

On the Revised Racial Harassment Policy

To the University Community:

Over the past two years, University Council and many members of the campus community have been engaged in debate over the revision of the University's existing Racial Harassment Policy, promulgated in 1988. Background on the issue and drafts of alternative policies which have figured in the discussion were published in *Almanac* (1/12/88, 3/27/90, 10/2/90, 11/27/90, 12/11/90, 3/19/91, 4/30/91, and 9/17/91). Draft definitions of racial harassment were discussed at length at the March and April meetings of University Council. After considering the extensive debate in University Council, the wide-ranging comments at a well-attended Public Forum last December, and consultations with many groups and members of the University community, I proposed a new Racial Harassment Policy last spring (see *Almanac* 4/30/91). After receiving extensive comments—from all sides of the debate—on this proposal over the summer, I have decided to adopt the proposed policy with only slight modifications, effective as of the date of its publication "Of Record" in *Almanac*.

A few final comments on the policy may be helpful:

First of all, let me address what I take to be the heart of the very real distress expressed by many of those who fear that the adoption of such a policy will infringe and diminish academic freedom and free speech on campus. As I said numerous times during the year-long discussion of the proposed policy and most recently in a letter to the *Gazette*, the University is trying to carry out two responsibilities: to provide both the freest possible forum for the exploration and discussion of ideas and the most supportive atmosphere for all its members, so that each one is able to participate fully in the life of the University—most especially in the vigorous consideration of controversial ideas.

Free speech at Penn is as absolute as any single value can be, but because we seek to be a real community with the mutual obligations implied by that term, there are certain rules of decorum and behavior that must be followed. They are not all written in policy statements. Indeed, they generally do not get expressed in policy statements until they become problematic in some way. Just as lawyers in a courtroom or legislators in a deliberative body are constrained by rules of procedure to express their ideas in acceptable forms, the members of the University community are expected to show enough respect for each other, especially for their adversaries, that they will not stoop to *ad hominem* attacks based on race or ethnicity. I cannot imagine a judge or the Speaker of the House allowing racial insults to be used during the proceedings in those sacred places. Penn seeks to be both a humane community and one that is open to the free flow of ideas. The new Racial Harassment Policy will help us toward that goal.

Secondly, to those who fear that the new Racial Harassment Policy represents a retreat from the vision and commitment embodied in the current policy, let me say that the prevention of a "hostile environment" for any member of the University community remains our goal. In my view, the University's fundamental commitment to free speech and unfettered exchange of ideas for all its members *requires* such a commitment. However, rather than speaking vaguely and imprecisely of this goal, the new Racial Harassment Policy seeks to specify more clearly than the existing policy those acts which serve to create such a hostile environment.

Perhaps I can underscore this point by clarifying for the record some of the language in the new policy which has been misconstrued by a few of those who commented upon it over the summer. For example, the phrase "directed at" refers to directedness to those who are identifiably insulted, demeaned, or abused, not merely directedness to an identifiable audience which may not be themselves so insulted, demeaned or abused. Similarly, "directed at" does not require the presence of those who are insulted, demeaned, or abused at the time the harassing behavior occurs.

It should also be pointed out that the new policy does not require the victim to prove intent; rather, absent such proof, it allows a judicial panel to conclude that such intent was present based on the extreme abusiveness or context of the behavior. Nor does the new policy require that a "reasonable, disinterested observer" actually be present to witness such acts; rather a judicial panel may conclude that if such an observer had been present he or she would have judged that intent was present.

Finally, in the near future I plan to issue the same policy provisions as a Comprehensive Harassment Policy covering all legally protected categories of persons (i.e., harassment on the basis of race, color, ethnicity, national origin, religion, age, gender, sexual orientation, disability, or status as a disabled or Vietnam-era veteran). This proposed Comprehensive Harassment Policy will be published "For Comment" in *Almanac* in the near future.

I shall also undertake aggressive steps to widely disseminate and reinforce the implementation of these new harassment policies, to strengthen our existing educational programs designed to prevent such harassment, to review the status of outstanding charges of harassment to ensure their timely resolution, and to heighten visibility of annual reporting by the Ombudsman of complaint statistics and resolutions.

All these and other steps are designed to ensure that no member of the University community is deprived of their right to participate fully in the unfettered exchange of ideas which makes Penn a great University. I call upon all members of the University community—whether they agree or disagree with the precise content of the new Racial Harassment Policy—to live up to that high standard of conduct.

—Sheldon Hackney

Racial Harassment Policy

I. Preamble: The Ideal of an Academic Community

The University of Pennsylvania is a community devoted to learning; it therefore provides the maximum latitude for the expression, examination and criticism of ideas. Indeed, the free and open exchange of ideas is the paramount value of the University community, and its realization *requires* that all members of the University community be able to participate in that exchange. Therefore, the intellectual freedom to which we aspire as a community requires that the University protect the rights of expression and of inquiry of each individual member of the University community, and that it also sustain an atmosphere that encourages the full participation of each of its members in the intellectual and academic life of the University.

