

Two Reports on Harassment

In the following pages are two reports now undergoing discussion in the University Council. The Report of the Ad Hoc University Council Committee on Sexual Harassment and the Report of the Ad Hoc Committee to Draft a University Policy on Racial Harassment were introduced at the October 8 meeting and continue on the agenda for November 12.

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Administrative/Professional Staff: A-1 Assembly representative Carol Vorchheimer, Dining Services, 3800 Locust Walk/6190.

Librarians: Librarians' Assembly representative Jean Adelman, University Museum Library, Museum/6324.

Support Staff: A-3 Assembly representative Russell Muth, Cerebrovascular Research Center, 429 Johnson/6063.

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Undergraduates: Names are available from Undergraduate Assembly Office, Houston Hall/6306, Ext. 8908.

Report of the Ad Hoc University Council Committee on Sexual Harassment

I. Background

This committee was convened by the Steering Committee of University Council in response to a resolution of Council on November 13, 1985. The Council charged us to "review and recommend a set of policies and procedures to resolve cases of sexual harassment, with particular attention paid to peer-to-peer harassment."

Membership of the committee reflects a wide variety of constituencies on Council. Five committees that have addressed various aspects of the issues of sexual harassment are represented:

1. Task Force on Conduct and Misconduct,
2. Senate ad hoc Committee on Behavioral Standards,
3. Subcommittee on Sexual Harassment, Student Affairs Committee, University Council,
4. Second Task Force on the Quality of Teaching,
5. Women's Studies Subcommittee on Sexual Harassment.

Additionally, the committee has members chosen by the Senate Executive Committee, the Undergraduate Nominations and Elections Committee, the Graduate and Professional Women's Organization, the Graduate and Professional Students Assembly, the A-3 Assembly, Librarian's Assembly, Administrative Assembly, and the Penn Women's Center.

The charge to the Committee followed a period of extended committee work and of gradually increasing awareness of the extent and complexity of the problems of sexual harassment on our campus. The Preliminary Report of the Committee to Survey Harassment at the University of Pennsylvania (*Almanac* September 24, 1985) indicated the severity of the problem and the weakness of our institutional responses. The Committee's Final Report (December 1985) made the impact of this harassment on individuals dramatically clear.

Our charge has led us to examine existing policies in the University, to review the work of previous committees that have dealt with sexual harassment, to review past Council discussions, to meet with interested and informed people on the University campus, and then to debate the issues in Committee.

Our Report starts with a statement of principles and a definition of sexual harassment that seem to us to warrant general agreement. The Report focuses on clarifying issues and making recommendations in regard to reporting complaints, offering support and counseling, developing procedures for resolution of complaints, centralizing recording and documentation, and developing programs for prevention and education. In making recommendations for resolution of sexual harassment cases, we have tried to suggest procedures which would both support fairness to complainants and respondents and also safeguard the traditional academic rights and responsibilities of all concerned. We acknowledge the double jeopardy of racial and sexual minorities and the intersection of racial and sexual harassment. We hope that the Committee on Racial Harassment will address some of these issues. Our report will focus specifically on sexual harassment, including harassment based on sexual or affectional preference.

II. Principles

The strength of the University's policy on sexual harassment is largely determined by the integrity and effectiveness of the system designed to resolve complaints of such misconduct. *Procedures developed to respond to complaints of sexual harassment must be easily and equally accessible to all campus constituents.* We think it is essential that stu-

dents, staff, and faculty be provided with multiple ways of reporting problems of sexual harassment. At the same time, our procedures need to protect the academic freedom of individuals and the rights and responsibilities of faculties with respect to their own membership. Our aim is to design a system of support and resolution which will facilitate the appropriate utilization of formal and informal mechanisms to address sexual harassment across the campus.

This system must be constructed and perceived as an accessible and a fair system that will hear complaints, provide support to all parties, investigate allegations, suggest remedies, recommend sanctions, and work toward the prevention of sexual harassment in all aspects of University life. Such a system mandates a centralized reporting mechanism for the coordination of information gathered from both formal and informal complaints.

To this end, we have been guided by the following principles in considering the major issues:

1. We value the due process rights of all individuals involved.
2. We consider it essential that the academic freedom rights of respondents and complainants are protected.
3. We respect the confidentiality of complainant records. Furthermore, we consider it essential that both respondents and complainants be protected from libelous or slanderous statements.
4. We consider it essential that complainants be protected from retaliation.
5. We are committed to informed consent, i.e., sharing with complainants information about all the options they have available and the consequences of their choices.
6. We agree with the general principle, under which ombudsmen's offices operate, that individual complainants can limit the extent of their own involvement.

III. Definition of Harassment

The committee notes Provost Ehrlich's statement of University policy concerning the definition of sexual harassment and its possible consequences (*Almanac* September 24, 1985, p. XII).

"For purposes of University policy, the term 'sexual harassment' refers to any unwanted sexual attention that: (1) involves a stated or implicit threat to the victim's academic or employment status; (2) has the purpose or effect of interfering with an individual's academic or work performance; or (3) creates an intimidating or offensive academic, living, or work environment. The University regards such behavior as a violation of the standards of conduct required of all persons associated with the institution. Accordingly, those inflicting such behavior on others within the University setting are subject to the full range of internal institutional disciplinary action, including separation from the institution."

Specifically, sexual harassment includes, but is not limited to, the following examples:

1. Behavior which is inappropriate in the classroom or workplace and/or which may create an environment that interferes with the academic or work performance of students or employees, particularly if engaged in by a person in a position of authority:
 - a. sexually suggestive looks or gestures;
 - b. questions of a sexual nature;
 - c. remarks that stigmatize or ridicule others on the basis of gender or affectional preference;
 - d. unwanted pressure for dates;
 - e. persistent following.
2. More serious examples of harassment:
 - a. unwanted cornering or leaning over;

- b. display of offensive, sexually-oriented photographs, slides, transparencies, graffiti, etc.
- c. unwanted letters, phone calls or interviews which explicitly discuss personal sexual matters.
- 3. Extremely serious examples:
 - a. unwanted touching, pinching, or patting;
 - b. pressure (unwanted requests) for sexual favors, especially from a person in authority;
 - c. actual or attempted sexual assault;
 - d. actual or attempted rape.

The recent report of the Committee to Survey Harassment within the University of Pennsylvania documents the occurrence of many of these behaviors and establishes the existence of harassment involving persons in a position of authority and those under their authority as well as peer harassment.

IV. Applicability

The structures described in this report are open to all members of the University community:

- 1. all matriculated and other special fee-paying students;
- 2. all faculty: standing, non-tenured, associated, and visiting;
- 3. all staff and administrative officers and workers on contract to the University;
- 4. members of the Board of Trustees.

Individuals will have up to one year from the time of their separation from the University to initiate use of these structures to seek redress for any situation that occurred while they were at the University.

V. Reporting Complaints

There are many people and places on campus where complaints of sexual harassment may currently be reported. The list includes the University Ombudsman, the Penn Women's Center, the Office of Student Life, the Judicial Inquiry Officer, the Director of Victim Support and Security, the Office of Public Safety, Gay and Lesbian Peer Counseling, designated faculty (e.g., Graduate School of Education), School of Social Work Ombudsman, Department Chairs and Heads of Administrative Units, Deans, all formal grievance mechanisms, and the Provost.

Two considerations shaped our thinking on the questions involved here.

1. The urgent need to have data on the incidence of sexual harassment suggested the desirability of designating some central office to which complainants would turn. Several previous committees have found this need to be compelling. Some have suggested the Ombudsman's office for this purpose; the Student Judicial System specifies the JIO as the formal recipient of complaints against students; others saw that role being shared by the JIO, the Ombudsman, and the Director of the Penn Women's Center.

2. The Report of the Survey on Harassment (*Almanac*, September 24, 1985) documents the low reporting rate of sexual harassment on campus relative to its incidence. This suggests that reporting should be made easier, more accessible.

We separate the two problems and recommend:

- 1. that responsibility for central recording and documentation be located in the Ombudsman's Office;
- 2. that multiple entry points for initial complaints be encouraged, that we maintain all the mechanisms we now have, and that, in addition, individual schools designate faculty, staff, and students to receive complaints;
- 3. that in instances where the complainant prefers anonymity, no written records be kept identifying either the complainant or the respondent by name or department. In these instances, only categorical data will be forwarded to the Ombudsman's office (see Sec. IX.B.6.); and
- 4. that in instances where the complainant agrees to relinquish anonymity and register a written complaint, a record of the case will be forwarded to the Ombudsman's office (see Sec. IX.B.1-2).

