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.
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The comments most often repeated to the Task Force about the disciplinary procedure were that the community would like to see student involvement in the process, and wanted a provision for continual oversight of the policy, which also included student involvement. Accordingly, the Task Force proposes that there be a student member of the disciplinary panel in each instance, unless both parties to the hearing choose to exclude the student member. Student participants would be chosen in a similar way to the selection of deans, from a specially trained standing group.

With respect to the alternative disciplinary procedure itself, the Task Force was informed that there needed to be more specificity of time lines and process. Accordingly, the Task Force has made those changes to the outline of the procedure.

In addition, at the November 12 meeting, the Senate resolved to have the Task Force address the issue of the collection of accurate statistics reflecting the incidence of sexual misconduct on campus. The Task Force proposes that the Coordinator be designated as the recipient of all reports of incidences of sexual misconduct affecting students of the University, anonymously, but with sufficient specificity to maintain an official count for reporting under the Campus Security Act, and for measuring the effectiveness of the Policy in prevention of sexual misconduct. Further, the Coordinator will be responsible for informing all those officials on campus who are likely to receive reports of sexual misconduct about the reporting requirements of the law. Those officials will then be responsible for reporting incidents to the Coordinator on an ongoing basis throughout the year.

The Task Force is herewith submitting its Revised Report for the consideration of the Senate.
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
to the Senate that further review and study was necessary before a determination could be made to continue the Procedure in its current form. The Task Force therefore spent fourteen months in an examination of the Alternative Disciplinary Procedure.

During that time, the Task Force heard from many witnesses, including representatives of offices of deans of students and residence life, the advisory board of the Rape Crisis/Anti-Violence Center, Columbia Men Against Violence, Take Back the Night and other student groups, and held an open meeting where any members of the community who wished to express a viewpoint could meet with it. The Task Force also reviewed the petition which was circulated on campus by the Policy Reform Organization of the Rape Crisis/Anti-Violence Center and was presented to the University Senate on November 12.

Since the first draft of the Report was submitted to the Senate on November 12, the Task Force, separately and together, has met with representatives of the community and held an open forum co-sponsored by student government on November 18. Community input during the past month has greatly exceeded that provided during the first year of the Task Force’s work, and has led to an expansion of our recommendations, especially with respect to education, information, and training, and the need for ongoing oversight of those efforts. Many of the suggestions received from the community are reflected herein.

Additionally, as requested by the Senate, the Task Force considered the issue of the collection of statistics. With respect to the collection of accurate statistics on the incidence of sexual misconduct on campus, the Task Force recognizes that sexual
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
above.

Overview of Recommendations

The Task Force is making four specific recommendations to the Senate to form the basis for resolutions to be presented at a later meeting. Firstly, that education and information about the issue of sexual misconduct be expanded under the oversight of the President’s Advisory Committee on Security; secondly, that an office be created entitled Coordinator, Sexual Misconduct Education and Prevention to have responsibility for education and training of the community on the issue of sexual misconduct, to provide mandatory education on sexual misconduct for all students, to expand the distribution and availability of information about resources, including complaint processes, and to collect statistics on its incidence on campus; thirdly, that a specialized discipline procedure for cases of sexual misconduct be continued, and that other options, including the option for mediating such cases continue to be available; and, fourthly, that the form of the alternative procedure be changed as described below.

The Task Force wishes to emphasize that the most important aspect of the University’s Policy On Sexual Misconduct is education and information. Four years after its initial creation, the Task Force heard from many witnesses that students were still not aware of the existence of the Policy, where to receive advice and counseling, or how to commence disciplinary proceedings. The responsibility for informing students of the University’s prohibition against sexual misconduct and the availability of support services and complaint procedures rests throughout the community, not only with deans and residence advisors, and the Department of Security, but with any member of the
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,
Sexual Misconduct Education and Prevention' ("Coordinator"). The Coordinator will be responsible for the creation and distribution of information about sexual misconduct and the University policy, for the education of students and student advisors, such as residence advisors, and for consultation and advice on this issue by deans of students or other administrators.

With respect to discipline, the Task Force recommends replacing the current Alternative Procedure with a specialized form of discipline, modeled on dean's discipline, designed to hear cases of sexual misconduct. The Task Force believes that this recommendation will address not only the original concerns which led to the création of the Alternative Procedure in 1995, but will eliminate the problems perceived to exist with the Alternative Procedure as it is currently designed and implemented.

Those problems, as expressed to the Task Force, included concerns about the procedurally dense and bureaucratic nature of the Alternative Procedure, which was perceived to be confusing to persons wishing to bring a complaint, and which required complainants to repeat their story many times; the inexperience of the current membership of the hearing panels as compared with the experience of deans of students who are familiar with disciplinary proceedings and the nuances of student life; the short statute of limitations; the burden placed on the complainant to locate and present witnesses and testimony; the difficulty experienced by complainants who are required to describe the incident(s) in the presence of the accused; and concerns about the involvement of attorneys in the process which has the potential to place complainants at a disadvantage.

