Proposed Procedures Governing Sanctions Taken Against Members of the Faculty (Revised)

Following is the second report of the Task Force on Procedures Governing Sanctions Taken Against Members of the Faculty, incorporating revisions made since the initial report was published for comment on February 9, 1993. It has been received by Interim President Claire Fagin and Interim Provost Marvin Lazerson, and is scheduled for systematic discussion by the constituencies of the Faculty Senate.

Contents

Preamble	S-2
Detailed Table of Contents	S-3
I. Introduction and Definitions	S-3
II. Preliminary Procedures	S-4
III. Minor Sanction	S-5
IV. Disability	S-5
V. Misconduct in Research	S-5
VI. Major Sanction	S-6
VII. General Matters	S-8

Preamble: Highlights of the Unresolved Issues

Author's Note: *The letter below was sent to Interim President Claire Fagin, with copies to Interim Provost Marvin Lazerson and Faculty Senate Chair Gerald Porter. It is presented here as a preamble to the revised procedures given in the following pages.—M.M.*

On behalf of the Task Force on Procedures Governing Sanctions Taken Against Members of the Faculty appointed by your predecessor I am pleased to submit to you our revised proposals. The proposals reflect consideration of the many comments received since its preliminary report was published in *Almanac*. The work on this report was begun with Professor Robert Davies as chair. As a consequence of his untimely death, I was asked to assume the chair. He was sorely missed.

While the Task Force agreed on most points, there was disagreement on a number of important points. These are discussed below.

Perhaps the most important recommendation found in the enclosed draft is the proposal to create a University-wide tribunal to consider charges. The Task Force feels strongly that because a major infraction by a faculty member threatens to impair the integrity of the University faculty, not just the faculty of the school or college to which the respondent belongs, the matter of guilt or innocence is a University-wide concern. Many on the Task Force feel that consequently the matter should be judged by a body representative of the University rather than the school. Some members of the Task Force feel that an investigation of the effectiveness of University-wide tribunals at other institutions should be undertaken before a final commitment is made to establish such a tribunal here.

In our deliberations we were very concerned that the respondent be duly protected by the proposed procedures. Not all members of the Task Force believe that sufficient protection to faculty members has been provided. The conditions under which a major sanction may be imposed reflect these concerns. A major sanction may be imposed only by the President and only when the University Tribunal makes a factual finding that the respondent has committed a major infraction.

Only the University Tribunal may find that a faculty member has committed a major infraction. A majority vote of the University Tribunal is necessary for such a finding. We were evenly split on the recommendation that a majority, as opposed to a super-majority or unanimity, be necessary for such a finding by the Tribunal. Half of the Task Force felt that at least a super-majority should be necessary to protect the respondent from an erroneous finding of guilt. Those who took this position argued that given the size of the Tribunal, a verdict could easily be reached that would differ from one that a substantial majority of the University community would support if they had heard the case themselves. Even with a super-majority there would still be a better than even chance that someone would be found guilty that a substantial minority of the faculty would judge innocent. The other half of the Task Force was persuaded, however, that only a majority vote be required. There were three arguments that they found persuasive: first, unanimity or a super-majority would allow the University Tribunal to be controlled by a minority of one or two of its members; second, because the respondent has the opportunity to disqualify for prejudice any members of the Tribunal, he or she has protection from a biased Tribunal; and third, because all members of the Tribunal have been previously elected to their school committees on academic freedom and responsibility, a majority vote from this particularly sensitized group of faculty provides ample protection from an erroneous finding that a major infraction has occurred.

The President can impose a major sanction *only* when the University Tribunal finds that a major infraction has occurred. If the University Tribunal finds that no major infraction has occurred, the President cannot impose a major sanction. When the University Tribunal finds that a major infraction has occurred, it must also recommend the specific sanction that the President imposes. If the President wishes to impose a different major sanction, the majority of the Past Chair, Chair and Chair-elect of the Faculty Senate must agree to that sanction.

One member of the Task Force reluctantly accepted this last proposal. The reluctance stemmed from the view that the determination and implementation of a sanction are basically administrative matters and that approval of a change asked for by the President should come from within the administration, namely the Board of Trustees, and not from the faculty.

Other members objected to any possibility of upgrading the penalty. Since the respondent is free to write to the President objecting to the findings and recommendation of the Tribunal, the President is not only the implementor of major sanctions, he/she is also the entity to whom appeals are directed. They argue that since increased penalties are not permitted in criminal cases, it is unfair to permit them here.

The enclosed draft has added provisions for extenuating circumstances surrounding the respondent's conduct. The dissenters feel that the draft still gives too little weight to what they consider the wide range of justifications and excuses that may render the respondent's conduct less or not at all blameworthy. Others felt that additional weight would create the danger of capricious verdicts.

The dissenters feel that if the President deemed that it was in the interest of the University, he/she should be free to acknowledge the findings of the Tribunal and nevertheless decide to do nothing about them. It is to be noted, that while the document makes provision for decreasing the penalty, it nevertheless requires a major sanction if the Tribunal found the respondent guilty of a major infraction. A majority of the members believe that if a major infraction has occurred, failure to impose a major sanction would impair the perceived integrity of the faculty resulting in major consequences in the future.