VI. Support and Counseling

The committee acknowledges the impact of sexual harassment not only on the complainant and respondent, but also on the University community at large. Therefore, it recommends that both support and counseling services be widely available.

Currently, counseling and support are available through the Faculty

Staff Assistance Program, University Counseling Service, Student Health Psychiatry, Penn Women's Center (Counseling Program), Office of Student Life, Gay and Lesbian Peer Counseling, Office of Residential Living, Victim Support and Security Services, Department Chairs, Deans, and individual faculty.

We encourage the multiplicity of support services to allow for differing needs of people in differing circumstances. We further note that the most appropriate counseling and support is often that most closely based—i.e., within individual schools or peer groups. Therefore, we recommend that individual schools be encouraged to provide counseling and support by designating particular faculty, students, and staff as informed advisors to serve all groups, including gay and lesbian individuals.

Additionally, we recommend the establishment of two university-wide peer advising programs for students on matters relating to conduct. One program would provide services to students who are respondents, while the other program would provide services to students who are complainants. Both services would offer advice and support to any individual who chooses to use the service or who is referred to the service by another campus organization, or as part of the resolution of a complaint.

Responsibility for the design and implementation of these peer advising programs should reside with the Office of Student Life and the Penn Women's Center, with attention paid to the use of these services as model programs from which other peer advising programs in other areas of the campus might be developed.

VII. Informal Mechanisms for Information Gathering, Mediation and Resolution

A. Development of Mechanisms by Individual Schools or Administrative Units

The University already has in place a number of options for dealing with sexual harassment. The Ombudsman, the Judicial Inquiry Officer, the Director of Student Life, the Office of Public Safety, as well as Department Chairs, Deans and the Provost are all available to assist in the resolution of complaints of sexual harassment. We agree with past recommendations that, in addition to these existing resources, each School and large Administrative Unit develop procedures for dealing with complaints of sexual harassment from faculty, staff, administrators, and students. (See Report of the Task Force on Conduct and Misconduct, *Almanac* December 3, 1985; Report of the *ad hoc* Committee on Behavioral Standards, *Almanac* September 24, 1985).

These procedures should be presented to the School faculty, appropriate staff, and to the student body for discussion and review. An approved mechanism should be put in place within one academic year after the submission of the recommendation of the aforementioned groups, and a description distributed within the School/Unit and published in the *Almanac*. Examples of such individualized plans are the proposals drawn up by the Graduate School of Education and the School of Social Work.

In consultation with the University Ombudsman, such procedures should be discussed, reviewed, and revised when necessary.

B. Selection of Individuals to Help Resolve Complaints

We recommend that individuals selected within a given School/Unit to deal with incidents of sexual harassment be chosen, in the case of a School, by a committee made up of the Dean, the Chair of the School Committee on Academic Freedom and Responsibility, the Chair of one other relevant faculty committee, staff members selected by the staff of the School, and four students chosen by the student body. Of these latter four persons, at least two should be women. In the case of an Administrative Unit, we recommend that the committee be made up of representatives of the faculty, staff, and student body, as appropriate to the Unit. These committees shall consult with the University Ombudsman and the Director of the Penn Women's Center. The number and characteristics of persons chosen for the various roles will depend on mechanisms developed within individual Schools/Units.

Positions to be filled in this way include:

- a. recipients of information regarding possible sexual harassment;
- b. mediators for the informal resolution of incidents involving sexual harassment;
- c. individuals participating in the formal resolution of incidents involving sexual harassment; and
- d. a School Ombudsman.

VIII. Formal Procedures for Information Gathering, Resolution and Adjudication

A. Introduction

In many cases, the use of existing formal procedures for resolving issues of sexual harassment is determined by the category of the respondent. For example, when formal charges are brought against a student, the matter is referred to the Student Judicial System. Charges brought against most of the administration and non-unionized staff are referred to Staff Grievance Procedures. For union members, most of our contracts have some provision for grievance procedures. When charges which might result in termination or suspension are brought against a member of the faculty, whether by a Dean or by a Group for Inquiry set up on the initiative of a School Faculty, the matter is referred to the School Academic Freedom and Responsibility Committee. On the other hand, access to the Faculty Grievance Mechanism requires that a faculty member be the complainant.

The committee has concerns about the comprehensiveness of these procedures, the ease of access to them, especially by students and junior faculty and staff, and the degree of protection they offer complainants and respondents. We are also concerned that for a large group of senior administrators, there is no published grievance mechanism. Nor are we satisfied that union grievance procedures offer sufficient protection to all concerned.

Overall, it would appear to us that the procedures in existence make it extremely difficult for complaints to be filed when harassment cases involve power relationships and the complainant must use the structures designed according to the category of respondent. The issues here involve a delicate balancing of rights and protections on all sides.

The committee has attempted to resolve this tension by delineating the composition of two different University-wide structures, a Hearings Panel and an Appeals Board. Composition of the former would reflect the categories of both sides in a dispute, and the Panel would be charged with gathering information, determining what actually occurred, and making initial recommendations for sanctions. Composition of the Appeals Board would be representative of the entire University community.

B. Jurisdiction

The committee recommends that jurisdiction with respect to complaints against students remain within the Student Judicial System, except in cases where graduate or professional students are alleged to have committed acts of harassment while serving in a formal instructional capacity. In these instances, jurisdiction will be within the School/Unit, except as described below.

We recommend that jurisdiction in the case of complaints against faculty members, instructional and research staff, and other staff and administrators of the University (subsequently referred to as faculty and staff) lie in the first instance within the individual School/Unit involved.

We recommend further that a University-wide structure be established with original jurisdiction in certain instances, and with appellate jurisdiction with respect to (1) procedural error by the panel of original jurisdiction, (2) severity of sanctions, (3) errors of fact or introduction of new evidence not previously available; and (4) inappropriate or discriminatory behavior of the panel of original jurisdiction.

C. Individual School/Unit Mechanisms

We recommend that each School and major Administrative Unit set up formal structures for resolving complaints of sexual harassment which are appropriate to the unique character of the School/Unit, and which are both attentive to the special concerns of due process and academic freedom and also sensitive to the vulnerability of complainants.

Complete information about these formal structures should appear in the report of each School/Unit (see Section VII.A., above) which outlines the details of informal procedures.

D. University-Wide Structures

1. Jurisdiction

The recommended University-wide Hearings Panel will have original jurisdiction if either:

- (1) no formal mechanism for resolution of harassment complaints exists within the respondent's School/Unit, or
- (2) a senior administrator of the School/Unit is the respondent, or
- (3) the complainant and respondent belong to different Schools/Units, or
- (4) the complainant or the respondent requests the use of a University-

wide structure.

The Judicial Administrator (as defined by the Student Judicial Charter) shall determine whether the University-wide structure has jurisdiction in a particular case.

The University-wide Appeals Board will have appellate jurisdiction with respect to procedural error, severity of sanctions, questions of new evidence, and issues of inappropriate behavior of the original panel. Either the respondent or the complainant may appeal on any of these grounds.

2. Composition and Selection of Panels and Boards

In cases of original jurisdiction the committee recommends that the panel consist of one (1) faculty member, two (2) members drawn from the constituency of the complainant, and two (2) members from the constituency of the respondent. (Constituencies are faculty, undergraduate students, graduate/professional students, administrative staff (A-1s), support staff (A-3, A-4, A-5). The Chair shall be a faculty member from this group, selected by the Judicial Administrator. Challenges for cause will be permitted.

Panel members shall be drawn at random from the following pools:

- (1) a pool of thirty (30) faculty members provided by the Senate Executive Committee,
- (2) a pool of twenty (20) administrative staff members provided by the A-1 assembly,
- (3) a pool of twenty (20) support staff members provided by the A-3 assembly,
- (4) a pool of fifty (50) undergraduate students provided by the Undergraduate Nominations and Elections Committee,
- (5) a pool of fifty (50) graduate/professional students provided by the Graduate and Professional Student Assembly.

The bodies setting up these constituency pools should be careful to ensure a reasonable representation of women and minorities.

