

Exb. 5

December 9, 1999

To: The University Senate

Subject: Revisions to the Task Force Report on the Sexual Misconduct Policy and Procedure

After submitting our proposed Report to the Senate on November 12, 1999, the Task Force has received numerous comments, questions and suggestions, both on the Senate floor, and in meetings with the community subsequent to its release. In addition, the Task Force has consulted with other institutions and outside resources. The Task Force would like to thank the students of PRO, SAFER, Columbia Men Against Violence and Take Back the Night, whose hard work has assisted us in creating this new document. Based on community input, the Task Force has revised its Report, which is attached. This memorandum identifies the most significant changes, and explains the rationale for those changes.

The most significant change in the Revised Report is the expansion of the recommendations with respect to education and awareness of the problem of sexual misconduct on campus, and the recommendation for the creation of position to be entitled "Coordinator, Sexual Misconduct Education and Prevention" (hereafter "Coordinator"), to be sited within Student Services, and to have responsibility for the administration of the policy. Additionally, the Task Force has made recommendations with respect to the responsibility of the President's Advisory Committee on Campus Security to oversee the provision of education and information about sexual misconduct on campus. The Coordinator will have primary responsibility for education and training, and for informing the community about the limits of confidentiality with respect to reporting and discipline, and for ensuring that every officer of the University is aware of the existence of the counseling and support services for victims both on campus and in the neighboring community. The Advisory Committee will provide oversight of the accomplishment of these efforts, and of the efficacy of the disciplinary mechanism.

December 9, 1999

REVISED REPORT OF THE UNIVERSITY SENATE TASK FORCE TO REVIEW
THE SEXUAL MISCONDUCT POLICY AND PROCEDURE

Introduction

In the following document the University Senate Task Force presents its recommendations with respect to the University's Sexual Misconduct Policy and Procedure. The Task Force was appointed by the Executive Committee of the Senate, in accordance with a Senate resolution dated April 24, 1998, to study the Sexual Misconduct Policy and the Alternative Discipline Procedure for cases of sexual misconduct involving University students, and to report back to the Senate in November 1999.

The Alternative Procedure was created by the Senate in April 1995 for a three year trial period to address concerns expressed by some that Dean's Discipline was not an appropriate procedure to handle these cases in all instances. During the trial period, the Alternative Procedure, although viewed by many members of the University community as a valuable mechanism for handling complaints, drew criticism from some sections of the community with respect to certain of its aspects. This criticism indicated

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assault, in general and presumably also on campus, is widely under-reported. However, the Task Force is recommending that the University should develop mechanisms to ensure the accuracy of its figures which appear low in comparison to nationwide statistics. The Task Force proposes that an effective way to improve statistical collection would be to impose reporting responsibilities on all campus officials who learn of incidents to a single, centralized location during the year, rather than the current methodology of soliciting those data many months after incidents occur.

The Task Force has concluded that the importance of the issue of sexual misconduct on campus requires the continuation of the University's Policy on Sexual Misconduct, which requires that standards of sexual conduct be observed on campus, that violations of these standards be subject to discipline, and that resources and structures be sufficient to meet the physical and emotional needs of individuals who have experienced sexual misconduct. As noted by the Senate in 1995, the term 'sexual misconduct' encompasses a wide range of non-consensual sexual behavior, the most egregious form of which is sexual assault. For purposes of this policy and the applicability of the proposed new disciplinary procedure, the Task Force adopts the definition forged by the Senate in 1995, namely:

Sexual misconduct is non-consensual, intentional physical conduct of a sexual nature, such as unwelcome physical contact with a person's genitals, buttocks or breasts. Sexual assault is that form of sexual misconduct which involves force, threat, physical intimidation, or advantage gained by the victim's mental or physical incapacity or impairment of which the perpetrator was aware or should have been aware, or by the young age of the victim.