Dissenters also feel that respondents judged innocent should be reimbursed for legal expenses or partially reimbursed if not found guilty on all charges. Others feel that partial reimbursement was not a feasible objective and did not feel strongly enough to wish to include provision for full reimbursement for total exoneration.

Another controversial point is the manner of selecting the Panel from which Tribunals are drawn. The report recommends that they be selected from academic freedom committees. Some members of the Task Force prefer selection at random from all full professors stratified by school.

The report states that reduction in rank should not be used as part of a sanction. We all agree that this particular sanction should be singled out for special approval or rejection. The dissenters argue that it is not wise to limit the authority of the Tribunal in recommending sanctions it sees fit.

A few members of the Task Force feel that provision should be made for allowing probation to be included among the penalties permissible for a major infraction. A substantial majority believe that such a provision would undermine the whole process.

Some feel that the President should be allowed to reduce the penalty to a lesser major sanction unilaterally; and some feel that the President, with the approval of the Trustees, should even be allowed to pardon the respondent.

The Task Force will, of course, meet with you to discuss our report if that is your wish. Please let me know whether or not you will want to have such a meeting.

— Morris Mendelson, Chair,
Task Force on Procedures Governing
Sanctions Taken Against Members of the Faculty

Proposed Procedures Governing Sanctions Taken Against Members of the Faculty (Revised)

Detailed Table of Contents

I. Introduction and Definitions S-3
- A. Introduction S-3
- B. Definitions S-3

II. Preliminary Procedures S-4
- A. Types of Charges S-4
- B. Preliminary Investigation S-4
- C. Further Action by Dean or Provost S-4
- D. Formation of a Group for Complaint S-4

III. Minor Sanction S-5
- A. Imposition by Dean or Provost S-5
- B. Minor Sanctions for Minor Infractions S-5
- C. Appeal to Faculty Grievance Commission S-5

IV. Disability S-5
- A. Direct Application to Disability Board S-5
- B. Complainant Involves Disability Board S-5
- C. Review by Disability Board S-5
- D. Report of the Disability Board S-5
- E. Actions for Total Disability S-5
- F. Complainant Initiates Creation of a University Tribunal S-5

V. Misconduct in Research S-5
- A. Initiation of Formal Investigation S-5
- B. Formation of Formal Investigating Committee S-5
- C. Duties of Formal Investigating Committee S-5
- D. Disposition of Report of Formal Investigating Committee S-6
- E. Temporary Safeguards and Actions by Administration S-6
- F. Complainant Determines Further Action S-6
- G. Actions for Unfounded Charges S-6
- H. Actions for Minor Sanction S-6
- I. Complainant Initiates Creation of a University Tribunal S-6
- J. Involvement of Other University Committees S-6

VI. Major Sanction S-6
- A. Only President May Impose Major Sanction S-6
- B. Complainant Requests Formation of University Tribunal S-6
- C. Potential Members of University Tribunal Named S-6
- D. Complainant and Respondent Informed of Potential Members of University Tribunal S-6
- E. Complainant and Respondent May Move to Disqualify S-6
- F. Decisions on Whether to Disqualify S-6
- G. Members of University Tribunal Named S-6
- H. Hearing Requested by Respondent S-6
- I. Tribunal Actions Without Hearing S-7
- J. Tribunal Actions With Hearing S-7
- K. Disqualifications for Prejudice S-7
- L. Procedures During a Hearing S-7
- M. Report of Tribunal to President S-7
- N. President's Options S-7
- O. President's Actions S-8
- P. Time Constraints on Sanctions S-8
- Q. Tribunal Records S-8

VII. General Matters S-8
- A. No Public Statements When Proceedings Are in Progress S-8
- B. Actions When Charges are Unfounded S-8
- C. Statements Following a Minor Sanction S-8
- D. Statements Following a Major Sanction S-8

Aide Memoir I: Initialization of Panels S-8

Aide Memoir II: Partial Disability S-8

I. Introduction and Definitions

A. Introduction

The imposition of a sanction on a faculty member of the University of Pennsylvania is a rare event. However, when situations that might lead to such an action arise, they must be handled fairly and expeditiously. It is essential to have a process that both protects the rights of faculty members and addresses the legitimate concerns of the University. This document replaces the previously existing "Suspension or Termination of Faculty for Just Cause" and "Procedures Regarding Misconduct in Research" (*Handbook for Faculty and Academic Administrators* 1989, as revised 1991, pages 47-51 and 117-121 respectively) and also modifies the "Procedures of the Senate Committee on Conduct" (*Almanac* October 31, 1989). In the latter case the following procedures are available to those students or faculty or staff members who complain of extortion of sexual favors. Any cases initiated after this document is in force, even if the alleged actions preceded its adoption, will be governed by the procedures described here. This document simplifies the previous process in a major way and relates them to a Dean's procedures for imposing minor sanctions and to the disability procedures. The result is a more coherent and less cumbersome process. In addition, an important new principle is here enunciated, namely: charges of major infraction of University behavioral standards against a faculty member transcend the interests of any single school. Such charges, if true, reflect unfavorably upon the University as a whole; thus they demand consideration by a University-based process. These procedures do not change the scope or powers of any Academic Freedom and Responsibility Committee as defined in the Statutes of the Trustees 1983, Article 10.