In cases of appellate jurisdiction, the Board shall be composed of five members and a non-voting Chair. One member shall be randomly selected from each of the pools designated above. A past Chair of the Faculty Grievance Commission who is no longer serving on the Commission shall serve as Chair. (For appeals by faculty members to the Committees on Academic Freedom and Responsibility, see Sec. VIII.D.3. below.)

3. Procedures

a. Original jurisdiction

In cases of original jurisdiction, upon receipt of a written complaint and determination that the University-wide structure has responsibility, the Judicial Administrator will notify both parties, oversee the selection of the Panel, designate a faculty member as Chair, and convene the Panel. The Panel will receive information from both sides, reach a decision on the facts, and recommend sanctions to the Dean of the respondent's School or the Administrative Head of the Unit to which the respondent belongs. Formal rules of evidence shall not apply. Evidence, including hearsay evidence, shall be admitted if it is relevant and is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Both the complainant and respondent are entitled to bring a colleague or advocate who must be a member of the University community. The proceedings are to be considered confidential and the records of hearings are confidential records.

Ordinarily a Panel shall be convened no later than one month after the receipt of a written complaint, and the Panel shall report no later than two months after the time it is initially convened, even if the case is settled by negotiation.

b. Appellate jurisdiction

In cases of appellate jurisdiction, upon receipt of a written appeal from either the respondent or complainant, the Judicial Administrator will notify the other party, oversee the selection of a Board, designate the Chair, and convene the Board.

In the case of appeal on the basis of procedural error, questions of evidence, or inappropriate behavior, the Board will evaluate the record. If no grounds for appeal are found, the original finding stands; if procedural error is found, or if there is substantial new evidence, or if the behavior of the original Panel is found to have been inappropriate and prejudicial to either party, the case will be reopened and a new University-wide Hearing Panel convened in accordance with Section VIII.D.2.

In the case of appeal on the basis of severity of sanctions, the Appeals Board will review and evaluate the case as determined by the original

Hearing Panel. It shall either uphold or nullify the originally imposed sanctions. If they are nullified, the case will be reopened and a new University-wide Panel convened in accordance with Section VIII.D.2. If the sanctions are upheld, they are forwarded to the Provost or President, as appropriate. A faculty member may also appeal the sanctions so forwarded to the appropriate school Committee on Academic Freedom and Responsibility, whose recommendations shall also be forwarded to the Provost. All proceedings are to be considered confidential and the records of the deliberations are confidential records.

The Board shall notify the complainant, the respondent, the Dean or Administrative Head and the Judicial Administrator, of its findings no later than two months after the filing of the appeal. The Judicial Administrator shall report the findings to the Office of the Ombudsman, and within two weeks of the conclusion of the case, shall report its final resolution.

IX. Central Recording and Documentation

A. Maintenance of Records of Complaints Handled by Formal Mechanisms

1. Confidential written records of all formal complaints will be submitted promptly to the Ombudsman. These records will include the names of the complainant and the person complained against, the nature of the charge, and the disposition of the case. The Ombudsman will maintain these records for seven years.

2. At the end of the academic year, and in consultation with the Penn Women's Center, the Ombudsman will issue a report that gives an accounting, on a case-by-case basis (without revealing personal identities), of all cases which required resolution by formal mechanisms and arrangements, as well as those still in progress. This report will be presented to the President and the Provost, and to *Almanac* for publication.

B. Maintenance of Records of Complaints Handled by Informal Mechanisms

1. Confidential written records of informal complaints will be submitted to the Ombudsman in cases where the complainant has agreed to the forwarding of her or his name. The complainant will at all times be advised of: 1) the Ombudsman's need to keep accurate records of the extent of sexual harassment on campus, and 2) the University's established policy of total confidentiality of the Ombudsman's files. If the complainant wishes the record of the complaint to be sent to the Ombudsman, the respondent shall be informed that a complaint has been sent.

2. The record filed with the Ombudsman will contain the information outlined in IX.A.1., above. The Ombudsman will maintain these records for seven years and examine them periodically to determine whether there is a pattern of multiple informal complaints against the same individual or an unusually high incidence of complaints within a particular school.

3. When the records show that three or more discrete informal complaints are lodged against the same person within a three-year period, the Ombudsman will arrange a confidential meeting with the respondent, inform him or her of the nature of the complaints without identifying the complainants, and attempt to reach an agreement on future behavior. A summary of this discussion and any agreements reached are to be recorded in the respondent's file in the Ombudsman's office and a copy forwarded to the respondent.

4. Should a subsequent complaint be filed against a respondent indicating a violation of an agreement with the Ombudsman, the Ombudsman may file a formal complaint against the respondent.

5. If a formal complaint is lodged subsequently against a respondent who has a record of three or more prior complaints, and if there is a finding for the complainant, the fact of multiple prior complaints will be brought to the attention of the Panel before sanctions are recommended.

6. Complaints involving sexual harassment that have been handled by the various informal arrangements within the University community, are to be reported to the Ombudsman. The purpose of the reporting is to provide data so that at the end of the academic year, and in consultation with the Penn Woman's Center, the Ombudsman can prepare a cumulative report, using generic categories to preserve confidentiality, indicating the number of informally received complaints, their nature, the University affiliation (see Sec. IV) and School/Unit of the complainant and

respondent, and the outcomes that have been achieved. This report will be presented to the President and the Provost and to *Almanac* for publication.

X. Prevention and Education

The reports of previous committees which have studied the issues involved in sexual harassment, [Report of the Task Force on Conduct and Misconduct, (*Almanac* December 3, 1985); Report of the Subcommittee on Sexual Harassment, Student Affairs Committee of the University Council, (*Almanac* October 21, 1985); Report of the Second Task Force on the Quality of Teaching, (*Almanac* November 26, 1985); the Survey on Sexual Harassment (*Almanac* September 24, 1985)], and previous University Council discussions all support our view that both the prevention of sexual harassment and the establishment of effective procedures with due concern for all parties when harassment occurs, require a thoughtful educational program. We therefore recommend:

1. That all individuals designated as 1) recipients of information regarding possible sexual harassment, 2) mediators for the resolution of incidents involving sexual harassment, 3) members of individual department, school or university-wide bodies established to participate in the resolution of incidents involving sexual harassment and/or 4) School/Unit Ombudsmen receive information concerning:

- a. other informal and formal mediation and resolution mechanisms available,
- b. all individual department, school and university-wide procedures,
- c. examples of incidents of sexual harassment and possible resolutions,
- d. definitions of sexual harassment,
- e. central reporting forms and descriptions of how and when to report,
- f. sources of support and information for victims and respondents, and
- g. sources of information and advice for informal mediators.

2. That all individuals who have responsibilities for the resolution of incidents involving sexual harassment be asked to attend an information session to be held each fall semester at which the University's policies and procedures regarding the mediation and resolution of incidents involving sexual harassment will be presented and discussed.

3. That training programs for residential advisors, senior administrative fellows, those who meet students in crisis situations and others serving in an advising capacity to students should include training about referrals, resources, and methods for handling instances of sexual harassment.

4. That for students, an overall educational program dealing with issues of peer harassment and providing information, definition, support, identification of resources, and exploration of behavioral alternatives, be developed by the Office of Student Life and the Penn Women's Center in conjunction with the Office of Residential Living, the Council of College House Masters, and the Council of Senior Faculty Residents involved with the Freshman Year Program. Such an educational program should be directed toward new undergraduate and graduate/professional students. It should be noted that the development of the Freshman Year Program in the Quadrangle will offer opportunities for small programs to be developed in residential settings and explored fully by faculty, staff and students within the setting of each Freshman House.

5. That the use of a form such as that proposed by the Second Task Force on the Quality of Teaching (*Almanac* Supplement, November 26, 1985, p. xi) be implemented.

XI. Summary

Our efforts have been based upon an examination of existing policies within the University, an evaluation of the areas of agreement and disagreement among the various committees that have studied the issues of sexual harassment in the last few years, and extended discussions with interested and informed parties on campus, as well as within our committee. We have in this Report set forth principles, defined sexual harassment, suggested procedures for the resolution of complaints, and offered some preliminary suggestions for education and training to reduce the incidence of this kind of objectionable behavior.