This policy applies to both sexual assault and sexual misconduct as defined

community who has occasion to advise students. Thus, a widespread campaign to publicize the University's policy and procedures and to educate all members of the community of their responsibilities is necessary. The focus of this campaign should be that the University will not tolerate sexual misconduct on campus.

In this context, although outside its mandate, the Task Force wishes also to stress the importance of more education and information on campus about the responsible use of alcohol. The Task Force heard repeatedly, from students, administrators and educators, how alcohol abuse is almost always involved in instances of sexual misconduct. Frequently, excessive use of alcohol creates a physical impairment rendering a victim incapable of giving consent. Thus, the Task Force recommends that alcohol awareness be an integral part of any training on issues of sexual misconduct, and that education for students and academic administrators on issues with respect to alcohol be increased.

Because of the importance of the issue and the extent of outreach that is being recommended, the Task Force is proposing that a new position be created to handle the administration of the Policy and the Alternative Procedure, and to be responsible for arranging and conducting training for student and administrator panelists, in addition to the other responsibilities identified in Recommendation #1 of this Report, and to be responsible for maintaining an accurate list of current members of the panel and confirming their training. Adequate resources must be made available to this office to permit it to provide sufficiently extensive and professional training to the hearing panelists. The Task Force suggests that this new position be entitled 'Coordinator,

Recommendation #1

That the University improve its education and training on sexual assault and its prevention through the establishment of three standing subcommittees of the President's Advisory Committee on Campus Security, on education, on oversight of the disciplinary procedure, and on inter-campus issues with Barnard College.

The Task Force reiterates the opinion in the Report of the 1995 Senate Task Force on Sexual Assault Policy emphasizing the importance of "infusing information regarding appropriate sexual conduct as well as information on available recourse for complaints throughout student orientation as well as on an ongoing basis." This Task Force, like the 1995 Task Force, declines to make specific recommendations on how this can be achieved, since it is our opinion that the matter deserves ongoing study by members of the community who are in the best position to determine what needs to be done and how to do it in the most effective way. However, the Task Force would like to revise the recommendation made in the first draft of this Report, that an *ad hoc* committee of student affairs officers, health educators and students be formed, in response to the views expressed by the community that a standing committee is necessary.

Education

The Task Force notes that the President's Advisory Committee on Campus Security, chaired in the past by Executive Vice President for Administration Emily Lloyd, has responsibilities under the New York State Education Law to review current policies

Oversight

The Task Force also wishes to recommend that the Advisory Committee take on responsibility for continuing oversight and review of the Disciplinary Procedure for Sexual Misconduct (see Recommendation #4) by creating another subcommittee of its members and other community representatives (the "Oversight Subcommittee"). The Task Force is not recommending that the Disciplinary Procedure for Sexual Misconduct have a sunset clause, but that it continue as long as it is seen to be effective, subject to review at least biennially. In the event that certain aspects of the Procedure prove to be ineffective or inappropriate, the Advisory Committee should be empowered to make recommendations to the Senate for changes and improvements. In forming the Educational and Oversight Subcommittees, efforts should be made to include representation of both the Morningside and Health Sciences campuses, and as many schools as possible.

Inter-Campus Issues

In connection with the reporting of the incidence of sexual misconduct on campus, the Task Force heard that there is a belief that the reporting of statistics on sexual misconduct should not be separated between the University and Barnard College. However, the Task Force recognizes that the Campus Security Act imposes separate reporting responsibilities on educational institutions with respect to their campuses. Therefore, the Task Force would like to propose that the Advisory Committee consider forming a third subcommittee, (the "Subcommittee on Inter-campus

Recommendation #2

That a new position be created entitled Coordinator, Sexual Misconduct Education and Prevention, to have responsibility for carrying out the University's Policy, for educating students and the entire community about the University's Policy, about the existence of resources for counseling and support of students who experience sexual misconduct, and about disciplinary procedures.