In order to attain this goal, the University must be ready to protect the expression of ideas, opinions, information and knowledge that may be deemed objectionable and insulting to some members of the University community. The best protection against abhorrent ideas is the unfettered operation of the academic community as a forum for ideas.

At the same time, the University must also preserve the ability of all members of the community to participate fully in the life of the University. Therefore, the University does not tolerate abusive behavior by members of the University community. Such behavior is unacceptably disruptive of the University's function. Under some circumstances the use of certain words or symbols may constitute abusive behavior. Words that are intended only to inflict pain and suffering are no more legitimate in our community than physical actions intended to inflict bodily harm. Such words can hurt as much as a physical assault. Therefore, abusive utterances or other conduct which are intended only to cause direct injury to an identifiable individual, on the basis of his or her race, color, ethnicity, or national origin, should not be tolerated any more than violence itself.

II. Racial Harassment Policy

No member of the University community may engage in racial harassment, regardless of time or place. Racial harassment is a violation of University policy and may be the basis for disciplinary action. "Racial harassment" is defined as any verbal or symbolic behavior that:

1. is directed at an identifiable person or persons; and
2. insults or demeans the person or persons to whom the behavior is directed, or abuses a power relationship with that person, on the basis of his or her race, color, ethnicity, or national origin, such as (but not limited to) by the use of slurs, epithets, hate words, demeaning jokes, or derogatory stereotypes; and
3. is intended by the speaker or actor only to inflict direct injury on the person or persons to whom the behavior is directed; or is sufficiently abusive or demeaning that a reasonable, disinterested observer would conclude that the behavior is so intended; or occurs in a context such that an intent to inflict direct injury may reasonably be inferred.

III. Related Policies and Laws

In addition, in this University community the following behaviors are also deemed to cause direct injury and are therefore prohibited under other University policies on conduct, affirmative action, sexual harassment, or non-discrimination on the basis of race, color, ethnicity, national origin, religion, age, gender, sexual orientation, disability, or status as a disabled or Vietnam-era veteran, or under applicable laws:

- Violence against persons or property, breach of the peace, threat of immediate violence, or incitement to immediate violence or to breach of the peace.
- Discrimination in the administration of University policies or the conduct of University programs.
- Discriminatory deprivation of access to educational, extra-curricular, research, service, or employment resources of the University.
- Discriminatory threat to educational or employment status.

IV. Resources

The University believes that a strong system of informal procedures to receive and handle most racial harassment complaints will encourage reporting and resolution of complaints. To this end a harassment information resource manual will be forwarded to all deans and directors, and all school and administrative units shall make known to all their members the available resources and the informal procedures for resolving complaints of racial harassment within the unit or at the University level.

These resources include the following:

A. Information, Counseling and Support

The following University resources are available to members of the University community who seek information and counseling about University policies on racial harassment, standards of behavior, informal and formal mechanisms for resolving complaints and resources for complainants and respondents. Deans and directors may also make referrals to these resource offices:

- Office of Affirmative Action
- African American Resource Center
- Faculty/Staff Assistance Program
- Gay and Lesbian Peer Counseling
- Office of Labor Relations
- Office of the Ombudsman
- Office of Staff Relations
- Victim Support and Security Services
- Penn Women's Center
- University Counseling Service
- Student Health Service Psychiatric Service
- Office of the Vice Provost for University Life

(Addresses, phone numbers, and brief descriptions of these offices are provided in *Policies and Procedures* and other University publications.)

B. Informal Mechanisms for Mediation and Resolution

The Ombudsman, the Office of Affirmative Action, the Women's Center, all other offices named as resource offices in this policy, the Judicial Inquiry Officer, the Director of Student Life, the Office of Residential Living, department chairs, deans and administrative directors, the provost, and the senior vice president are available to assist in the informal resolution of complaints.

C. Formal Mechanisms for Resolution and Adjudication

When informal resolution is not chosen or is unsatisfactory, complainants are urged to use appropriate formal mechanisms, described below:

1. Complaints of racial harassment against a faculty member, instructor, or teaching assistant may be brought by a student, staff, or faculty member to the department chair or dean of the faculty member. The department chair or dean who receives a complaint is then charged with pursuing the matter. While the process depends on the particulars of the complaint, normally the department chair or dean interviews the faculty member. If the matter is not resolved informally, the department chair or dean either conducts an investigation or requests that the Ombudsman, the Office of Affirmative Action, the Office of Staff Relations, or the Office of Labor Relations do so. If the results of the investigation persuade the dean or department chair that sanctions are warranted, he/she consults with faculty members—without disclosing the identity of the individuals involved—to aid in determining an appropriate sanction, including whether there is substantial reason to believe that just cause exists for suspension or termination. If it is determined that action should be taken to suspend or terminate, the dean should refer the matter to the Committee on Academic Freedom and Responsibility of the school for proceedings in accordance with the procedures set out in section II.E.10. of the *Handbook for Faculty and Academic Administrators* (1989).

2. Complaints of racial harassment against a staff member may be brought by a student, staff member or faculty member to the supervisor of the person complained against. The supervisor who receives the complaint is then charged with pursuing the matter. While the process will depend upon the particulars of the complaint, normally the supervisor interviews the staff member. If the matter is not resolved informally, the supervisor either conducts an investigation or requests that the Ombudsman or Office of Affirmative Action do so. If the result of the investigation persuades the supervisor that sanctions are warranted, he or she consults with his or her colleagues or supervisor—without disclosing the identity of the individual(s) involved—to aid in determining an appropriate sanction.

3. Complaints by students of racial harassment may be made to the Office of the Vice Provost for University Life, in accordance with the Student Grievance Procedure set out in *Penn Policies and Procedures*. Grievances associated with racial harassment in student employment may also fall within the purview of the Vice Provost for University Life.

4. A complaint of racial harassment may be brought against a student by filing a complaint under the Charter of the University Student Judicial System, or, if the respondent is a graduate or professional student enrolled in a school which has established a hearing board or other decision-making body, with that body.

5. A tenured or untenured faculty member, whether full or part time, who believes she or he has been subjected to racial harassment by a faculty member or by any academic administrator may file a grievance under the Faculty Grievance Procedure, *Handbook for Faculty and Academic Administrators* (1989), Part II.E.15, provided the complaint constitutes a grievance as defined in section I of the Procedure. This procedure is administered by the Faculty Grievance Commission. The panel makes its recommendation to the provost. In cases that involve reappointment, promotion or tenure, and in which the provost has declined or failed to implement the recommendations of the panel to the satisfaction of the grievant, the grievant may obtain a hearing before the Senate Committee on Academic Freedom and Responsibility on the actions of the provost.

6. If the matter has not previously been referred to a different panel or committee, a student or staff member who believes that she or he has been subjected to racial harassment by a faculty member, and whose complaint has not been resolved through the mechanisms listed above, may bring the matter to the Faculty Senate Committee on Conduct. This Committee is a standing committee of the Faculty Senate. At meetings with the Committee, the student or staff member may be accompanied by an advisor who is a member of the University community (student, faculty or staff). The findings and recommendations of the Committee shall be advisory and shall be submitted to the provost for her or his decision and implementation.

D. Central Reporting of Racial Harassment

1. A decentralized system of resources encourages the reporting and resolution of complaints of racial harassment. To that end, and with the consent of the complainant, those offices described in Sections IV.A and IV.B of this policy that have handled through mediation or counseling a complaint that was not submitted to a formal hearing board should forward to the Ombudsman a report of the matter as soon as it is received. Such reports should not include the names of the persons involved. They should include, however, a description of the complaint, the schools or administrative units with which the complainant and respondent are affiliated, and the disposition of the complaint. In the case of a large department in a large school, the department also should be identified.

Reports from decentralized areas will enable the Ombudsman to identify patterns in a particular location and the frequency of such incidents in a given area. Such information can then be transmitted to the appropriate dean or administrative supervisor. These reports will also enable the Ombudsman to act on behalf of the community and to conduct whatever investigation he or she deems necessary to determine whether University regulations are being violated.

2. Summary reports of formal charges of racial harassment that have been adjudicated and records of their disposition should be forwarded

to the Ombudsman's Office as a matter of information by the resource offices named in this policy.

3. Based on the information forwarded to her or him during the previous year, the Ombudsman shall submit to the president on an annual basis a summary report of the number and type of formal and informal charges of racial harassment and their resolution by September 15 of the academic year. This report will be shared with the University community early in the semester.

E. Education and Prevention

The prevention of racial harassment and the establishment of effective procedures with due concern for all parties require a thoughtful educational program.

1. University resource offices will provide to the community information on:

- a. available mediation and resolution resources; and
- b. sources of support and information for victims and respondents.

2. Deans and heads of major administrative units are encouraged to discuss this policy and issues of racial harassment at meetings of faculty and staff.

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

4. An overall educational program for students that addresses issues of peer racial harassment and also provides information, definition, support, and the identification of racial harassment resources has been developed by the Office of the Vice Provost

for University Life, the Office of Affirmative Action, 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 is directed toward new undergraduate and graduate/professional students.

5. The University will publish annually the operative portions of this policy statement, including information about the resources available to advise, counsel and assist in the mediation of racial harassment allegations. Information will explain how and where to contact University-wide and school specific resources and will be posted in conspicuous locations.

All members of the University should feel a responsibility to try and prevent racial harassment whenever they observe it. Community members should report racial harassment to appropriate University resources promptly for appropriate action.

F. Exit Interviews

Deans and administrative directors will periodically survey departing students, faculty and staff to measure the existence and frequency of reports of racial harassment.

Based on the data yielded by these surveys and the annual reports of the Ombudsman, the University administration will determine, in consultation with the University Council, whether there is need for further efforts to be taken on the issue of racial harassment.

G. Implementation

Deans and administrative directors will be responsible for the implementation of this policy. The provost and senior vice president will oversee the performance of deans and directors in the implementation of this policy.