

## **Report from the Sexual Misconduct Committee**

Responding to the WFF on Sexual Misconduct

July 9, 2010

The Provost charged this committee to review the proposals in the Women Faculty Forum Council report on sexual misconduct at Yale and to make recommendations on the basis of this review. Our committee was impressed by the care and research and insight that the WFF devoted to the report.

We fully endorse the recommendation in the WFF report that the policies and procedures for dealing with cases of sexual misconduct at the University be made more transparent and more accessible. With this goal in mind, our major recommendation here – one which grows out of the WFF report -- concerns the formation of a University-wide committee (hereafter: UWC) that will handle and resolve, through both formal and informal means, complaints of sexual misconduct at Yale. Below (in section C) are detailed recommendations concerning the workings of the UWC and its connections to other mechanisms currently in place for formal and informal resolution of such cases. We recognize, though, that before such a committee can be fully operational a number details need to be addressed beyond those that we discuss here.

We recommend that, over this summer, the Provost appoint a working group to refine and develop the procedures of the UWC, using the recommendations contained in the report below as a guide. During the fall semester, if necessary, this working group could seek further input from various groups in the university concerning the structure and procedures of the UWC. During this period also, the Provost can constitute the UWC and arrange for the requisite training of the members of the UWC. We recommend that the UWC be available to address cases both formally and informally by January 2011, if such a timeline is possible.

Below we respond to the major recommendations in the WFF report in the order in which they appear in the report.

### **A. Definition of Sexual Misconduct and Policy Language.**

We concur with the recommendation in the WFF report that the University should adopt a comprehensive definition of the term “sexual misconduct” and adopt a statement, similar to the published Sexual Harassment Statement, to the effect that sexual misconduct is antithetical to the values of the university community as a whole and to the values of individual schools within the University.

“Sexual misconduct” is understood as an umbrella term that encompasses rape and sexual assault, sexual harassment, and other forms of sexual misconduct. The definition of “sexual misconduct” on the Yale College website is, we believe, particularly effective (<http://www.yale.edu/yalecol/publications/uregs/appendix/sexual.html>). The definition offered in the WFF report (on p. 11) is also effective, but we propose some minor modifications. The WFF includes in its definition of sexual misconduct, sexual stereotyping and gender discrimination, which we agree represent problematic behaviors, but which we do not believe

should be encompassed under this policy, which governs conduct of a sexual nature. We believe that the University has effective procedures for addressing complaints of discrimination, and we do not recommend that these types of matters be adjudicated by the UWC. Thus a definition that we recommend is as follows:

“Sexual misconduct includes a range of behavior and actions from rape and sexual assault (which includes any kind of non-consensual sexual contact), to sexual harassment and any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening or intimidating the person against whom such conduct is directed.”

We recommend including, with the statement, precise definitions of sexual assault and sexual harassment and illustrative examples of behavior that fall under the definitions. For example, a violation of the Policy on Teacher-Student Consensual Relations would be considered sexual misconduct.

## B. Reporting Mechanisms.

Our committee recognizes that incidents of sexual misconduct are under-reported. One reason we seek the creation of the UWC is to encourage reporting of cases of sexual misconduct. (See the first and fifth reasons in section C.2 below for instituting the UWC.) We also agree completely that publicizing the SHARE center more broadly within Yale will lead to more and better reporting of sexual misconduct.

We do not recommend the creation of a specific website, hotline, or other venues through which anonymous reports are encouraged. Instead, we want to encourage confidential reporting; and, indeed, we worry that the explicit provision for anonymous reporting might discourage non-anonymous reporting. Non-anonymous (but still confidential) reporting is more useful both to the complainant and to the University. In any event, if an anonymous report does come to the SHARE center or to the UWC, as deemed appropriate by the chair of the UWC or by the appropriate officials, that information can provide the basis for informal, non-disciplinary action, as suggested in the WFF report (p. 18), including additional training for a specific group or department or other non-punitive action.

## C. Resolution Procedures.

1. Our committee has carefully considered various possible structures for the resolution of complaints of sexual misconduct. While we have a number of proposals – outlined below – we also recognize that these proposals may require further review as more discussion takes place on these matters in the University community. We also recognize that the implementation of these procedures may require revisions to existing policies at various schools within the University.