Education and Information Responsibilities

The Task Force is recommending the creation of a new position, the Coordinator, Sexual Misconduct Education and Prevention, to carry out the dissemination of information across the campus, and, in conjunction with the Office of General Counsel, to be responsible for compliance with all State and Federal laws with respect to sexual assault compliance and reporting. Additionally, it recommends that this officer be charged with the administration of all educational and training programs necessary for the Disciplinary Procedure for Sexual Misconduct, and for all record-keeping in connection with incidences of sexual misconduct. The Coordinator should be an individual having formal education in counseling, either a social worker or psychologist, and experience with sexual assault on campus.

Data Collection

Any incident of sexual misconduct occurring on campus or University-owned property will be reported to the Coordinator at the time it occurs by the University official having knowledge of the incident. The Task Force believes this will enhance the accuracy of the data used in official reports. The Coordinator, together with the

The Task Force would like to clarify that the Coordinator will not supplant the role of the Barnard-Columbia Rape Crisis/Anti-Violence Center, ("RCC"), but should work in conjunction with it. The RCC will provide a valuable resource for the Coordinator with respect to providing counseling and support of victims of sexual violence, and their partners and friends, and it has a well-established training program in place for its volunteers, which could provide a model for the training programs proposed for hearing panelists. However, the administrative and reporting responsibilities of the Policy shall be exclusively that of the Coordinator.

The Task Force is proposing further that the Coordinator have the responsibility for administering the Disciplinary Procedure for Sexual Misconduct. The Coordinator's role in that regard is described in Recommendation #4.

Grants are available from the Attorney General under the Higher Education Act Amendments of 1998 for the purpose combating violence against women on college campuses. The grants may be used for purposes including providing personnel and technical assistance for prevention and investigation of violent crimes against women, education and training programs for campus judicial administrators and for developing and implementing more effective campus policies. The Task Force encourages the University to apply for such funding to support the office and activities of the proposed Coordinator.

one copy of the binder produced by the Ombuds Office which contains a written description of the disciplinary process in each School, and make the binder available to all students.

However, where a student is uncomfortable, perhaps with the formality of the procedure in the accused student's School, or is uncertain about the impartiality of the process, then the Task Force believes a second disciplinary alternative should be available, the Disciplinary Procedure for Sexual Misconduct (the "Disciplinary Procedure") which forms the substance of the Task Force's fourth recommendation.

The Task Force heard from the Ombuds officer about the appropriateness of mediation to resolve conflict, even in cases of sexual misconduct, and believes that it provides a valuable avenue for students. The Task Force therefore recommends that mediation be available to students through any of the accredited mediators on campus, and that the Coordinator maintain a list of such persons. Mediation of such cases would be informal, and would be kept confidential, unless the mediator felt that the facts of the case represented a situation that created an immediate danger for the student or other members of the University community.

The options outlined above are not entirely mutually exclusive. That is, a student may choose to bring a criminal complaint against another student, but will not be foreclosed from also bringing charges under a University disciplinary procedure. However, as is University practice, if criminal charges are pending against a student, any internal disciplinary procedure will be suspended until the criminal case is

Recommendation #4

That the Alternative Procedure for Cases Involving Sexual Misconduct be replaced by the Disciplinary Procedure for Sexual Misconduct, which is handled by specially selected and trained deans, student affairs administrators and students to be administered by the Coordinator.

While the Task Force heard many examples of dissatisfaction with the process and administration of the Alternative Procedure, it heard positive opinions about the special experience and training of deans of students to handle student discipline cases. Therefore, the Task Force believes that, while in some instances, a particular student may be uncomfortable with a particular school's dean's discipline, in general, it is a well-accepted and well-respected mechanism for handling disciplinary matters. However, after the publication of the draft Report, the Task Force was informed that some students doubt the impartiality of deans, and believe that deans have a vested interest in denying the existence of sexual misconduct on campus. The Task Force does not endorse this viewpoint, but has addressed it in this Revised Report by providing for a student member of the hearing panel.