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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
and procedures for educating the campus community, including security personnel and those persons who advise or supervise students, about sexual assault, and for educating the campus community about personal safety and crime prevention. The membership of the Advisory Committee, established by statute, should be expanded to ensure maximum representation of various sectors of the University community. The Task Force recommends that the President's Advisory Committee on Campus Security create a subcommittee (the "Education Subcommittee") of its membership and other members of the community such as health educators and student affairs administrators, to create specific proposals about the most effective ways to educate the community about the sexual misconduct policy, and about resources and help available to students, and to recommend ways of effective implementation of such proposals. These proposals should include methods of informing non-residential students, both graduate and undergraduate, of the University policy and available resources. The Task Force recommends that, at a minimum, every member of the community should be informed about the Policy and the location of resources in an annual letter. Additionally, the Subcommittee should address the pressing need to educate students and the community in general about alcohol use and abuse.

One additional note with respect to this recommendation on education is that the Advisory Committee on Campus Security make an effort to educate the University community about the specific requirements of the reporting obligations of the Campus Security Act, since materials and opinions presented to the Task Force indicate that the criteria are not well understood, and lead to perceptions of misreporting.
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
Issues"), composed of members of the University committee and its counterpart at Barnard College to address issues that involve both campuses. This committee would work closely with the Education Subcommittee to ensure that information about resources and support is widely available on both campuses. Additionally, this Subcommittee would assist those offices at each institution responsible for the reporting of annual statistics, and ensure that statistical information be shared for purposes of accuracy.
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
Education Subcommittee, should develop a mechanism for identifying incidents, while preserving the confidentiality of victims, to ensure the accurate collection of statistics. The Coordinator would also work in conjunction with the Senate Executive Committee, which has undertaken the obligation to report accurately statistics of disciplinary proceedings involving sexual misconduct pursuant to one of the 1995 Senate Resolutions. The Task Force is not recommending that the University officially report statistics other than those required by Federal law, but believes that the separate collection of statistics reflecting all incidents of sexual misconduct affecting University students will be useful in gauging the success of educational and preventive efforts. The Coordinator will serve *ex officio* on the Advisory Committee on Campus Security, and on all three Subcommittees, but will be administratively located within the Student Services organization. While it is anticipated that the Coordinator will work during the day, the Coordinator's office should maintain a 24-hour telephone line with information about resource availability after office hours.

**Advisory Role**

Additionally, the Coordinator will be available as a resource to victims of sexual misconduct who seek information and advice about disciplinary options through the University or the criminal justice system. The Coordinator will be able to provide resources, other than counseling, to victims, such as arranging for changes in housing or classes, when appropriate. The Coordinator will submit an annual report on his or her activities to the Advisory Committee and the Senate.
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.
Recommendation #3

That students who have experienced an alleged incident of sexual misconduct have the options of proceeding through Dean's Discipline, the proposed Disciplinary Procedure for Sexual Misconduct, or mediation.

The Task Force believes that it is important for persons who wish to bring complaints of sexual misconduct to have a choice in how they wish to proceed. In certain cases, the misconduct may be so egregious that it is most appropriately handled in the first instance by the criminal justice system and/or by a University disciplinary hearing. However, in others, the complaining student may feel that it can be resolved by a mediated discussion that will allow the parties to correct misunderstandings and to create a mutually acceptable solution for their continued coexistence in the community.

The University Statutes provide that the ultimate responsibility for discipline in each School resides with the Dean of that School, and each School has adopted procedures for hearing such cases, which vary from the informal investigative procedure used in Columbia College, The Fu Foundation School of Engineering and Applied Science, and Barnard College, to formal hearing panels in General Studies and many of the graduate schools. Cases of sexual misconduct, as all cases of student misconduct, fall under the jurisdiction of the Deans. If a student feels comfortable with the process in the School attended by the accused student, then it is appropriate for a case of sexual misconduct to be heard under the procedures normally used in that School. In order for a student considering making a complaint to make an informed choice, the Task Force recommends that the Office of the Dean of Students in each School maintain at least
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
concluded. The Dean of a School may, in such cases, exercise his or her summary power to suspend an accused student until a disciplinary panel can be convened.

Likewise, if mediation is unsuccessful, a complainant may elect to pursue a disciplinary remedy. A student may not proceed under both Dean's Discipline and the Disciplinary Procedure. However, a student may change his or her mind about which procedure to follow up until the time a hearing commences.
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...
member of every disciplinary panel to assist the deans in reaching a decision. Attempts should be made to include in the pool at least one representative, both student and administrator, from every School in the University which has agreed to participate in the Disciplinary Procedure for Sexual Misconduct, which currently includes Barnard College and Teachers College, but excludes the Law School. Panelists may also be student affairs officers from other departments of the University, such as Athletics, Student Activities and Residence Life. Student representatives shall be nominated by the Dean of their School after expressing an interest in the position. The Coordinator shall interview all candidates before appointment.