B. Definitions

In this document, the terms given below shall have the meanings there stated.

1. "Alerter"—individual bringing to the attention of the Dean or Provost a situation that may call for a sanction [Definition No. 15] against a faculty member [Definition No. 6]. The alerter may be a student or faculty or staff member of the University, or any individual outside the University who believes that a major infraction [Definition No. 9] or minor infraction [Definition No. 11] of University behavioral standards by a faculty member has occurred.

2. "Complainant"—either the Provost, a Dean, a Provost's or Dean's designee who shall be a faculty member of the University, or a Group for Complaint [Definition No. 7].

3. "Counsel"—an advisor, who may be an attorney, chosen by the advisee.

4. "Dean"—the Dean of one of the University's schools.

5. "Disability Board"—an independent committee described in the By-laws of the University Council (Sec. VI.2.d), as revised 1992.

6. "Faculty member"—a member of the standing faculty, standing faculty clinician-educator, the academic support staff (who is not a student), or post-doctoral fellow.

7. "Group for Complaint"—an alternative complainant, elected by the standing faculty of a school, by a secret ballot, from its own tenured professors which by the fact of its election shall be empowered to take action that may result in the imposition of a major sanction [Definition No. 10] pursuant to these procedures. The size of the Group for Complaint shall be determined by the faculty but shall not be less than three.

8. "Hearing"—a meeting of the University Tribunal to receive evi-

dence from the parties involved in a dispute. A transcript is produced and maintained.

9. "Major infraction of University behavioral standards"—an action involving flagrant disregard of the rules of the University or of the customs of scholarly communities, such as, but not exclusively, serious cases of the following: plagiarism; misuse of University funds; misconduct in research [Definition No. 13]; repeated failure to meet classes or carry out major assigned duties; extortion of sexual favors within the University community, improperly providing controlled substances (Schedule I or II substances as defined by the U. S. Drug Enforcement Agency) to, or physical assault upon, a member of the University community; the bringing of major or minor infractions of University standards against a member of the University community, knowing these charges to be false or recklessly indifferent to their truth or falsity; violation of the University's conflict of interest policy or commission of serious crimes such as, but not limited to, murder or rape. Due consideration should be given to exculpatory or extenuating circumstances.

10. "Major sanction"—a set of one or more relatively severe penalties that includes, but is not limited to, termination; suspension [Definition No. 16]; reduction in base salary; reduction in total salary; zero salary increases stipulated in advance for a period of four or more years; removal of the right to submit specific research proposals internally or externally or the right to carry on specific external activities for compensation; denial of the use of University research or library facilities; and, in the case of disability and incapacity only, mandating placement of the faculty member in the University's disability income protection program. Reduction in rank is never an appropriate penalty.

11. "Minor infraction of University behavioral standards"—an action involving disregard of the University's rules or of the customs of scholarly communities that is less serious than a major infraction.

12. "Minor sanction"—a set of one or more penalties less severe than a major sanction. Such penalties may include, but are not limited to, a private letter of reprimand; a public letter of reprimand; special monitoring of specific future research, teaching, supervision of students, or other activities; zero salary increases, for a period not to exceed three years; and assignment of special duties within the faculty member's capability.

13. "Misconduct in research"—fabrication, falsification, plagiarism, or deception in proposing, carrying out or reporting results of research; or deliberate, dangerous deviations from accepted practice in carrying out research. It does not include honest error or honest differences in interpretation or judgment in evaluating research methods or results. It does include failure to follow agreed-upon protocol if this failure results in unreasonable risk or harm to humans or other vertebrates.

14. "Respondent"—the faculty member complained against.

15. "Sanction"—one or more penalties imposed by the President, the Provost, or a Dean on a faculty member.

16. "Suspension"— cessation of all of a faculty member's University activity for a fixed period of time without salary or any other compensation by or through the University for that period and without those benefits that are based on such salary or compensation.

17. "Termination"—cancellation of a faculty member's appointment, as of a certain date, accompanied by permanent cessation of salary and any other compensation by or through the University and of all benefits not accrued prior to that date.

18. "University Just Cause Panel"—a University-wide Panel from which University Tribunals are chosen. This Panel shall be composed of tenured professors: twelve from the School of Arts and Sciences; twelve from the School of Medicine; six each from the School of Engineering and Applied Sciences, the School of Veterinary Medicine, and the Wharton School; and three from each of the remaining schools of the University. They shall be appointed, for staggered three-year terms except where an appointment is to complete the term of a person who leaves the panel early. Terms start on July 1. Appointments may be renewed.

The Chair of the Faculty Senate, after consultation with the Past Chair and Chair-elect, has the responsibility for designating the members of the Panel from current or past members of the various Senate or School Committees on Academic Freedom and Responsibility. This shall be done in consultation with the current or past chairs of the various Committees on Academic Freedom and Responsibility, and with due regard for the need for appropriate diversity on University Tribunals [Definition No. 19]. It is also the responsibility of the Chair of the Faculty Senate to inform the prospective members of the Panel about their responsibilities as members of a Tribunal.