The Task Force believes that the difficult and specialized nature of cases of sexual misconduct requires training, sensitivity and experience in handling such cases. The Task Force therefore recommends that a pool of deans of students and student affairs officers, experienced in handling student discipline, be formed, and that these deans be assigned to handle sexual misconduct disciplinary cases under the Disciplinary Procedure. In addition, the Task Force is proposing that there be a student

procedural intricacies of the current Alternative Procedure, and returns to the simplicity of the traditional dean's discipline model, following the guidelines established by the Senate Rules Committee in 1990. A detailed description of the proposed Disciplinary Procedure is attached to this Report as Exhibit A.

The Task Force specifically recommends that the requirement of both parties being present at the hearing at all times be eliminated, that lawyers not be permitted to represent students in such hearings, and that the panelists be free to question any witness whom they believe to have relevant probative evidence to offer.

The Task Force recommends that the gatekeepers of the Alternative Procedure be eliminated, as creating an additional complication to the process. Instead, we suggest that the names of the qualified deans and students be maintained in the office of the Coordinator, and widely publicized, in FACETS, on the web, in student lounges and on bulletin boards, and in offices of all deans of students. Any student wishing to bring a complaint under the Disciplinary Procedure should approach the Coordinator, in person or by written and signed statement, to initiate proceedings. Alternatively, to provide for maximum accessibility, a student would be free to consult any of the specially trained deans or administrators for advice or to initiate a complaint. Such panelist may accept the complaint, (but will not express any opinion on the merits or sufficiency of the complaint) and forward it to the Coordinator for appointment of a hearing panel. The Associate Provost for Equal Opportunity and the Ombuds should also be available for consultation and for accepting complaints. The Coordinator would have responsibility for maintaining the list of deans, and for appointment of the hearing

The Task Force believes that it is important for the student member of the panel to participate fully in the hearing and the deliberations, and to put his or her vote on record. Both deans hearing a complaint must agree on the decision and on the recommended penalty. A written report would be issued to the dean of students of the accused student's School reflecting the decision of the panel, and including a statement of the facts, the evidence presented, and the reasoning of the panel. If the student member of the hearing panel disagrees with the decision or the penalty, he or she may submit a dissenting report. A copy of the report, and dissent, if any, will also be sent to the Coordinator who will maintain it for two years in a confidential file, with the participants names deleted, for purposes of later review of the process. Although the decision of the deans who heard the complaint would be final, subject to later appeal to the Dean of the accused student's school, the recommended penalty would not be binding on the dean of students, who would be free to increase or decrease the penalty. An accused student who is disciplined will have a right of appeal to the Dean of his or her school, and may appeal both the decision of the hearing panel and the penalty imposed by the dean of students. After deciding the appeal, the Dean will convey his or her decision on the outcome and penalty imposed, but not the report of the hearing deans, to both the complaining student and the accused, and the Coordinator.

One issue that was raised repeatedly to the Task Force was the short 'statute of limitations' (one hundred and eighty days) in the Alternative Procedure. The Task Force therefore recommends that complaints brought under the Disciplinary Procedure be considered timely if brought while the accused student is still enrolled within the same

court has stated that "the student's welfare is best served by a non-adversarial setting which emphasizes the educational functions of disciplinary proceedings."

In further response to these concerns, the Task Force would like to clarify certain specific questions in this respect which have been raised about the proposed Disciplinary Procedure. While the accused student will not have the right to confront or cross-examine his accuser, the hearing panel will provide him or her an opportunity to hear the specifics of the accusations, and the opportunity to answer the allegations and to provide witnesses or other evidence to support his or her defense. While lawyers are excluded from the proceedings, an accused student will not be precluded from consulting an attorney, or in protecting any of his or her rights in the case of a potential criminal proceeding. Either party may produce information which he or she believes to have evidentiary value, and each party may review and rebut evidence produced by the other party.