These deans and students must be provided with extensive training, repeated annually, in the psychological, social, including cultural and racial, and legal issues involved in sexual misconduct, as well as in procedures appropriate for hearing such cases, and in 'First Responder' procedures. Legal issues to be covered would include training in the evaluation of evidence, standards of proof, and the irrelevance of prior sexual history. No panelist who had not undergone such training within the preceding twelve months would be eligible to hear such cases. The Coordinator would maintain records of training. This recommendation on training reaffirms the Third Resolution of the University Senate, passed on April 28, 1995.

The Task Force recommends that cases brought under the Disciplinary Procedure would be heard by a panel of two of these deans and one student, (excluding members of the School(s) attended by the parties unless both parties consent), following an informal, non-adversarial procedure, which eliminates many of the
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
panel. The Coordinator, however, would have no role in the proceedings once a panel had been appointed.

The selection of deans and students from the pool would be done on a rotating basis, but with due consideration to neutrality toward both parties, and with an expectation of gender balance. The student member may be excluded by the agreement of both the complainant and the accused, and must be excluded if acquainted with either student. After appointment, the hearing panel would then handle all administrative aspects of the hearing, having discretion with respect to any unforeseen or unusual procedural matters that are not specified in the Procedure. As is customary within the University, attorneys would not be permitted to participate in the hearing. Either party would be permitted to be accompanied by a member of the University community as a silent supporter, who will not participate in the hearing.

At the time of the appointment of a hearing panel, the Coordinator will inform the individual(s) in the office(s) of the dean of students trained in sexual misconduct of the school(s) attended by both the complainant and the accused, that a hearing is to take place, but will not identify the parties by name. Before a written report is issued, the hearing panel will meet with these deans to inform them of the outcome, and to allow the deans to satisfy themselves that the process was appropriately followed and of the fair treatment of the students for whom they have disciplinary responsibility. Also at the time of the appointment of the panel, the Coordinator will draw up a proposed schedule for the hearing and decision, and provide it to all participants.
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
School as he or she was at the time of the incident, with an outside limit of five years. However, since only currently enrolled students are subject to dean's discipline, the opportunity to proceed under the Disciplinary Procedure may be lost if an accused student has graduated in the interim.

Confidentiality of the proceedings and the outcome will be expected of all participants, including the complainant, the accused and the witnesses. Throughout the review process, the Task Force heard concerns and questions about the nature and scope of confidentiality with respect to sexual misconduct hearings and the collection of statistics. A proposed statement concerning the scope of confidentiality is therefore attached to this Report as Exhibit B.

Retaliation by any party to a disciplinary hearing against any other party or witness is prohibited, and will be considered a violation of the Sexual Misconduct Policy, and subject to the same disciplinary alternatives.

Some senators and members of the community have raised concerns about the legality and constitutionality of the proposed Disciplinary Procedure. The University's dean's discipline procedures have been tested on several occasions in the New York courts. In each instance, provided that the procedures are followed and there is no evidence of arbitrary or capricious actions by the University, these procedures have been upheld. This has been so even in cases of discipline which involved allegations which constitute crimes under New York law. Specifically, courts have held that the law does not require a University to permit an accused student the right to counsel, a right to cross-examine or a transcript in disciplinary hearings. In fact, a New York appellate
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.
Conclusion

In conclusion, the Task Force would like to reaffirm its belief that the University Administration is committed to addressing the issue of sexual misconduct on campus. However, while current efforts meet minimum legal requirements, the University can demonstrate its commitment by improving education about and prevention of sexual misconduct. It must also make stronger efforts to inform the community of resources and information that are currently available.

The interest and involvement of students have demonstrated how significant an issue this is to those members of the Columbia community. This Report attempts to address the issues raised by students and all sectors of the community. If the recommendations of this Task Force are accepted and implemented, the University will be making important strides toward successful prevention of, as well as response to, sexual misconduct.

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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.

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The student has the right to appeal a decision that results from a disciplinary hearing to the Dean of his or her School. The appeal must be made in writing within thirty days of the time he or she is notified of the decision, and it must clearly state the grounds for appeal. Normally, on such an appeal, the Dean of the School relies solely upon the written record and does not conduct a new factual investigation. Moreover, the Dean focuses upon whether, in the Dean's view, the decision made and the discipline imposed are reasonable under all of the circumstances of the case. There is no further right to appeal within the University.

Both students will be informed in writing of the Dean's decision, and the penalty imposed.
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
information is not disclosed, while still providing enough information for students to make safety decisions in light of the danger.