19. "University Tribunal"—a body of six tenured professors selected from the Just Cause Panel to hear evidence in a particular case. No more than two members of a Tribunal shall hold primary appointments in the same school. Not less than one of the members shall be from the school of the respondent, unless the respondent moves to disqualify all members of the Just Cause Panel from his or her school. The Tribunal shall be created by the process described in VI. C. Members of the Tribunal shall serve until the case is completed regardless of the termination date of their appointment to the University Just Cause Panel. The Chair of the Tribunal shall conduct the Tribunal's business and preside at hearings but not cast votes except to break ties. Once having served as members of a Tribunal, faculty members are excused from further membership on the University Just Cause Panel for the remainder of their terms. The Chair of the Faculty Senate in accordance with the process described in Definition No. 18 shall designate a faculty member from the same school to serve the remainder of the term.

20. "Working days"—shall mean Mondays through Fridays except when the University is officially closed.

II. Preliminary Procedures

A. Types of Charges

Four types of charges, governed by four separate but related processes are here introduced: misconduct in research, other major infractions of University behavioral standards, minor infractions of University behavioral standards, and actions following disability. In each situation, appropriate action shall be initiated promptly by a member of the University administration who shall normally be the Dean of the school in which the faculty member's primary appointment lies but who may, in unusual circumstances, be another Dean or the Provost. The Dean or Provost may act personally or through a delegate.

B. Preliminary Investigation

When the Dean or Provost has been alerted to a situation which may involve the types of charges mentioned above, the Dean and the Provost shall consult with each other, and determine whether to initiate a preliminary investigation. If they decide to initiate a preliminary investigation, the chair of the department will be consulted and the faculty member will be notified. This investigation will usually be carried out by a committee consisting of two tenured faculty members whose primary appointments are not in the same department (for schools organized in departments) or school (for schools not organized in departments). In the case of misconduct in research, the faculty members must be appropriately knowledgeable in the relevant field. However, in special circumstances, the preliminary investigation may be carried out by other agencies, such as the Office of the Ombudsman. In all cases, the Dean and the Provost shall consult with each other and with at least three members of the tenured faculty concerning the format of the investigation and the personnel carrying it out.

The investigative agency shall interview those concerned, engage in fact finding and summarize its work in a report sent to the Dean and Provost. During these proceedings, all parties shall make every effort to protect the identity of the individuals involved.

C. Further Action by Dean or Provost

Having received the report of the Preliminary Investigating Committee, the Dean or Provost shall normally interview the faculty member in the presence of any department chair concerned and afford opportunity for informal adjustment of the matter. If the matter is adjusted informally to the satisfaction of the Dean or Provost and the faculty member no further proceedings shall be invoked by them. If the matter is not adjusted informally, the Dean or Provost shall consult with several tenured members of the University faculty, who are not currently members of the University Just Cause Panel. Relying on these consultations and on the report of the Preliminary Investigating Committee, the Dean or Provost shall decide whether to proceed to the formal investigation stage in a case involving misconduct in research, to invoke the just cause procedures in a case involving other major infractions of University behavioral standards, to impose minor sanctions directly in a case involving minor infractions of University behavioral standards, to take the case to the Disability Board in a situation involving disability, or to drop the matter. If the decision is to drop the matter, the Dean or Provost shall so notify the respondent and any alerter in writing.

D. Formation of a Group for Complaint

If the Dean or Provost decides to drop the matter, [See also V.G] no further proceedings shall be initiated with the single exception of the

faculty's prerogative to form a Group for Complaint (Definition no. 7). In cases of alleged misconduct in research a record of the preliminary investigation and the final decision shall be maintained in the Office of the General Counsel for the period required by the federal government. If a faculty has by resolution requested its Dean to examine a situation possibly involving imposition of a major sanction and within fifteen working days following the date such resolution was adopted, neither the Dean, another Dean, nor the Provost has either initiated proceedings for imposition of a major sanction, or has provided reasons for not initiating such proceedings that are deemed satisfactory by the faculty; then, within thirty working days, the faculty may elect from its own members a Group for Complaint. Members of the University Just Cause Panel shall withdraw from faculty meetings when these matters are considered and shall not be eligible for membership on the Group for Complaint. The secretary of the faculty shall record the minutes of this meeting and attach as appendices any written information upon which the faculty's vote to elect the Group was based. If formed, the Group shall receive this material and promptly conduct an investigation and may initiate proceedings for imposition of a major sanction if it determines that there is substantial reason to believe that just cause exists therefor. A determination by the Group not to initiate further proceedings shall be reported to the faculty, the Dean, the Provost, the faculty member, and any alerter, with the Group's reasons for making such determination, and no further action shall be taken by the faculty. However, the Group for Complaint may recommend that the Dean or Provost, where appropriate, impose a minor sanction.

If a Dean, Provost or Group for Complaint (hereafter "complainant") decides to pursue the case against the faculty member (hereafter "respondent"), he or she shall initiate other proceedings as described in the remaining sections of this document.

III. Minor Sanction

A. Imposition by Dean or Provost

When the Dean or Provost has received the report of the Preliminary Investigating Committee and consulted with the tenured faculty members, he or she may conclude that the situation does not involve misconduct in research, any other major infraction of University behavioral standards, or disability, but instead a minor infraction of University behavioral standards. The Dean or Provost shall then impose a minor sanction on the respondent. He or she shall notify the respondent and any alerter of this decision and take the steps necessary to put the sanction into effect after a two week time period for the alerter to decide whether to initiate the mechanisms needed to create a Group for Complaint.