Each school within Yale has its own procedures for addressing and resolving complaints of sexual misconduct that arise within those schools. These procedures are more specifically defined in some schools than in others, and some schools maintain grievance committees to conduct hearings through which such cases can be resolved in a formal manner and through which sanctions may be imposed.

We regard the informal resolution procedures at various schools as an important first line of response in many cases of sexual misconduct. We also recognize the value of local grievance committees at some schools within Yale. But, at the same time, we acknowledge the value – emphasized in the WFF report – of a more general option for formal proceedings. The WFF report recommends the creation of a University-wide committee which would conduct informal and formal proceedings in cases in which students, faculty, or staff are accused of sexual misconduct. We agree with this general recommendation, though we diverge from the WFF report in some matters. In particular, we do not follow the recommendation that complaints against staff members would be handled by the UWC. See especially §§8 and 10 below.

2. Several reasons for such a University-wide committee stand out.

First, individuals bringing a complaint of sexual misconduct may be reluctant or unwilling to come forward with a formal case that will be decided by a committee drawn from faculty and students at their own relatively small school within Yale where confidentiality might be harder to ensure and conflicts of interest are more likely to arise.

Second, it is more feasible to train and staff a university-wide committee drawn from schools throughout the university than it would be to assemble and train committees at each school on campus.

Third, some schools at Yale – e.g. schools which do not have well-defined or easily implemented local grievance procedures – may welcome the opportunity to refer cases of sexual misconduct to the UWC.

Fourth, instituting such a committee is an effective way to develop and maintain consistent procedures and outcomes for formal hearings in cases involving sexual misconduct.

Fifth, instituting such a committee will make a powerful statement that Yale takes the issue of sexual misconduct seriously and thus will encourage the reporting of cases that may otherwise go unreported.

3. We do not see the institution of the UWC as inconsistent with or as rendering obsolete the local grievance committees in place at various schools. We recognize that some individuals bringing a complaint may prefer to have the case handled by a committee drawn from their specific school. Thus, e.g., if a case involves teaching, learning, or work arrangements that are unique to a particular school, individuals bringing the complaint may want to have the case handled only by people from that school. Also, some complainants may find the prospect of going to a university-wide committee more daunting than pursuing the case by means of a local adjudicatory option.

Thus the UWC would complement the activities of the local grievance committees. Nonetheless, we also anticipate that, in some cases, a school may prefer to disband its local grievance option and have cases involving individuals from that school heard by the UWC, a committee that will already include representation by members of that school. In any event, there will be, in at least some cases, two options for an individual bringing a formal complaint: the local grievance committee and the UWC. This decision as to whether there should be a local option in addition to the UWC should be made by each school.

We see the creation of this choice for complainants as, on the whole, a very good thing. It would be unacceptable for any pressure to be brought upon a complainant to choose to pursue the case in one venue as opposed to the other.

The UWC would have members drawn from across the university. We recommend a pool of approximately 15-20 members. In order to achieve such broad representation, the committee may draw some of its members from local grievance boards, where such local boards exist. This will make the process of identifying and training appropriate committee members easier. The UWC should include faculty, mental health professionals with experience in cases of sexual misconduct, other administrators, and students. The committee may avail itself of a rotating group of students from the various schools.

4. The individual bringing the formal complaint may decide to go before the local grievance board at the school of the student or faculty member against whom the complaint is brought (if such a local board exists) and the case would then be handled according to the rules of the local board; OR the complainant may decide to bring the case before the university-wide grievance committee. In a case in which sexual misconduct is a component of a broader complaint, the chair of the relevant committee will decide whether the case is one appropriately handled by a sexual misconduct committee or by some other grievance panel. The chair of the UWC should consult with the Office of General Counsel as necessary. Once a decision has been made to pursue one formal option (through the local board or the UWC) and the investigation has started, the complainant may not request moving the case to another board.

5. If the complainant decides to pursue matters locally, then the procedures of the local committee will be followed. If the complainant decides to go before the UWC, then the chair of the UWC will select a panel – we recommend an odd-numbered panel of five or seven members -- drawn from the UWC as a whole. The chair of the UWC will appoint one of these panel members to serve as chair of the panel. The panel will investigate and hear the case.

In constituting each panel, the chair of the UWC will take into account the possibility of conflicts of interest as well as the nature and context of the particular case. However, if school-specific matters are particularly germane to the case, the chair may choose to appoint to the panel members from one of the relevant schools. Alternatively, the chair may consult with members from the relevant schools even if UWC members from these schools are not appointed to the panel hearing the case.