In examining the many complex questions, particularly as they refer to peer-to-peer harassment, we started with four questions: 1) How do we build on our existing set of procedures for reporting and resolving complaints to make them easier to use while ensuring protection for all parties? 2) What is the most effective way to provide support and

counseling to those who suffer the impact of sexual harassment? 3) How can we be certain of adequate recording and documentation while assuring confidentiality? and most important of all 4) What can we do to prevent incidents of harassment in the first place or to limit the damage they inflict on all of us when they do occur?

The more detailed answers to these questions are spelled out above. In sum, we have concluded that we must have multiple entry points into the system, that these must be widely known and easily available, that structures for resolution of complaints as well as new support and counseling services should be created both on an individual school/unit basis and on a University-wide basis, and that there should be a well-defined mechanism for central reporting.

The Report reflects the Committee's concern with a number of vital issues. There are problems that may be encountered by both respondent and complainant in small schools in using school-based mechanisms. There are many difficulties in inter-school cases. Perhaps the most difficult questions of all arise when either complainants or respondents feel threatened using the available mechanisms. We have tried to be attentive to the need of all for confidentiality and protection from intimidation or fear of reprisal, while safeguarding the due process rights and academic freedom of everyone involved. For all within the University community, the goal is to move towards a situation which will indeed

minimize the "threat to academic or employment status" or any "interfering with . . . academic or work performance" (Provost Ehrlich, *Almanac* September 24, 1985) which results from sexual harassment.

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OF RECORD

University Policy on Sexual Harassment

It is the purpose of this statement to reiterate the University's policy on sexual harassment and to identify the resources available to individuals who believe they have been subjected to such coercion. Provost's Memorandum #3-80, issued on May 6, 1980, defines the University's responsibilities in matters of sexual harassment:

"As an employer, the University seeks to ensure that the workplace is free from harassment. As an educational institution, the University's commitment to eradicating sexual harassment goes beyond the Equal Employment Opportunity Commission guidelines."

Sexual harassment in any context is reprehensible, and is a matter of particular concern to an academic community in which students, faculty, and staff are related by strong bonds of intellectual dependence and trust. Sexual harassment most frequently occurs when one person has some power and authority over another. For purposes of University policy, the term "sexual harassment" refers to any unwanted sexual attention that: (1) involves a stated or implicit threat to the victim's academic or employment status; (2) has the purpose or effect of interfering with an individual's academic or work performance; or (3) creates an intimidating or offensive academic, living, or work environment. The University regards such behavior as a violation of the standards of conduct required of all persons associated with the institution. Accordingly, those inflicting such behavior on others within the University setting are subject to the full range of internal institutional disciplinary action, including separation from the institution.

Any student, faculty member, or other employee who believes he or she is a victim of sexual harassment may report the complaint to his or her advisor or supervisor or to the supervisor of the person who is behaving objectionably; the individual who receives such a complaint has the responsibility to pursue the matter and may draw upon University resources. The person receiving the complaint must treat it as confidential, to be communicated only to the appropriate authorities. In addition, all persons who believe they are victims of harassment, including those who are reluctant to raise the matter with a supervisor, are encouraged to use the other avenues within the University through which guidance and counseling can be obtained, formal and informal complaints can be made, and corrective action, as appropriate, can be taken.

The following University resources and grievance mechanisms are available:

A. General Resources

1) The *Women's Center* will aid students, faculty and staff with counseling, advocacy, advice and referral concerning formal and informal avenues of redress in matters of sexual harassment. The Women's Center does not conduct investigations, and will keep all information confidential.

2) The *Office of the Ombudsman* exists to help resolve grievances of all members of the University community—students, faculty and staff—on a confidential and informal basis, and can assist persons with complaints about sexual harassment to decide on the course of action that they want to take. The office is independent of the University's formal administrative structure and grievance mechanisms. The Office of the Ombudsman may also be requested by the Office of Student Life to undertake a formal investigation of charges of sexual harassment of students (see B-1a below).

B. Additional Resources

1) *Students*: In addition to the General Resources listed in Section A above, students may call upon the following resources:

a) The Director of the *Office of Student Life* is responsible for dealing with student grievances arising under Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education. Grievances associated with student employment may also fall within the Director's purview. Complaints by students of sexual harassment may be made to the Director, who will supervise, or delegate to the Ombudsman, an investigation into the matter.

b) Student complaints of sexual harassment by faculty may be brought by the student or an advocate on behalf of the student to the department chair or dean of the faculty member. The appropriate *School Committee on Academic Freedom and Responsibility* may investigate the case, either on its own initiative or at the request of an academic administrator.

c) Victims of harassment may seek assistance from the *University Counseling Service*, *Gay and Lesbian Peer Counseling* and the *psychiatry section of the Student Health Service*. Contacts with these services are strictly confidential and may be particularly helpful to students desiring assistance in dealing with their feelings about their experience with sexual harassment.

2) *The University Staff and Faculty*: In addition to the General Resources listed in Section A above, nonacademic staff may utilize the formal grievance mechanism described in Personnel Policy #801. Faculty may utilize the Faculty Grievance Procedure described in the *Handbook for Faculty and Administration*.

—Thomas Ehrlich, Provost

Letter of Transmittal

Provost Thomas Ehrlich
102 College Hall/CO

Dear Tom:

On behalf of the Racial Harassment Policy Committee, I am pleased to submit to you the enclosed *Report of the Ad Hoc Committee to Draft a University Policy on Racial Harassment*, with an appendix, and Mr. Hamburg's and Professor Perlmutter's memorandum about certain recommendations in the report.

In charging the committee "to draft a University policy on racial harassment, with as much specificity as possible," you also asked the committee to extend its considerations to other forms of harassment, particularly ethnic and religious harassment. Following our many months of deliberations and numerous meetings with members of the University community, we formulated a proposed definition of harassment and a statement of policy and prepared a system for resolving complaints of racial and ethnic harassment that might arise on campus, in University facilities, or in the context of University-related activities. While the proposed mechanisms were developed with racial and ethnic harassment in mind, the committee envisions the University's having three levels of procedures for handling all types of complaints of harassment.

The first level would ensure that any faculty member, staff or student at the University who is considering or possibly facing a complaint of harassment would be provided with advice and consultation about policies, standards, complaint mechanisms and resources. The second level would consist of informal procedures for resolving harassment complaints within each school or administrative unit of the University. The third level would be a University-wide mechanism for the formal resolution of complaints. This plan, as well as many of our specific recommendations, are very much in line with those proposed in the

Report of the "Ad Hoc Committee on Behavioral Standards" (*Almanac* September 24, 1985).

We are grateful to you for affording us the opportunity to learn more about our University's existing procedures for handling complaints, to understand better the complexities of campus interactions, and to share with you and the University community our views of what steps might be helpful in improving the quality of education, work and life at Penn. We also want to express our thanks to the many students, faculty and staff who shared their thoughts, their experiences—sometimes very personal and painful ones—and their proposals with us. They enabled us to carry out our work with greater insights into the effects of harassment, the necessity of protecting academic freedom and the delicate challenge of addressing harassment without interfering with academic freedom.

As we submit this report to you, we do so with the hope that its consideration by the administration, faculty members, students and staff of Penn will lead to the adoption of a policy and procedures that will meaningfully and fairly address issues of harassment while continuing to affirm, support and cherish freedom of thought, inquiry, discourse, speech and teaching.

Sincerely, James J. Bishop Chair
Committee Members
Elijah Anderson
Muhammed Aurangzeb
Jean Crockett
Neil Hamburg
Lorenzo Holloway
Orneice Leslie
Daniel Perlmutter
Ann Strong

P.S. Messrs. Aurangzeb and Holloway graduated in June and did not participate in the committee's discussions of the final drafts.

Report Of The Ad Hoc Committee to Draft A University Policy on Racial Harassment

October 1, 1986

Following discussions at University Council meetings during the spring of 1985, President Sheldon Hackney and Provost Thomas Ehrlich agreed to establish an ad hoc committee "to draft a University policy on racial harassment, with as much specificity as possible." At the committee's first meeting, the Provost asked its members to discuss what issues should be in this policy, and suggested that the committee use as a starting point the Report of the Ad Hoc Committee on Behavioral Standards (*Almanac* September 24, 1985), that the committee's deliberations at least begin with racial harassment and, if the committee so chose, that it extend its deliberations to ethnic and religious harassment. The Provost noted that, based upon the University's history of developing over a two year period the Sexual Harassment Policy and the difficulties that had been brought out in the previous spring by earlier and "inadequate" drafts of racial harassment policies, the committee's work would be difficult but important. The committee was asked to report its findings and recommendations to the Provost with the understanding that its report and draft policy would go to the University Council Steering Committee immediately after he received it.