B. Minor Sanctions for Minor Infractions

A faculty member judged to have committed a minor infraction of University behavioral standards can receive no more than a minor sanction.

C. Appeal to Faculty Grievance Commission

If a minor sanction has been imposed, the respondent may apply for relief to the Faculty Grievance Commission. However, subsequent formation of a Group for Complaint requires that the Grievance Commission cease all activity regarding such relief until a final decision has been reached concerning a major sanction.

IV. Disability

A. Direct Application to Disability Board

As in the past, faculty members may apply directly to the Disability Board for disability benefits and request placement in the University's Long Term Disability Plan.

B. Complainant Involves Disability Board

If the complainant, relying upon the report of the Preliminary Investigating Committee and the conversations with tenured faculty members, decides that the respondent is unable to carry out his or her University responsibilities and obligations because of disability, including substance abuse that impairs performance, then the complainant shall promptly send to the Disability Board a written statement that sets forth in detail the grounds for removing the respondent's University responsibilities and obligations, and/or placing the respondent in the University's Long-Term Disability plan.

C. Review by Disability Board

The Disability Board shall undertake a thorough review of the situation. It shall examine the report of the Preliminary Investigating Committee, consult relevant medical records, and conduct interviews with the complainant, the respondent, and with any others having relevant information. Summaries of these interviews shall be prepared, provided for comment or revision to the party interviewed, and included as a part of the investigation file. The Disability Board shall utilize the Health Evaluation Center of the University and the Faculty/Staff Assistance Program, if needed. During its proceedings, the Disability Board shall be advised by legal counsel. When appearing before the Disability Board, the complainant and the respondent may each be accompanied by counsel. Counsel may advise the party in question but normally shall not participate further in the proceedings. The Disability Board shall not conduct formal hearings, and, except in unusual cases, the parties shall not appear before the Disability Board at the same time.

D. Report of the Disability Board

After its investigation is finished, the Disability Board shall promptly submit a written report to the complainant with a copy, by certified mail, to the respondent. The report shall describe the proceedings in detail and provide full documentation of the Disability Board's findings, including the nature and extent of any disability and whether reasonable accommodation can be made; it shall normally be received by the complainant within two months of the complainant's letter to the Disability Board. If the Disability Board concludes that the respondent is not disabled, the matters shall be dropped and the complainant shall have no further recourse under section IV. Otherwise, the Disability Board shall recommend, for the reasons given in section IV. A, that the matter be referred to a University Tribunal for further action and/or that the respondent is eligible for the Long Term Disability plan.

E. Actions for Total Disability

If the Disability Board concludes that the respondent is disabled, the respondent may agree to retire or enter the Long Term Disability plan. If the respondent objects to this conclusion of the Disability Board, he or she shall so state by certified letter to the complainant within one month of being notified of the conclusion. Otherwise, the complainant shall assume that the respondent agrees to the proposed change in status and appropriate action shall be taken. If the complainant decides not to pursue the matter further, he or she shall so notify the respondent, the Dean and/or Provost, the Disability Board, and any alerter, in writing. [See also VII.B.]

F. Complainant Initiates Creation of a University Tribunal

Otherwise, the complainant shall proceed as indicated in Section VI.

V. Misconduct in Research

A. Initiation of Formal Investigation

If the complainant, relying upon the report of the Preliminary Investigating Committee and the consultations with tenured faculty members, decides that misconduct in research has occurred, the Dean or Provost must initiate a formal investigation. The Dean or Provost shall inform the respondent of the nature of the charges, identify any alerter to the respondent and notify both parties and, if required by law or regulation, any external organization funding the research, that a formal investigation is being initiated.

B. Formation of Formal Investigating Committee

The Dean or Provost shall then appoint a Formal Investigating Committee consisting of at least three persons, none of whom are members of the same department (or the same school if the school is not organized in departments) as, or collaborators with, the respondent, selected with the advice of the Chair, Past Chair and Chair-elect of the Faculty Senate. The committee members should be unbiased and have appropriate backgrounds for judging the issues raised. At least one of them must be a member of the faculty of the University. The appointment of a Formal Investigating Committee will ordinarily be completed within fifteen working days following the complainant's receipt of the report of the Preliminary Investigating Committee. During the committee's proceedings, all parties shall make every effort to protect the identities of the respondent and any alerter.

C. Duties of Formal Investigating Committee

The Formal Investigating Committee shall undertake a thorough investigation of the charges including a review of all relevant research data, proposals, reports, financial records, publications, correspondence, memoranda of telephone calls, etc. and the report of the Preliminary Investigating Committee. Whenever possible, interviews shall be conducted with the

complainant, the respondent and any alerter as well as with others having information of relevance. Summaries of these interviews shall be prepared, provided to the interviewed party for comment or revision and included as part of the investigation file. During its proceedings, the Committee shall be advised by legal counsel. When appearing before the Committee, the complainant and the respondent may each be accompanied by counsel. Counsel may advise the party in question but shall not participate otherwise in the proceedings. The Committee shall not conduct trial-type hearings. The complainant and the respondent cannot be required to appear before the Committee at the same time.

D. Disposition of Report of Formal Investigating Committee

After its investigation is finished, the Formal Investigating Committee shall submit a written report to the complainant with copies to the respondent by certified mail and to the Dean and/or Provost. The report shall describe the proceedings in detail and provide full documentation of the Committee's findings; it shall normally be received by the complainant within three months of the appointment of the Committee. The respondent will then be allowed to send a written commentary to the Provost within twenty working days following the date the report was sent by the complainant. The Provost shall promptly send the report of the Formal Investigating Committee, along with any commentary from the respondent, to the complainant, the Chair of the Faculty Senate and, if required by law or regulation, to any external organizations funding the research in question. The formal investigation process shall be completed within four months from the date of the appointment of the Committee.

E. Temporary Safeguards and Actions by Administration

During the formal investigation, the Provost and the Dean shall take appropriate administrative action to protect the funds supporting sponsored research and to ensure the purpose of any external funding. The Provost may apprise external funding organizations of any development during the formal investigation that may affect current or proposed funding of the respondent's research. If the formal investigation is terminated before completion, the Provost shall notify in writing any external funding organizations of this termination and the reasons therefor.

F. Complainant Determines Further Action

Having received the report of the Formal Investigating Committee, the complainant, relying primarily upon that document, but also noting the report of the Preliminary Investigating Committee, shall judge whether the charges are unfounded, or whether a major or minor infraction of University behavioral standards has occurred.

G. Actions for Unfounded Charges

If the complainant believes that the charges are unfounded, the matter shall be dropped and the respondent, any alerter, the Dean and/or Provost shall be notified. If the alerter did not appear to act in good faith, the administration has the responsibility to investigate and take appropriate action. [See also VII.B.]

H. Actions for Minor Sanction

If the complainant believes that the respondent has committed a minor infraction of University behavioral standards, the Dean or Provost shall impose a minor sanction on the respondent. The respondent may apply to the Faculty Grievance Commission for relief. However, if a Group for Complaint is subsequently formed, the Commission shall cease all activity regarding such relief until a final decision has been reached concerning a major sanction.

I. Complainant Initiates Creation of University Tribunal

If the complainant believes that the respondent has committed misconduct in research—a major infraction of University behavioral standards—the complainant shall then proceed as indicated in Section VI.

J. Involvement of Other University Committees

Some forms of misconduct in research, such as failure to adhere to requirements for the protection of human subjects or to ensure the welfare of laboratory animals, are governed by specific federal regulations and are subject to the oversight of established University committees. However, violations involving failure to meet these requirements may also be covered by the procedures discussed here or by other duly established University rules and regulations.

VI. Major Sanction

A. Only President May Impose Major Sanction

No major sanction shall be imposed except by the President, after receiving a recommendation from the University Tribunal based on its determination that the respondent has committed a major infraction of University behavioral standards. Upon making such a determination, the University Tribunal must recommend a major sanction, and the President must impose the recommended sanction unless he or she concludes, with the majority consent of the Chair, Past Chair and Chair-elect of the Faculty Senate, that no major infraction has been proved.

B. Complainant Requests Formation of University Tribunal

If the complainant believes that a major infraction of University behavioral standards has occurred, the complainant shall promptly request that the Chair of the Faculty Senate provide a list of ten faculty members from the Just Cause Panel who will constitute the potential members of the University Tribunal.

C. Potential Members of University Tribunal Named

The Chair of the Faculty Senate shall name the potential members of each Tribunal. The ten potential members are to be drawn from a randomly ordered list of members of the University Just Cause Panel that is stratified to insure that at least two shall hold primary appointments from the school of the respondent and no more than three shall hold primary appointments from a single school. Only the Chair of the Faculty Senate shall know the order of the names on this list. The Chair of the Faculty Senate shall provide them with copies of these procedures.

D. Complainant and Respondent Informed of Potential Members of University Tribunal

Within five working days following the receipt of the request, the Chair of the Faculty Senate shall provide the complainant and the respondent an alphabetic listing of the potential members of the Tribunal.

E. Complainant and Respondent May Move to Disqualify

The complainant and the respondent shall be entitled to move to disqualify for prejudice any potential member of the Tribunal. Such motion shall set forth, in writing, the reasons therefor and shall be delivered to the Chair of the Faculty Senate within twenty working days after receiving the list of potential Tribunal members.

F. Decisions on Whether to Disqualify

The Chair of the Faculty Senate shall convene the potential members of the Tribunal after the deadline for motions to disqualify have passed, but no later than twenty five working days after the potential members have been named. The potential members shall immediately elect a pro tem chair from those members who are not named in a motion to disqualify. These members shall decide, by majority vote, whether to disqualify the members named in the motions. The pro tem chair shall provide the list of potential members who have not been disqualified to the Chair of the Faculty Senate. The Chair of the Faculty Senate will designate the six of the remaining potential members who rank highest on the randomized list as the University Tribunal for this case.

G. Members of University Tribunal Named

If more than four members of the group or all members of the faculty of the school of the respondent, the Chair of the Faculty Senate shall, without identifying those who were not excused, provide an additional list of four more than the number excused, in the manner described in VI.C, the process as described in VI.D-E shall continue until a Tribunal of six that includes at least one member of the faculty of the school of the respondent can be designated. Once the members of the Tribunal have been designated, they will then elect a chair.

H. Hearing Requested by Respondent

Once the composition of the Tribunal is determined, the complainant shall then promptly send to the Chair of the Tribunal, the respondent and the Dean and/or Provost the report of the Preliminary Investigating Committee and a succinct written statement, based on the earlier investigations, which summarizes the grounds for the complaint and recommends a major sanction. In the case of misconduct in research or of disability, the report of the Formal Investigating Committee or of the Disability Board shall be included. The notice to the respondent shall be by certified

mail. To determine whether formal hearings shall take place, the Tribunal shall immediately consider the statement from the complainant, consult the relevant documents including the records of previous Tribunals, and afford the complainant opportunity to present oral and written argument, but shall not hold a hearing to receive evidence. If the Tribunal concludes that the grounds stated, if true, would clearly not constitute just cause for imposition of a major sanction, it shall issue a report to that effect, sending copies to the complainant, the President, any alerter, and the respondent. The substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions. However, the Tribunal may remand the case to the Dean or Provost for further proceedings or actions in accordance with paragraph III.A that relates to a minor sanction. If the Tribunal concludes that the grounds stated, if true, might constitute just cause for the imposition of a major sanction, and it believes that there is probable cause that in further proceedings the grounds stated will be found to be true, it shall conduct such proceedings as hereinafter provided. The Tribunal shall normally issue its determination within fifteen working days of receiving the complaint. If the Tribunal fails to issue a determination within thirty working days, the substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions.

I. Tribunal Actions Without Hearing

If further proceedings are conducted, the Chair of the Tribunal shall send to the respondent, by certified mail, written notice that the respondent may ask to testify by submitting such a request in writing to the Tribunal's Chair within fifteen working days following the respondent's receipt of such notice. A summary statement of the evidence to be presented by the complainant, a list of witnesses to be called by the complainant, copies of relevant extracts from the statutes and standing resolutions of the Trustees of the University of Pennsylvania, a copy of this document and copies of any other University documents that are relevant to the respondent's procedural rights in this matter shall be included with the notice. These documents shall have been supplied to the Chair of the Tribunal by the Dean or Provost. The Tribunal may at its discretion and in exceptional circumstances, grant a short extension of this time period at the respondent's request and upon a showing of good cause.

J. Tribunal Actions With Hearing

If the respondent does not ask to testify before the Tribunal, the complainant shall nevertheless present his or her evidence to the Tribunal. The Tribunal shall then make a written report of its findings, recommendations and reasons therefor and send a copy of its report and a transcript of the testimony (prepared as in Paragraph VI.L below) to the complainant and the respondent within twenty working days following the receipt of the complainant's testimony. If the Tribunal concludes that the complainant has not shown clear and convincing evidence of just cause for the imposition of a major sanction, no major sanction may be imposed and the substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions. However, based on clear and convincing evidence of a minor infraction, the Tribunal may recommend that the Dean or Provost impose a minor sanction and he or she will normally implement that recommendation. If the Tribunal concludes that the complainant has shown clear and convincing evidence of just cause for the imposition of a major sanction, the Tribunal shall promptly send to the President a copy of its report recommending the major sanction and a transcript of the testimony.

K. Disqualifications for Prejudice

If the respondent asks to testify before the Tribunal, the Chair of the Tribunal shall notify the complainant and the respondent in writing of the date and place of the hearing, within five working days following the receipt of the respondent's request. The hearing shall be held at the earliest date that is agreeable to the respondent, complainant, and Tribunal, and ordinarily no more than three months from the notification date. Delay of the hearing beyond three months from the notification date shall require a written request to the Tribunal from the complainant and/or respondent, and be granted only if the Tribunal deems that more time is required. Not less than fifteen working days prior to the date of the hearing, the respondent shall provide to the Chair of the Tribunal a written answer to the complainant's statement of the grounds for the proposed major sanction.

L. Procedures During a Hearing

Hearings shall be private with two exceptions. The respondent shall have the right to invite as observers representatives of national professional academic associations concerned with matters of academic freedom and tenure; other observers may be invited to attend if the complainant, the respondent and the Chair of the Tribunal mutually consent. A transcript of the hearing shall be taken by a stenographer furnished by the University. The complainant has the burden of proving by clear and convincing evidence that there is just cause for imposition of a major sanction against the respondent. Both the respondent and the complainant may appear personally throughout the hearing; both may have the assistance of counsel. The Tribunal shall afford the respondent and the complainant the opportunity to present oral and written argument. The respondent and the complainant shall have the right to confront the witnesses and to question them personally or through counsel. He or she may call witnesses on his or her own behalf and shall receive the cooperation of the University administration in securing the attendance of such witnesses and the possession of such documents as may be relevant to the faculty member's defense. The relevance and extent of document production shall be determined by the Tribunal. The Tribunal may decide the appropriateness of telephone conference calls in lieu of the appearance of witnesses.

M. Report of Tribunal to President

Upon concluding the hearings, the Tribunal shall deliberate privately. It shall determine solely upon the basis of information presented at the hearings whether or not the complainant has established by clear and convincing evidence that a major infraction has occurred. If so, the Tribunal shall recommend what the major sanction should be and may, in addition, recommend a minor sanction. If the Tribunal determines that just cause for the imposition of a major sanction has not been established, no major sanction may be imposed. In that event, the Tribunal may recommend a minor sanction if it determines that a minor infraction has occurred. The Tribunal shall reach its conclusions promptly and send to the President a written report in which it shall set forth its findings and recommendations along with the reasons therefor, a transcript of the hearings, and copies of any reports of the investigative committees and the Disability Board. Copies of these documents shall also be sent to the respondent by certified mail, the complainant, and the Dean and/or Provost. The respondent may, within thirty working days following the receipt of the documents, send to the President any objections to the findings or recommendations of the Tribunal.

N. President's Options

The President, relying only on the materials forwarded by the Tribunal, and any objections prepared by the respondent, shall decide whether to:

1. accept the Tribunal's recommendations;

- or -

2. with the majority consent of the Chair, Past Chair and Chair-elect of the Faculty Senate, discontinue the proceedings because the complainant has failed to prove, by clear and convincing evidence, the existence of just cause that warrants the recommended sanction. In this situation, the President shall send to the Chair, Past Chair and Chair-elect of the Faculty Senate all the documents received from the Tribunal and the respondent. The Chair, Past Chair and Chair-elect of the Faculty Senate shall then consult with the President before they make their decision. Should any of the three Chairs choose to be recused or have a conflict of interest, the other two Chairs shall select a replacement from the available former Chairs of the Faculty Senate. If the proceedings are discontinued, the substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions;

- or -

3. remand the matter to the Tribunal because there has been a significant defect in procedure;

- or -

4. because the President does not believe that the recommended sanction is appropriate, proceed as in Section VI.O.

If the matter is remanded to the Tribunal, the President shall send to the Tribunal the respondent's objections, if any. The Tribunal shall reconvene, take steps to repair any procedural defects, and hold an additional hearing, if needed, granting to the parties those procedural rights provided in paragraph VI.L. The Tribunal shall then send a second report to the President, along with the transcript of any second hearing, with copies to the respondent by certified mail, the complainant, and the Dean and/or Provost.

O. President's Actions

The President, relying upon the reports from the Tribunal, all accom-

panying documents, and any further objections prepared by the respondent shall normally accept the Tribunal's final recommendations. In exceptional circumstances, with the majority consent of the Chair, Past Chair and Chair-elect of the Faculty Senate, and following the procedures described in VI.N.2, the President may impose a different major sanction than that finally recommended by the Tribunal. The President shall promptly furnish all parties in interest with a letter stating his or her decision and the reasons therefor. The President's decision is final within the University.

P. Time Constraints on Sanctions

If the Tribunal recommends that the respondent's appointment be terminated, it shall also recommend a date of termination which cannot be more than one year beyond the date of the President's final action. Salary and benefits shall cease on that date. If the President accepts the Tribunal's recommendation to terminate the respondent's appointment, he or she must also accept the termination date recommended by the Tribunal. If the President decides to terminate the respondent's appointment in accordance with Section VI.N.2, the date of termination shall be one year from the date of the President's action.

Q. Tribunal Records

On the completion of the case the Tribunal shall transfer all of its records to the office of the Faculty Senate. These records shall be stored in a locked file. The Chair, Past Chair and Chair-elect of the Faculty Senate, are responsible for obtaining and maintaining these records.

VII. General Matters

A. No Public Statements When Proceedings Are in Progress

To preserve the integrity of the process, public statements about charges and proceedings that involve minor or major sanctions by persons within the University, whether parties to the proceedings *or otherwise*, should be avoided until the proceedings have been completed.

B. Actions When Charges are Unfounded

In the event that at the end of these procedures the charges are determined to be unfounded, the administration then has the responsibility to attempt to repair any damage wrongly done to the reputation of the respondent or of any alerter, provided that the alerter acted in good faith. If the alerter did not appear to act in good faith, the administration has the responsibility to investigate and take appropriate action.

C. Statements Following a Minor Sanction

If the respondent has been subjected to a minor sanction, the Dean or Provost, after consultation with the President and discussion with the Chair of the Faculty Senate, may publicize this fact. [See also I.B.12.]

D. Statements Following a Major Sanction

If the respondent has been subjected to a major sanction, the President, after informal discussion with the Chair, Past Chair and Chair-elect of the Faculty Senate, shall publish in *Almanac* a statement describing the case and its disposition in appropriate detail.

Aide Memoir I: Initialization of Panels

The following statement shall be sent to the Chair of the Faculty Senate on approval of this document:

Initially, one-third of the members of the University Just Cause Panel chosen from each school shall serve for one year, one-third for two years and one-third for three years. Thereafter, all appointments shall be for three-year terms, except where appointments are made to complete the terms of persons who leave the panel before the end of their terms.

Aide Memoir II: Partial Disability

The Task Force decided not to include recommendations for procedures to deal with partial disability because of the extreme complexity of that situation and the need for involvement of many other University groups.