Because of the complexity and special difficulties in interpreting and eliciting evidence in cases of sexual assault, we recommend that in each formal case before a panel of the UWC, the chair of the UWC appoint an independent and professional investigator to gather evidence and take statements from the complainant, the respondent, and any witnesses. We recommend engaging a fact finder from outside the University, most likely a person with legal training. The investigator will not be a member of the panel but will prepare a report for the panel hearing the case.

We recommend that the chair of the UWC – in consultation with the General Counsel’s office – establish a pool of independent investigators who would be available for such cases.

The panel will hear testimony from both the complainant and the respondent and any relevant witnesses. Both the complainant and the respondent may bring an advisor to the hearing who may not participate directly in the proceeding and whose role is limited to advising the complainant or the respondent. These advisors may not be practicing lawyers (except in cases involving the Law School, should a complainant or respondent choose a member of the clinical faculty to serve as advisor). In cases involving claims of sexual assault, both the complainant and the respondent shall have the right to bring legal counsel. After the investigator submits a report to the panel and after the panel has heard the case, the panel will render a decision and issue its report.

6. If the respondent is a student and if a violation of policy is judged to have occurred, the panel should make a recommendation for action to the dean of the respondent's school with a copy to the chair of the UWC. The dean may accept or reject this recommendation, but the presumption is that the dean will accept the recommendation. If the dean does not accept the recommendation, he or she will provide a written response to the panel that explains why the recommendation was not accepted and what penalty, if any, was imposed or what resolution was reached. This written response should be given to the panel and the chair of the UWC.

7. If the complaint is made against a faculty member, the panel that hears the case would, upon finding that a violation of policy has occurred, issue a recommendation for action to the Provost. As in the case of the recommendations made to the dean in cases involving student respondents, if the Provost decides to alter or not to implement the recommended resolution or punishment, he or she will give reasons in writing to the panel and to the chair of the UWC.

8. We recommend that there be a limited basis for appeal available to the respondent in all cases. As with appeals in other disciplinary bodies at the University, an appeal may be made only on the ground that the UWC did not follow its own procedures in resolving the case or on the ground that new and substantial evidence relevant to the case has emerged. In most cases, the UWC would be asked to reopen the case. In other cases, it may be appropriate to employ existing review bodies for such appeals.

9. The WFF report recommends that cases involving complaints against staff members by other members of the university community be handled by the UWC. Currently such complaints are handled either by a generalist in Human Resources or by the Office for Equal Opportunity Programs (OEOP). This procedure includes investigating the complaint, meeting with and questioning the relevant parties and, on this basis, reaching a recommendation concerning reprimands or punishments or alteration in working conditions, etc. The OEOP or the Human Resources generalist reports to the complainant after the resolution of the case and, consistent with confidentiality requirements, reports on the steps taken to resolve the case.

This system appears to work fairly and efficiently. Moreover, discipline of those staff members who are in the bargaining units is governed by labor agreements. Because the system is effective and because of legal constraints regarding disciplinary procedures involving staff members, including constraints stemming from labor agreements, we believe that it would be neither feasible nor desirable to have complaints against staff handled by the UWC.

However, if a staff member brings a complaint against a faculty member or a student, we recommend that – as in the case of a student or faculty member bringing a complaint against a student or faculty member – the staff member be given a choice as to venue. Thus the staff member bringing a complaint against a faculty member or a student could choose to bring the case before the UWC OR choose to have the case handled by Human Resources or the OEOP through the procedures currently in place for such cases. Under the current Human Resources procedure, such cases most often are investigated by the Director of the Office for Equal Opportunity Programs who would make a recommendation, as appropriate, to the faculty member's or student's dean or to the provost.

Finally, we think it is important that the UWC has some oversight with regard to the handling of cases of sexual misconduct throughout the university. We therefore recommend that each year Human Resources and the OEOP report to the UWC and summarize the nature and resolution of cases involving sexual misconduct in which either the respondent or complainant was a staff member. School-specific boards or committees should also submit such annual summaries to the UWC. In this way, the UWC can maintain a comprehensive overview of the handling of cases of sexual misconduct throughout the University.

10. We recognize that many – indeed most – cases of complaints of sexual misconduct are resolved informally and do not reach the formal hearing stage. We recommend that there be informal resolution procedures in place both at individual schools whether or not those schools have formal resolution options and at the university-wide level. A complainant may bring a case either to the UWC or to a local, school-specific panel for informal resolution. However, a complainant may not pursue more than one of these options for informal resolution at the same time.

If an informal case comes to the UWC, the chair of the committee will appoint a two- or three-member informal response team drawn from the broader committee. The informal response team would not have the power to recommend sanctions, but it could, however, facilitate voluntary, non-punitive resolutions. Both the complainant and the respondent may bring an advisor to the informal discussions, but, except in the Law School, these advisors may not be practicing lawyers.

If the case moves from an informal process to a formal process, then a panel will be chosen to investigate and hear the formal case. The formal panel will not include any members who served on the informal response team.

11. The WFF report recommends the creation of two standing committees: one to hear formal cases concerning sexual misconduct and a separate committee to review in an ongoing fashion policies concerning sexual misconduct and the implementation of these policies. Although we strongly agree that the policies and their implementation should be subject to regular review, we do not recommend the creation of a separate standing committee for the purposes of such review. We suggest that the Provost appoint – within three to five years – an ad hoc committee to review the strengths and weaknesses of the relevant policies of the UWC and any local sexual misconduct committees in the schools. This review committee may address the question as to whether the co-existence of the UWC with local formal grievance options continues to be necessary or feasible. The UWC would also receive yearly reports from local grievance boards

concerning the nature and resolution of cases of sexual misconduct that were brought before these boards. As mentioned in §8 above, Human Resources and the OEOP would also report on an annual basis regarding its handling of cases of sexual misconduct involving staff members. All reporting must preserve confidentiality of the parties.

12. Although, as noted, we favor the use of the umbrella term “sexual misconduct” to cover a broad range of behavior, including many of the cases mentioned on p. 49 of the WFF report (especially stalking, peeping tommery, any cases of a sexual nature that exceed the bounds of knowing consent, certain kinds of hazing), we do not recommend that cases of gender-based discrimination in connection with employee hiring, firing, promotion, or compensation – cases mentioned by the WFF report – be handled by the UWC. Such complaints are best handled, we believe, through other grievance mechanisms currently in place. In any event, the chair of the UWC could decide, in consultation with the Provost and General Counsel’s office as to the appropriate venue for hearing complaints in such cases.

#### D. Communication of Policy and Procedures.

We are in favor of the general recommendations in the WFF report on the communication of Policy and Procedures. In particular, we agree that there should be a single University website outlining all University policies regarding sexual misconduct and that the website be readily accessible to the Yale community. The Secretary’s Office should be consulted to determine the best placement for links to the site.

#### E. Training.

We support the ongoing efforts in training students, faculty, and staff to respond to and understand cases of sexual misconduct, and we support the general recommendations concerning training in the WFF report. We especially support the goal of ensuring that all members of the faculty and managerial staff acting in a supervisory role complete the Sexual Harassment training as required by state law. We question the feasibility and effectiveness of requiring refresher courses on an annual or more frequent basis (as recommended in section I.B.6 of the WFF report), but recommend that training on these important issues be emphasized and continued.

#### F. Crisis Management.

We support the values the WFF report emphasizes in the section on crisis management. In particular, we support the idea that appropriate information be delivered to the community in a timely manner. We recognize, however, that the complexity of these situations often requires flexibility of response including a concern for confidentiality, and we believe that such a response should be determined by the key personnel with authority over a particular school.

#### G. Data Collection, Monitoring, and Reassessment.

We agree with the recommendation in the WFF report that the UWC should administer a survey of representative samples of students, faculty, and staff. The survey would assess knowledge of and attitudes toward university mechanisms for dealing with cases of sexual misconduct. The

UWC should consult with the Office of Institutional Research in order to determine the frequency and the nature of such a survey.

We suggest also that the survey inquire as to knowledge of the definitions of sexual misconduct and consent, etc. In this way, the survey could have an educational role for those taking the survey as well as an informational role for the UWC. For the maximal educational value, however, the survey would need to go out, not just to a representative sample, but to a broader set of members of the university community.

Members of the Committee:

Linda Bockenstedt  
Joan Channick  
Judy Chevalier  
Michael Della Rocca, chair  
Marichal Gentry  
Kevin Hicks  
Charles Long  
Thomas Masse  
Susan Mayne  
Tracey Meares  
Douglas Mennin  
Peter Parker  
Susan Sawyer  
Diane Young Turner