The initial part of the committee's work was devoted to trying to clarify what is meant by "harassment" and to understand its effects upon members of a university community. In doing so, the committee members reviewed the University's policies and procedures on sexual harassment, the Report of the Ad Hoc Committee on Behavioral Standards, policies and procedures of other universities, annual reports of the Office of the Ombudsman, and the Final Report of the President's

Commission on Judicial Procedures. In addition, the committee met with members and leaders of Penn's minority faculty, staff and student organizations, and with the current and past Ombudsmen.

As the committee formulated definitions of racial harassment, it used many of the complaints and incidents that had been brought to its attention to test the applicability and appropriateness of the use of these definitions, lest a particular formulation might affect longstanding University policies that protected and encouraged freedom of thought, speech, and academic pursuits within the University. On that basis, the committee arrived at the proposed introduction to a policy statement, definition of racial and ethnic harassment, and policy statement below (Sections I and II).

In considering procedures for handling complaints of alleged racial or ethnic harassment, the committee was greatly influenced by the following:

1. The relatively large number of existing procedures and resources within the University for responding to complaints of misbehavior or other grievances;
2. The small number of cases that have been filed as formal complaints under existing mechanisms relative to the incidence of harassment reported by the Committee to Survey Harassment;
3. The low level of trust that many minority members place in the existing procedures;
4. The lack of formal, clearly specified adjudicative procedures with enforcement powers in nearly all cases except complaints filed against students;
5. The several recommendations from many committees and groups

within the University for a multi-tiered system that begins with informal mechanisms within the academic, research, and administrative units, while allowing also for University-wide hearing groups;

6. The imperative to recognize the special nature of the relationship between a University and its faculty, and to preserve and protect traditions, mechanisms, and procedures established to safeguard and further academic freedom and responsibility.
7. The difficulty that often exists in determining whether a particular injustice was based on race or gender alone, or was in fact caused by a combination of attitudes or behaviors.

With these points in mind the committee concluded, as did the Ad Hoc Committee on Behavioral Standards before us, that the University should not increase the procedures "dedicated" to handling specific complaints of racial, sexual, or other harassment. Instead, the committee believes that the University should have three levels of procedure for handling all types of complaints of harassment. The first level should provide for advice and consultation to any faculty member, support, instructional or research staff member, administrator or student of the University. Under these procedures, members of the University community should be able to seek and receive advice and consultation about University policies, standards of behavior, mechanisms for resolving complaints, and resources for both complainants and respondents.

The second level should include procedures for resolving complaints informally within each school or administrative unit of the University. Under the procedures, the parties involved should rely heavily upon discussion and mediation of complaints. Schools and administrative units may also establish procedures for formally resolving complaints by members of their schools or administrative units against members of the same school or administrative unit. The University should make available a range of alternative resources outside of the academic, administrative, and research units, including administrative offices and the Office of the Ombudsman.

The third level would include a University-wide mechanism for formally resolving complaints. Our specific recommendations, which are fundamentally those proposed by the Ad Hoc Committee on Behavioral Standards, are detailed below.

We should note that our committee began its deliberations with a composition that was not as broad as we would have liked. We would have preferred to have had a faculty member from an Asian, Asian-American or Hispanic background. After several efforts, we were unable to find a faculty member in this category who would agree to join our committee. The committee did have major student participation during the fall term but, much to its regret and disappointment, the committee had only one active student representative for the entire spring semester. The graduate student representative resigned at the beginning of the spring semester, and the Graduate and Professional Student Assembly decided that it would not appoint a successor to the committee. One of the undergraduate representatives said that he was remaining on the committee, but did not attend any of the committee's meetings during the spring semester. The other undergraduate student attended and participated regularly until his graduation in June. (Both students were unable to participate in the committee's deliberations of the final drafts.)

It is our hope that these proposals will be discussed widely by the University Council and other groups within the University, and will lead to the University's adopting as soon as possible procedures for handling all forms of harassment cases.

I. Proposed Introduction to Policy Statement on Racial and Ethnic Harassment

The University of Pennsylvania has firmly established in various University policies and regulations that, as a community of scholars, it affirms, supports, and cherishes the concepts of freedom of thought, inquiry, discourse, speech, and teaching. These University policies include, but are not limited to, the Statement on Academic Freedom and Responsibility, the Guidelines on Open Expression, and the Code of Academic Integrity. These policies underscore and protect the freedoms of members of the community to experiment, to present and to examine alternative data and theories, to hear, to express, to debate various views, and to voice criticisms of existing practices and values.

The University has also found it necessary from time to time to promulgate policies on behaviors that interfere with these freedoms by eroding mutual trust among its members, failing to respect their funda-

mental rights, and preventing the attainment of the highest quality of academic and educational pursuits and daily work. Foremost among these policies is the University's Statement on Non-Discrimination, which prohibits discrimination on the basis of race, color, sex, sexual or affectional preference, religion, national or ethnic origin, handicap or disability. The University's policy on non-discrimination is in accordance with federal laws and regulations and attempts to deal explicitly with situations unique to the University.

II. Proposed Definition of Harassment and Statement of Policy

For the purposes of University policy, the term "racial or ethnic harassment" refers to any behavior that stigmatizes or victimizes individuals on the basis of race, ethnic or national origin and that: 1) involves a stated or implicit threat to the victim's academic or employment status; 2) has the purpose or effect of interfering with an individual's academic or work performance; and/or 3) creates an intimidating or offensive academic, living, or work environment.

The University regards such behavior as a violation of the standards of conduct required of all persons associated with the institution. As noted in the *Handbook for Faculty and Academic Administrators, Policies and Procedures*, the *Academic Bulletin*, and other University publications, those inflicting such harm on others within the University setting are subject to the full range of internal institutional disciplinary actions, including separation from the institution. The prohibition on discrimination and harassment applies to all interactions occurring on campus, in University facilities, or in the context of University-related activities.

Acts of harassment may be by omission or commission,* and can be physical or verbal. It should be noted that not every act that might be offensive to some individual(s) should necessarily be considered as harassment and a violation of the University's standards of conduct. In determining whether an alleged act constitutes racial or ethnic harassment, the totality of the circumstances that pertain to any given incident in its context must be carefully reviewed and due consideration must be given to the protection of individual rights to academic freedom and advocacy. The review should establish whether or not the behavior in question amounts to stigmatization or victimization with one or more of the adverse effects listed above.

It is the policy of the University to provide a system of support and resolution through which problems of harassment can be addressed in an appropriate way. This system must be open to all members of the University community. It must be constructed and perceived as an accessible and fair system that will hear complaints, provide support to all parties, investigate allegations, suggest remedies, recommend sanctions, where appropriate, and work toward the prevention of harassment in all aspects of University life.

III. Proposed Implementation

A. Academic and administrative units will make known to all of their members the available procedures for resolving complaints within the unit or at the University level. The unit will also inform its members of existing counseling and other supports provided by the University, including the Faculty-Staff Assistance Program, University Counseling Service, Psychiatric Section of the Student Health Service, Women's Center, Office of Student Life, Office of Affirmative Action, Office of Residential Living, Victim Support and Security Services, peer counseling programs, departmental chairs, deans, directors, and individual faculty staff and students. If and when additional programs of support and counseling become available, these should be regularly noted in University and departmental publications.

B. Jurisdiction with respect to complaints against students will remain under the Charter of the University Student Judicial System, or the student judicial systems of individual schools, except for graduate and professional students accused of acts of harassment while acting in a formal instructional capacity.

C. Jurisdiction in the case of complaints against faculty members, instructional and research staff, and other staff and administrators of the

* Please see Mr. Hamburg's and Professor Perlmuter's memorandum in which they express their reservations about the wording of this sentence, and Sections IV, V and VI of the report.

University (subsequently referred to as "faculty and staff") will lie in the first instance within the individual school or administrative unit of the involved complainant(s) and respondent(s).

D. A University-wide body will be established with original jurisdiction in certain cases and appellate jurisdiction with respect to: (1) procedural error at the school/unit level and (2) severity of sanctions.

E. Any actions to suspend or terminate the appointment of a member of the standing faculty for just cause shall follow the procedures outlined in the *Handbook for Faculty and Academic Administrators*.

IV. Suggested Procedures Within a School or Administrative Division

All schools and major administrative units should establish, if they have not already done so, procedures for filing and resolving complaints of harassment arising from alleged acts of faculty or staff.

A. Advice and Consultation.

Advisors should be available within each school or administrative unit for consultation by individuals who believe themselves to have been harassed. Such consultation will be confidential and no records will be kept. Advisors will provide information as to the support mechanisms available and the procedures available for the filing and resolution of complaints.

B. Mediation of Informal Complaints.

A three-person panel, composed of members of the school or administrative unit who are distinct from the advisors in paragraph IV-1, should be established for the mediation or other informal resolution of complaints. Members of this panel should be chosen by a committee appointed by the dean or administrative head. This committee should contain representatives of the various component groups within the school or administrative unit (faculty, students, A-1s and A-3s, as appropriate) and should consult with the University's Ombudsman, Affirmative Action Office, and Director of the Women's Center. If feasible, the panel should have minority and female representation.

Each school or unit should establish whatever minimum procedures it believes are necessary for the panels to operate. However, to ensure flexibility or informality, we strongly encourage that the procedural issues be kept to a minimum. The panel member(s) receiving a complaint will contact the person(s) against whom the complaint is made and will keep a confidential record of the allegations and facts and will send copies of the record to the complainant(s) and the respondent(s). This written record may be used in any formal complaint that is filed subsequently. The panel member will seek to resolve the complaint through discussion and mediation, and may call upon the Office of the Ombudsman and administrative officials to assist in informally resolving the complaint.

Informal settlements shall be mutually agreed upon by all parties and shall be written, signed by the complainant(s), the respondent(s), and a panel member.

The complainant(s) and the respondent(s) who have reached an informal settlement shall waive further proceedings under the University or other jurisdictions.

C. Formal Resolution within School and/or Administrative Unit.

Schools and major administrative units may also establish procedures under which formal complaints may be initiated by students, faculty, staff, and administrators against faculty members, staff members, or administrators of the schools or administrative units.

If a school or administrative unit establishes procedures for handling formal complaints, the procedures should include provisions that ensure fair and orderly proceedings for all parties, and follow the procedures outlined in the *Handbook for Faculty and Academic Administrators*. We have listed in the Appendix those provisions that we recommend schools and administrative units consider adopting as parts of their procedures for handling formal complaints.

D. The complainant(s), as well as the respondent(s), will be informed of any sanctions imposed by the dean or administrative head of the unit.

E. Any faculty member who believes that his/her academic freedom has been infringed upon may take his/her case to the school's Committee on Academic Freedom and Responsibility.

F. If the complainant and the respondent are from different schools or administrative units, the case should not be handled by either the school or administrative unit. In such cases, the complaint should be referred for resolution to the Ombudsman or the University-wide body.

V. Formal Resolution of Complaints at the University Level

A. The University Hearing Board

1. The President and the Provost, in consultation with the University Council, should establish a University-wide body to hear harassment cases.

2. This body should have original jurisdiction:

a. In cases arising in a school or administrative unit that has not established a mechanism for formal resolution of complaints against faculty, staff, and administrators;

b. In cases in which a high administrative or academic or research official of the school or unit (dean, associate or assistant dean, departmental chair, vice provost, vice president, director, etc.) is the respondent;

c. In cases in which the complainant and the respondent are affiliated with different schools or administrative units.

d. At the request of either the complainant or the respondent, after informal attempts at resolution have been pursued in good faith by the requesting party—either through school or administrative unit mechanisms or through the University Ombudsman—for a period of 20 calendar days. The request must be submitted to the JA, who shall ascertain that the required attempt at informal resolution has been made before accepting the case.

3. This body shall also have appellate jurisdiction with respect to:

a. Procedural error in hearings at the school or administrative level; and
b. The severity of sanctions imposed by the dean of the school or head of the administrative unit.

4. Formal complaints may be initiated by submitting a written, signed statement to the Judicial Administrator (JA), who will determine whether or not the case lies within the jurisdiction of this University-wide body.

5. If jurisdiction is determined affirmatively, the JA will so notify both parties in writing, will oversee the selection of a hearing panel from a pool as stipulated below and will convene the panel. Ordinarily the panel will be convened no later than one month after the receipt of a written complaint (Section V-7).

6.* One half of the twenty faculty members of the pool will be selected by the Faculty Senate Executive Committee. One half of the fifty undergraduate students of the pool will be nominated by the undergraduate Nominations and Elections Committee. One half of the fifty graduate and professional students of the pool will be nominated by the Graduate and Professional Student Assembly. One half of the twenty A-1 members of the pool will be selected by the A-1 Assembly, and one half of the twenty A-3 members of the pool will be selected by the A-3 Assembly. The other half of these respective pools will be selected at random by the Judicial Administrator. The nominating groups will make special efforts to ensure that women and minority members of the community are adequately represented in the pools and that the full range of A-1 and A-3 grades are reasonably represented in the pool.

7. The composition of the hearing board will be determined as follows:

a. The Judicial Administrator shall choose from the faculty pool one person to serve as chair of the hearing board.

b. The complainant shall choose two members from any pool and the respondent shall choose two members from any pool.

8. a. Members of the hearing panel shall disqualify themselves from hearing a case if they believe in good faith that their capacity for making an objective judgment in the case is or may reasonably appear to be impaired. Members should not disqualify themselves for any other reason.

b. A respondent or complainant may object for a specific cause to any panel member assigned to hear the case. Objection must be written and received by the JA at least 48 hours before the hearing. Upon ruling that a challenge is valid, the JA, after notifying the respondent and the complainant and panel, shall ensure that the challenged member is replaced with

* The committee was divided between recommending this option and the following mechanism for selecting pools:

Alternative V.A.6. The pool shall consist of thirty members of the standing faculty, twenty members of the associated faculty, twenty A-1s, twenty A-3s, fifty undergraduate students and fifty graduate and professional students. Within each category, half will be drawn at random from the full membership of that category and half will be selected by the JA, who shall ensure that there is a reasonable representation of women and minorities and that the full range of grades within the A-1 category is covered. In this selection the JA shall consult with the Senate Executive Committee, the A-1 Assembly, the A-3 Assembly, the Undergraduate Nominations and Elections Committee, the Graduate and Professional Student Assembly and other appropriate groups.

another person selected in the same manner as the successfully challenged member.

c. A respondent or complainant may object for good cause to the replacement member. Within a reasonably prompt time of a member's appointment, but no later than the beginning of the hearing, the JA shall rule upon the objection.

9. When the hearing board has original jurisdiction, it will be empowered to hear evidence, make determinations on the merits of the complaints and, if appropriate, recommend sanctions or other actions to the President, Provost, or Senior Vice President, who will report the disposition of the case to the hearing board.

a. At hearings before the panel, each respondent and each complainant may be accompanied by an advisor who is a member of the University community (student, faculty, or staff). If criminal charges are pending against a respondent, she or he may be accompanied by an advisor who is an attorney and who is not a member of the University community; however, the attorney may not address the panel except as provided below with respect to advisors generally.

b. During the hearing, the advisor may consult with her or his advisee, but may not address the panel, except that the advisor may make a summary statement to the panel before the panel begins its private deliberations. The time allowed for such a summary shall be set by the JA.

10. The JA shall preside over the panel, shall advise the panel, respondents, complainants, and advisors on procedural matters, and shall oversee the procedural integrity of the hearing, but shall not participate in the votes of the panel.

11. All hearings shall be held in appropriate University facilities approved by the JA and shall be private unless both the respondent and complainant request an open hearing in writing to the JA. The JA may in any case limit attendance at a hearing to ensure fair and orderly proceedings.

12. All hearings shall be conducted in such a manner as to permit the panel to achieve substantial justice. Participants and observers will conduct themselves in accordance with these objectives.

13. Formal rules of evidence shall not apply. Evidence, including hearsay evidence, shall be admitted if it is relevant and not unduly repetitious, and is the sort of evidence that responsible persons of the University community are accustomed to using in serious personnel decisions.

14. No evidence other than that received at the beginning of the hearing shall be considered by the panel. No information may be given to the panel following the hearing unless its submission is mutually agreed upon by the complainant, respondent and the JA. Members of the panel should not have *ex parte* conversations with the JA, JIO, complainant or respondent. The JA shall rule upon any objection.

15. The panel may proceed to hear evidence against a respondent in his or her absence upon proof by the JA that the required notice was provided.

16. When the hearing board has appellate jurisdiction, it may remand the case to the school or to the administrative unit for a new hearing if procedural error is found, and may recommend alternative sanctions to the President, Provost or Senior Vice President, if those imposed are determined to be inadequate or excessive. The decision by the President, Provost, or Senior Vice President on the recommended sanctions of the Hearing Board shall be final.

17. Records of cases heard and findings shall be transmitted to the Ombudsman, who will maintain and examine them as in the case of records of school or administrative hearings, and will include them in the annual summary. Inactive files of departments, schools, and administrative units will be destroyed after five years.

18. Except for members of the faculty, this University-level body shall be the final appellate group.

19. Members of the faculty may use existing appellate bodies as outlined in the *Handbook for Faculty and Academic Administrators*.

B. Officers of the University Hearing Board

1. Judicial Administrator

a. The Provost, with the advice and consent of the Steering Committee of the University Council, shall appoint a Judicial Administrator (the "JA"), preferably a qualified faculty member, who shall administer these procedures and preside over hearings. The JA will be responsible for overseeing the procedural integrity of this system. He or she will, for example, consider and resolve prehearing challenges to jurisdiction and procedures; alert the hearing panel to procedural consequences of its actions; advise the

hearing panel of inconsistencies between the demands of fairness and its actions at any point in the proceedings; and consult as appropriate with faculty members and others about procedural issues and convey their advice, together with the JA's recommendations to the hearing board.

b. The JA shall serve at the pleasure of the Provost.

c. Upon request, the JA shall refer a complainant or respondent to an advisor and shall maintain a list of advisors for this purpose.

d. The JA may advise complainants and respondents and their advisors on procedural matters.

e. Upon a showing of good cause by the JIO, complainant, or respondent, the JA may grant a reasonable extension of any time limit set forth herein.

2. Judicial Inquiry Officer

The Vice Provost for University Life (the "VPUL") shall appoint a Judicial Inquiry Officer (the "JIO") whose duties under this system shall include investigating complaints filed under the provisions of this system; determining whether charges filed under the system should be brought before the Hearing Board and/or before other bodies; resolving by agreement charges filed under this system; presenting evidence and supporting charges in hearings before the Hearing Board; testifying as a fact witness before the Hearing Board; recommending sanctions to the Hearing Board after a determination of guilt; maintaining records of cases; preparing and compiling summaries of cases arising under this system; providing appropriate information to the Ombudsman and officers of the University; and ensuring that agreements and sanctions are enforced.

3. Alternative Officers

In any case in which a JA or JIO cannot perform his or her duties, an alternate may be designated using the procedures applicable to the officer's position.

VI. Maintenance of Records by the Ombudsman

A. Confidential written records of all complaints, whether formal or informal, whether handled through procedures such as those described herein or through administrative channels, will be submitted promptly to the Ombudsman. These records will include the names of the complainant and the person complained against, the nature of the charge and the disposition of the case. The Ombudsman will maintain these records for five years and examine them periodically to determine whether there is a pattern of multiple informal complaints against the same individual or an unusually high incidence of complaints within a particular school.

B. When three or more informal complaints are lodged against the same person within a three-year period, the Ombudsman will notify the appropriate dean or administrative head of the unit, without revealing the names of the complainants, and will request the dean or administrative head of the division to discuss the matter with the individual complained against and to report the date on which the requested discussion occurred. In the event of multiple complaints against the dean or administrative head of the unit, notification will be to the Provost and/or President. This correspondence will become part of the confidential file.

C. If a formal complaint is lodged subsequently against an individual thus notified and if there is a finding for the complainant, the fact of multiple prior complaints and prior notification will be brought to the attention of the Hearing Board before sanctions are recommended.

D. No use other than that specified in V-2 or V-3 may be made of the Ombudsman's confidential files relating to informal complaints.

E. Inactive files will be destroyed after five years.

F. The Ombudsman will prepare and publish an annual case-by-case summary of formal harassment complaints and their disposition with appropriate concern for confidentiality and the privacy of all concerned. These summaries shall be available at the offices of the Ombudsman, JIO, JA, and at Van Pelt Library.

Respectfully submitted to Provost Thomas Ehrlich by:

Elijah Anderson, Department of Sociology

Muhammed Aurangzeb, Wharton '86

James J. Bishop (Chair), Vice Provost for University Life

Jean Crockett, Department of Finance

Neil Hamburg, Associate General Counsel

Lorenzo Holloway, The College '86

Orneice Leslie, School of Social Work

Daniel Perlmutter, Department of Chemical Engineering

Ann Strong, Department of City and Regional Planning

Appendix

In addition to the procedures outlined in the *Handbook for Faculty and Academic Administrators*, schools and administrative units establishing formal procedures for handling complaints should consider adopting the following provisions:

1. A particular person or group of persons should be designated for receiving complaints, preferably written, from students, faculty members, staff members or administrators.

2. Within a reasonable prompt time after the filing of the complaint, those responsible for handling the complaint should inform the accused in writing of the complaint. The written notice shall cite the regulations, rules, or policies alleged to have been violated and shall describe the alleged acts constituting the violation. The notice shall also include a copy of the written procedures by which the complaint will be handled, and a copy of the regulations, rules, or policies alleged to have been violated.

3. A person or group of persons should be designated to decide questions of jurisdiction and be authorized, when appropriate, to refer a complaint to the Ombudsman, JIO, or to other University-wide systems.

4. A person or group of persons shall be designated to investigate complaints within the jurisdiction of the school or administrative unit, and to decide whether or not reasonable cause exists to believe that an offense has been committed. This person or persons shall make the determination of reasonable cause ordinarily after conducting a preliminary investigation. This person or persons may interview any appropriate witness, including a potential respondent. All witnesses, while being interviewed, should have the right to consult with an advisor who is a member of the University community (faculty member, student, staff member). All witnesses should be informed that anything they may say may be introduced as evidence.

5. In light of the evidence uncovered by the investigation, the investigating person or group may add additional charges beyond the scope of the original complaint, and may add additional persons as respondents, and may dismiss charges as unfounded.

6. These procedures should allow the school or the administrative unit to proceed regardless of possible or pending civil or criminal claims arising out of the same or other events. A designated member of the school or the administrative unit, with the concurrence of the dean of the school or the head of the administrative unit, after consulting with the general counsel, should determine whether or not the school/or administrative unit should, in fact, proceed with charges against a person who also faces later charges in a civil or criminal tribunal. If the school defers proceedings of charges against a respondent in light of related charges in a civil or criminal tribunal, the school should be able to proceed subsequently irrespective of any other time provisions set within the school's procedures.

7. Hearings within a school or administrative unit's procedures shall be scheduled reasonably promptly with due regard for the time required for all parties to prepare. All hearings should be held where possible in appropriate University facilities and shall be private.

8. A designated person or persons shall set the time and place for hearings and shall notify the complainant(s), respondent(s), and witnesses by hand delivery or certified mail, return receipt requested, of hearing place, time and date, at least 10 days before the hearing date. The notice should also contain the names of members of the hearing board assigned to hear the case. The procedures should also note that if the notices are given by mail, they shall be deemed to be effective when mailed.

9. The procedures should ensure that, within a reasonable period of time and in any case not less than two days before the hearing, those who have investigated the case, the complainant(s), and the respondent(s) shall exchange among themselves, and with any presiding officer(s), the copies of all exhibits to be introduced, the names of all witnesses to be called, and brief summaries of the testimony expected to be presented on direct examination. The procedures should spell out how witnesses or exhibits that become known or available immediately before the hearing will be handled or whether or not the hearing needs to be rescheduled.

10. The presiding officer or members of any hearing board should disqualify themselves from presiding over or hearing a case if they believe in good faith that their capacity for making an objective judgment in the case is or may reasonably appear to be impaired.

11. Respondents and complainants should be able to object for a specific cause to any person assigned to a hearing panel; the objections should be written and should be received by a designated person at least 48 hours before the hearing. The designated individual should be authorized to rule on the challenge and, if necessary, to replace the challenged member with an appropriate member of the University community.

12. All hearings should be conducted in a manner as to permit the hearing panel to achieve substantial justice. Participants and observers, if any, should conduct themselves in accordance with these objectives.

13. Formal rules of evidence shall not apply. Evidence, including hearsay

evidence, shall be admitted if it is relevant and not unduly repetitious, and is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

14. Those presenting the case, the respondent and the complainant shall have a right to present, to call, and to cross-examine witnesses.

15. The panel members shall have a right to examine all parties and witnesses.

16. No evidence other than that received at the hearing shall be considered by the panel.

17. All community members who may be interviewed or called upon to be witnesses should provide honest, complete statements to those conducting the hearing.

18. Complaints should be filed within 180 calendar days of the alleged incident.

Memorandum

TO: James J. Bishop

FROM: Neil J. Hamburg

Daniel D. Perlmutter

DATE: October 1, 1986

RE: Racial Harassment Policy Committee Report

We are writing with our general comments on the recommendations in the report of the Racial Harassment Policy Committee. Of course, if the University were to institute a new judicial process to resolve issues of racial harassment, the Office of the General Counsel would need to review the procedures in detail to ensure that they conformed to legal standards, were not inconsistent with other University systems and were easy to follow. At this point, no such review has been undertaken but, instead, we have focused on general issues raised by the report.

As we have advised you, we are strongly opposed to the creation of a new and separate grievance mechanism to resolve complaints of racial harassment. Based on Neil's review of cases, our familiarity with the University's own grievance and disciplinary procedures and to ensure that the University's grievance processes are fair to all members of the University community, we recommend that existing mechanisms should be used or improved to handle such complaints.

Presently, students may bring formal complaints of racial harassment against staff, faculty or administrators under the Office of Student Life Student Grievance Procedure; they may bring complaints against other students under the Charter of the University Student Disciplinary Procedure. Employees may file racial harassment complaints under the University's grievance procedure for nonacademic staff. The faculty grievance procedure covers claims of discrimination brought by faculty. In addition, the present system permits schools and administrative units to resolve complaints, including those of racial harassment, simply and informally by entering into settlement agreements, after consulting with the Office of General Counsel.

The creation of complicated new "formal" and "informal" grievance processes which, in practice, could be confusing, will increase the likelihood of litigation against the University for failing properly to follow its own procedures. In addition, it would establish an inadvisable precedent that would encourage various other campus groups to request, with reasonable justification, additional separate grievance processes to handle other complaints, such as sexual harassment. In a community with multiple grievance systems, plus additional informal investigatory resources, including the Offices of the Ombudsman and of Affirmative Action, we fear compounding jurisdictional confusion and promoting forum shopping.

Furthermore, we are disturbed by the proposal in Section VI of the Report that the Ombudsman should report allegations of racial harassment (as opposed to complaints found, after investigation, to have merit) to the supervisors of the employees accused. This reporting seems to us to be both premature and, potentially, inconsistent with the charge to the Ombudsman to resolve grievances on a confidential basis. Such a practice could subject the University to charges of defamation and discrimination by employees who suffer adverse consequences in their jobs as a result of allegations of harassment that, upon investigation, are determined to be untrue.

Finally, we believe that it is confusing to state in the proposed definition of harassment (p. 4) that "Acts of harassment may be by omission or commission . . ." If this is intended to mean that a person may engage in racial discrimination or harassment by conferring benefits upon one racial group to the exclusion of another, the policy should so state. However, to the extent the proposed language is decipherable, it implies that the University will punish its employees for failing to praise or failing to act, even in the absence of differential treatment. Such a policy might very well conflict with principles of academic freedom and free speech.

Policy Statement on Equal Opportunity/Affirmative Action

The University of Pennsylvania, which includes the hospital, does not discriminate on the basis of race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, or handicap. The University's policy applies to faculty and other employees, applicants for faculty positions and other employment, students, and applicants in educational programs and activities.

Such a policy in recruitment, appointment, promotion, transfer, compensation, benefits, training, tuition assistance, lay-offs, terminations and social and recreation programs and in all educational programs and activities is fundamental to the effective functioning of an institution of teaching, scholarship, and public service. How-

ever, simple absence of discrimination is not sufficient. The task is to act positively toward the elimination of all patterns of unequal treatment. The University's affirmative action policies are dedicated to the full realization of equal opportunity for all.

As required by law and its own policies, the University maintains written affirmative action plans for women and minorities; for handicapped individuals; and for disabled and Vietnam Era Veterans. The affirmative action plans of the University of Pennsylvania are available from the Office of Affirmative Action.

Any concerns related to these policies should be directed to the Office of Affirmative Action located in Bennett Hall, Room 4.

From the President and Provost

Conduct and Misconduct on Campus

Any community depends on trust. No set of rules and regulations, no codes of conduct, can legislate or take the place of mutual respect. A willingness to recognize the dignity and worth of each person at the University is essential for membership in our community.

Incidents have occurred in the past on the campus that are contrary to this minimal standard. Some of those incidents evinced racial, ethnic, religious, sexual, or sexual-preference intolerance. Some involved unwanted sexual acts and remarks. In all of these cases, the actions violated the personal obligations we must maintain toward other members of our community.

Racial, religious, sexual, and ethnic slurs are inconsistent with the responsibility of each person on campus to respect the personal dignity of others. We do not, of course, expect everyone to like everyone else. We do, however, expect members of our University community to demonstrate a basic generosity of spirit that precludes expressions of bigotry.

Penn properly celebrates the diversity of its community. We come from many different backgrounds and include different races, religions, sexual orientations, and ethnic ancestries. Learning to understand the differences among us, as well as the similarities, is an important dimension of education, one that continues for a lifetime. Tolerance alone, however, is not enough. Respect and understanding are also needed. We should delight in our differences, should seek to understand them and appreciate the richness such diversity provides for our community.

Treating others with respect for their personal dignity also precludes behavior that we define as sexual harassment, a frequently misunderstood term. We use the term here, following the University policy, to mean "any unwanted sexual attention that: (1) involves a stated or implicit threat to the victim's academic or employment status; (2) has the purpose or effect of interfering with an individual's academic or work performance; or (3) creates an intimidating or offensive academic or work environment." The University policy strongly condemns such behavior. Sexual harassment most frequently happens when one person has some power and authority over another; it can occur in a workplace, in an academic department, in a residence hall, in a classroom, or elsewhere.

Because the relationship between teacher and student is central to the academic mission of the University, we believe it is essential to establish that the standard of expected conduct in that relationship goes beyond the proscription against sexual harassment as defined in the University's

policy. No nonacademic or personal ties should be allowed to interfere with the academic integrity of the teacher-student relation. That integrity is at risk when sexual relations occur between them. What might appear to be consensual, even to the parties involved, may in fact not be so. On this basis, we believe that any sexual relations between any teacher and a student of that teacher are inappropriate. In this category we include relations between a graduate student and an undergraduate when the graduate student has some supervisory academic responsibility for the undergraduate. In addition we include relations between an administrator, coach, advisor, program director, counselor, or residential staff member, who has supervisory responsibility for a student, and that student. Although we do not have the means to enforce an absolute prohibition against such relations, our judgment is that they are unethical. The Provost and Deans should respond to reports brought to them of inappropriate and unethical behavior and act to help ensure that the integrity of the University is maintained.

In order to discourage such relations, in acting on complaints that come to our attention, we will presume that any complaint of sexual harassment by a student against an individual is valid if sexual relations have actually occurred between them while the individual was teaching the student. The presumption might be overcome, but the difficulties in doing so would be substantial. In short, any teacher enters at peril into sexual relations with a student.

Many situations involving administrators, advisors, coaches and others serving in mentor relationships also create the potential for abuses. By focusing particular attention on teachers and students, naturally we do not suggest that we countenance those abuses.

Student sexual misconduct in relation to other students is governed by the General Conduct Policy of the University: "All students of the University must conduct themselves at all times in a mature and responsible manner. The rights and property of all persons are to be respected regardless of time or place."

We call on everyone at Penn to help strengthen the human bonds of our community.

Sheldon Hackney

Thomas Ehrlich