Although a complainant has no right to appeal the decision of a hearing panel, in any case where a complainant later acquires evidence of an accused's lack of honesty during the hearing, such evidence may be presented to the dean of students of the accused's school, who will be free to address that in a separate hearing.

Exhibit A

Disciplinary Procedure for Sexual Misconduct

A student charged with a violation of the University Policy on Sexual Misconduct is entitled to notice of the charges, an opportunity to be heard and an opportunity to appeal a disciplinary decision to the Dean of his or her School.

Ordinarily, a disciplinary proceeding begins with a written communication from the Coordinator, Sexual Misconduct Education and Prevention, requiring the student to attend a disciplinary hearing to respond to a specified charge. In rare cases, the proceeding may begin with an oral communication requiring the presence of the student at a hearing. The hearing is held before two deans and one student, from a pool of specially trained individuals. The student member may be excluded by agreement of both students participating in the hearing, and either student may object to the membership of any specific student on the basis of acquaintance. Either party may be accompanied by a non-participating member of the University community as support. The hearing must commence within ten days of the Coordinator's receipt of the complaint, unless the University is not in session.

The hearing is not an adversarial courtroom-type proceeding; the student does not necessarily have the right to be present to hear other witnesses and does not have the right to cross-examine witnesses or prevent the consideration of relevant evidence. In addition, although students are always free to consult with an attorney, they are not permitted to have an attorney present during a disciplinary hearing or at any appeal.

The student bringing the complaint must inform the hearing panel of the facts of the situation, and answer any questions from the panel. The accused student is informed of the evidence that led to the charges against him or her and asked to respond. The student may offer his or her own evidence. This includes the student's own appearance at the hearing and may include the appearance by others on his or her behalf and any written submission or relevant documents the student may wish to submit. Each student will be informed of statements made by the other party, and by witnesses, and to respond.

After the panel has heard both students and any others and considered all of the evidence, it reaches a determination and notifies both students in writing of that decision. The panel will also submit a written report, summarizing the evidence and its findings to the Dean of Students of the accused student's school, and recommending a penalty. If the student is found to have committed a disciplinary infraction, the penalty can include probation, suspension and dismissal.

Exhibit B

Statement on Confidentiality in the Context of Sexual Misconduct

The University recognizes that many victims desire confidentiality, and many will not want the University to investigate and attempt to resolve the incident. Despite this fact, if officials of the University are notified of the details of an incident, they have a duty to investigate and resolve the incident to the extent possible, even without the cooperation of the victim. It is therefore very important that victims consider carefully how much information they divulge to University officials, because in investigating and attempting to resolve the incident, the University will not be able to assure victims complete confidentiality or control over the process. Only those with a need to know will have information about the incident. If the victim refuses to cooperate with the University's investigatory and disciplinary procedures, the process may not be able to go forward.

If a victim of sexual misconduct desires that details of his/her incident be kept confidential, victims should speak with counselors at the University Health Service or the Barnard Columbia Rape Crisis/Anti-Violence Center or off-campus rape crisis resources who will maintain confidentiality. These counselors are available to help victims free of charge, and can be seen on an emergency basis. In addition, victims may speak on and off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential.

Victims are encouraged to speak to other officials of the institution for purposes of seeking information or reporting incidents (such as RA's, medical providers, deans, or other administrators). Victims have the right and can expect to have incidents of sexual misconduct taken seriously by the University, and to have those incidents investigated and properly resolved through administrative procedures.

Campus officials also have a duty to report sexual misconduct for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to Security or the Coordinator, Sexual Misconduct Education and Prevention regarding the type of incident and its general location (on or off-campus in the surrounding area), for publication in the annual Campus Security Report. This Report helps to provide the community with a clear picture of the extent and nature of campus crime, in order to ensure greater community safety.

Victims of sexual misconduct should also be aware that University administrators must issue timely warnings for incidents reported to them that continue to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying