

FAS Senate

AN ELECTED BODY OF THE FACULTY OF ARTS AND SCIENCES
YALE UNIVERSITY

Report on Faculty Conduct Standards and Procedures

APPROVED BY THE SENATE

FOR DISTRIBUTION TO THE FACULTY AND THE UNIVERSITY

MARCH 10, 2016

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FAS Senate, Ad Hoc Committee on Faculty Conduct Standards and Procedures

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INTRODUCTION

On September 18, 2015, Yale University adopted a campus-wide set of standards for faculty conduct. These standards were developed by a 14-member university-wide faculty committee during 2014-15; then accepted by the President and Provost as policy. They currently appear as section II.B of the [Faculty Handbook](#). The same ad-hoc committee next developed a set of draft procedures for responding to violations of these standards. A copy of their proposed procedures can be found [here](#). This report offers the Senate's response to these draft procedures.

The draft procedures have been a source of considerable concern among FAS Faculty. Much of this concern is the result of ambiguities and flaws in the draft procedures. But additional to these editorial concerns is the general sense that these procedures, and the faculty conduct standards that gave rise to them, appeared without any account for their necessity. The faculty of the University has been told that faculty misconduct has occurred and that this is why we need these regulations. The FAS Senate has no doubt that faculty misconduct occurs, and the FAS Senate is committed wholly to ensuring that Yale remains a place where every member of its community can flourish. Yet it is the opinion of the FAS Senate that resolving faculty misconduct requires a more specific and robust discussion. Without a detailed report about the misbehavior these procedures seek to resolve, it is hard to know the best procedures to develop. Without a serious and thorough account of the kinds of misconduct that occur at Yale, there cannot be a serious and thorough reply to such malfeasance. If the University is serious about solving certain problems caused by faculty, those problems must be named. This is the only way to ensure that faculty will participate in the work of resolving them.

Resolution

The FAS Senate has considered the Standards of Faculty Conduct that have been added to the Faculty Handbook and the draft procedures for their implementation. The FAS Senate finds as follows:

1. The Standards of Faculty Conduct as currently formulated and the draft procedures are inadequate and unacceptable to the FAS faculty.

2. The FAS Senate does not reject the need for standards of faculty conduct, but we believe that they need to be (i) better tailored to the problems they purport to address and (ii) accompanied by safeguards that are currently absent.
3. Any appointed committee that is charged to work further on these matters must provide a serious and thorough account of the significant misconduct that needs to be addressed in the FAS.
4. Any appointed committee that is charged to work further on these matters as they apply to the FAS should be chaired by a member of the FAS faculty and be appointed in close consultation with the FAS Senate.
5. Any appointed committee that is charged to work further on these matters should be empowered to revise the standards as well as the draft procedures.
6. Any revised conduct standards and procedures developed by an appointed committee should be voted upon by the full FAS, and that vote should be considered binding on the policy of the FAS.

BACKGROUND

The FAS Senate has considered the draft procedures – as well as the conduct standards – in some detail. A FAS Senate committee prepared an interim report in Fall 2015 (Appendix A) that included an overview of the standards as well as recommendations for revisions to the procedures. In cooperation with the Dean of FAS, this committee then reviewed faculty comments (Appendix B) on the proposed procedures submitted online as well as additional remarks made at Senate meetings and a December 2015 town hall. In addition, the Senate reviewed an appraisal of the draft Yale procedures prepared by the American Association of University Professors. Finally, the FAS Senate committee tasked with this work conducted research of its own, including conversations with members of the 2014-15 committee and the Office of the General Counsel, and a survey of other universities and their faculty handbooks. From our research on the subject, it is clear that the draft procedures require serious revision. Below we offer some specific comments on what revisions are most recommended.

Review Procedures for Complaints about Violations of the Standards of Faculty

Conduct

Many faculty members found the proposed draft procedures altogether untenable. Any procedures used to manage complaints must incorporate these principles:

1. A greater emphasis should be placed on the use of informal mediation of complaints.
2. Additional training and resources for chairs and deans are needed to help their work in the informal resolution of complaints.
3. Complaints registered anonymously are not acceptable.
4. Both the complainant and the respondent should be permitted to be accompanied by an adviser, and the advisers can participate in the process in the same manner and to the same extent.
5. Any faculty review panel must be drawn from a faculty-elected (and not an appointed) committee. Panels should include six members, and any decision they achieve must be accomplished by a two-thirds majority.
6. The panel's findings and its decision will be furnished to the complainant and the respondent alike.

7. The affected faculty member must have an opportunity to contest any disciplinary decision in front of an appeal panel, distinct from any faculty review panel and also drawn from a faculty-elected, and not appointed, committee. Panels should include six members, and any decision they achieve must be accomplished by a two-thirds majority.
8. There should be a transcript of all proceedings.
9. The procedures must include recognition of the possibility that bias in terms of race, gender, sexuality, employment status, political or ideological beliefs and other categories of difference could affect the proceedings.
10. Clear guidance must be given on the difference between informal and formal procedures as well as on the appropriateness of each for various situations that may arise.

Standards of Faculty Conduct

As we reviewed the draft procedures, we realized that one of the primary problems with the procedures was that it was hard to tell what level of complaint would lead to a Review Panel. What kind of issues requires procedural intervention? This led us to look at the conduct standards, since ostensibly a violation of those would trigger a review panel. We found the faculty standards were less than clear about what level of violation would be the cause for an intervention. With this initial concern in mind, we identify several problems in the existing standards:

1. There is no evidence supplied for the necessity of these standards. It is unclear what types of behavior the standards were created to address.
2. The examples of infractions are unclear and too wide-ranging. They range from plagiarism, discrimination, and serious abuse of students, to far less serious behaviors such as failing to hold office hours or submit letters of recommendation prior to a deadline. Any standards worth upholding would emphasize persistent acts of misconduct.
3. The principles identify categories of problematic behavior, but do not describe boundary conditions for these categories, running the real risk that they could be over-applied or misconstrued and so constrain legitimate faculty rights and freedoms.
4. There is no enumeration of faculty rights.

5. Faculty members are told to abide by the stated standards of their respective professional organizations. Without a review of every professional organization and its standards, this seems a potentially embarrassing commitment.
6. The standards currently suggest that “behavior...intended to prevent the orderly conduct of a university function or activity” is an action that can instigate a complaint or investigation. This provision could inhibit the free expression of dissenting views within the university.
7. Faculties of the University were not centrally involved in determining or approving the standards.

Procedural Recommendation

The draft procedures (as well as the conduct standards themselves) must be seriously reconsidered. We recommend that the process by which these documents are rethought reflects the process of forming the FAS Senate and the process by which FASTAP is currently being reviewed. This process has therefore been tested for its procedural utility, practicality, and consensus-building effects:

1. An ad hoc committee must be formed to weigh the necessity of faculty standards, including the gathering of a broad range of input and data from the Yale community. This committee must produce a written report of its findings. This report should include reviews of two significant pieces of information: first, a comparative assessment of peer institutions and their management of faculty misconduct; second, a description of the specific acts of misbehavior that are not currently addressed by existing University policy. Included in this second part of the report must be a specific tally of the types and locations of various sorts of misconduct. Do most of them occur within certain parts of the University, or by people who hold certain managerial roles? We must be transparent about the data that informs our decision to either develop or not pursue the development of standards.
2. Once the committee has completed its report, it will furnish this document to the community at large. If the committee decides that standards and disciplinary procedures are necessary, they will offer draft standards as well in this report.
3. The standards, if recommended, should be discussed and voted on by the FAS faculty. The full Faculty of Arts and Sciences should be afforded the opportunity

to vote on both the conduct standards and the review procedures. This vote should be considered a binding vote that determines the future policy of the FAS.

Conclusion

Our concerns about these documents should not indicate that we deny the significant harm caused by instances of faculty misconduct. Despite the admirable work of the faculty committee that constructed them, the current standards do not yet meet the intellectual or ethical conventions of our community. As a result, they have no legitimacy among the FAS faculty, whose dissatisfaction with them is significant and widespread. Standards for faculty conduct have no value if they do not reflect faculty consensus about proper conduct. Procedures for the adjudication of Yale faculty have no value if they do not cohere with our longstanding practices of faculty governance.

APPENDIX A

Interim Report on Faculty Conduct Standards And Procedures

FAS Senate, Ad Hoc Committee on Faculty Conduct Standards and Procedures

Approved by the FAS Senate

November 2015

In response to the thoughtful work of the Ad Hoc Committee on Faculty Standards of Conduct, the FAS Senate's study group on faculty conduct standards and procedures offers the following interim report. We present these ideas in a spirit of collaboration and inclusion. We intend for this report and its concluding recommendations to improve the processes by which we handle faculty misconduct.

OVERVIEW AND RECOMMENDATIONS

In spring 2014, Yale President Peter Salovey and Provost Benjamin Polak appointed an Ad Hoc Committee on Faculty Standards of Conduct to formulate a code of conduct for the university faculty. The intentions behind this initiative were admirable: to ensure a safe, fair, and supportive environment for all members of the Yale community, and to affirm a collective faculty commitment to these principles. However, in recent weeks members of the faculty have raised serious concerns about the conduct standards, the draft disciplinary procedures to enforce those standards, and the process by which both the standards and procedures have been introduced as university policy. These concerns, in turn, raise questions about the legitimacy and workability of the standards and procedures as currently conceived.

This interim report, prepared by a study group of the FAS Senate (Beverly Gage, Kathryn Lofton, William Nordhaus, Karen Wynn), is intended to reflect these concerns. It attempts to synthesize the history of the conduct and standards process, and to introduce questions raised in recent weeks both at Senate meetings and through formal and informal conversations with members of the Yale faculty and administration.

It is the view of the study group that subjects of direct concern to the faculty – in this case, the standards and procedures by which faculty conduct will be adjudicated – are rightly subject to faculty deliberation as well as a faculty vote. The introduction of the new standards and procedures as an administrative policy (rather than as a process of collective deliberation and governance) tends to undermine rather than strengthen the standards' legitimacy.

With this principle in mind, the study group recommends that the Senate consider the following resolution in order to enhance transparency and faculty governance within the current standards process:

- 1) A recommendation that the current standards and draft procedures be distributed in full to the university faculty, followed by a 30-day period for faculty comment and input. Opportunities for input may be primarily written communication but should also include town hall or discussion meetings and other forms of exchange. Written and online comments should be made publicly available.
- 2) A recommendation that the Ad Hoc Committee on Faculty Standards of Conduct revise the standards and procedures with this expanded faculty input in mind.
- 3) A recommendation that the FAS Dean should, at an appropriate time, call a meeting of the Faculty of Arts and Sciences in order to discuss and vote upon the Ad Hoc Committee's final proposals for faculty conduct standards and procedures.

HISTORY

In spring 2014, President Salovey and Provost Polak appointed an Ad Hoc Committee on Faculty Standards of Conduct to formulate a university-wide code of behavior for the faculty. This occurred in the context of heightened attention to sexual misconduct throughout the university, including among university faculty. This attention to sexual misconduct in turn raised questions about other forms of "misconduct," such as workplace bullying, in which clear procedures and standards were perceived to be lacking.

Psychology professor Margaret Clark agreed to serve as chair of the Ad Hoc Committee. Five other members of the FAS served on the committee: Ron Breaker (Molecular, Cellular, & Developmental Biology), Michael Della Rocca (Philosophy), Dolores Hayden (Architecture, American Studies), David Post (Ecology & Evolutionary Biology), and Kyle Vanderlick (Dean, School of Engineering & Applied Science). The remainder of the committee's 14 members were drawn from the university's professional schools, including Law, Divinity, Medicine, Nursing, Management, and Forestry.

During the summer and fall of 2014, according to a message to faculty from the president and provost, "the committee reviewed existing Yale policies as well as peer institutions' statements and policies relating to faculty conduct. It also heard a number of de-identified reports of actual incidents and patterns of concerning behaviors on our campus. In fall 2014, informed by this exploration, the committee produced a draft of Standards of Faculty Conduct, which aggregated existing relevant Yale policies and

position statements and added language to clarify expectations that were not fully articulated in any existing documents.” The University Cabinet, a group of 25 deans and officers from across the university, reviewed and approved the proposed standards.¹

In January 2015, the president and provost released a draft of the standards to all Yale faculty and opened an online comment period, coordinated through the Office of the Provost. This initial report included only the standards of conduct themselves, and did not include the procedures by which faculty might be sanctioned or disciplined for violations of those standards. The faculty comments were not made publicly available, and there were no town hall meetings or formal public discussions within the FAS. It is worth noting, however, that news coverage and public perception suggested a divided reaction to the proposed standards. Faculty members interviewed by the *Yale Daily News* expressed concerns that free speech, political activity, and academic freedom would not be adequately protected by the proposed standards, for instance.² Others objected that the conduct standards had been presented for comment but not for an official vote by the faculty itself. Many similar concerns have since been expressed by members of the Senate as well.

On September 18, 2015, President Salovey and Provost Polak announced that the new faculty conduct standards had become official Yale policy, and those standards are now included in the Faculty Handbook. These revised standards include several small changes in response to feedback gathered during the open-comment period. For instance, the committee made efforts to clarify language regarding political activity and freedom of speech, and to note that faculty holding full-time administrative positions would be included within the conduct standards.

During this time, the Ad Hoc Committee also turned to its second task: developing the procedures by which faculty may be disciplined or sanctioned for violations of the university's conduct standards. To complete this task, the committee examined faculty conduct procedures at other universities, as well as existing procedures regarding sexual misconduct, prohibited business practices, and academic misconduct here at Yale. FAS Dean Tamar Gendler distributed the proposed conduct procedures to the FAS Senate in advance of the Senate meeting on October 15. At the October 15 meeting, the Senate discussed the proposed procedures with Dean Gendler, Professor Clark, and Deputy Provost Stephanie Spangler. The Senate recommended that Dean Gendler distribute the proposed procedures directly to the full FAS for comment. The Senate also offered to

1 Message from President Salovey and Provost Polak to Yale faculty, September 18, 2015, available at <https://messages.yale.edu/Messages/University/univmsgs/detail/126496>.

2 “Faculty standards of conduct draft draws criticism,” *Yale Daily News*, February 17, 2015, available at <http://yaledailynews.com/blog/2015/02/17/faculty-conduct-draft-draws-criticism/>.

work with the FAS Dean's office to gather the widest possible faculty feedback about the new procedures, and potentially to make recommendations for revision and reform.

QUESTIONS AND CONCERNS

Faculty Governance and the Right to Vote

According to the Yale University bylaws, “The members of the faculty of each school ... shall be the governing board of the school, entrusted with matters relating to the educational policy and government of the school.”³

The Yale Faculty Handbook, in introducing the new conduct standards, also affirms the importance of faculty governance. “The Yale faculty bears primary responsibility for preserving the conditions necessary to advance [the university's] mission, including protection of free expression and inquiry; participation in the governance of the University; the application of fair and consistent standards and processes in matters of promotion and tenure; and adherence to a shared set of principles governing faculty members in relation to each other, to their students and trainees, and to the University and its staff members.”⁴

Thoughtful and generous members of the faculty have played key roles in formulating the new conduct standards and draft procedures, both as committee members and as interlocutors. However, contributing input and providing feedback are quite different from engaging in “governance.” Once again: It is the view of the ad hoc study group that matters of direct concern to the faculty – in this case, the standards and procedures by which faculty conduct will be adjudicated – are rightly subject to deliberation and vote by the faculty itself.

The Standards

The new conduct standards are now official university policy, included in the Faculty Handbook. However, as Deputy Provost Spangler indicated in her discussion with the Senate on October 15, the handbook is a “living document,” subject to change and evolution.

3 Yale Corporation By-Laws, December 13, 2014, point 34, available at <http://www.yale.edu/about-yale/president-leadership/governance-historic-documents/yale-corporation-laws>.

4 *Faculty Handbook*, Yale University, September 18, 2015, p. 5-6, available at http://provost.yale.edu/sites/default/files/files/Faculty%20Handbook_9-18-15%281%29.pdf.

The basic principles articulated in the standards are sound. However, we have several concerns about the standards as they are currently drafted.

First, we recommend the articulation of the rights of faculty in this document. This could be in the form of a Bill of Rights or several sentences that state the value of academic freedom, political freedom, and intellectual expression, as well as the right to make judgments on student academic work. A stronger affirmation of the rights and privileges reserved for faculty would make clear that standards of faculty conduct exist as much to underscore our highest standards as to monitor egregious abuse of them.

Second, the standards have been created primarily to prevent ongoing, systematic patterns of misconduct. However the standards as written range widely from potentially serious ongoing patterns of intimidation, harassment, and racial discrimination to more technical violations such as submitting late letters of recommendation or failing to hold office hours. It is important to provide some clarification regarding the relative severity of these acts of misconduct, as well as to clarify the intent to discipline faculty for patterns of misconduct, rather than for a single late letter of recommendation.

Third, the standards attempt to compile in one place all of the policies governing faculty misconduct—a useful endeavor. Some of these are new policies. Many of these policies have existed at Yale for years. Of those existing policies, there has traditionally been a wide variation in levels of enforcement. Sometimes this is highly problematic—when it has yielded a toleration of workplace bullying, for instance. In other cases, it is simply a matter of faculty culture and institutional tradition. The disjuncture between accepted faculty practice and the “rules on the books” raises the possibility of selective enforcement under the new standards: Will all faculty in violation of a given policy receive the same warning and treatment? Will the disciplinary process be triggered only by specific complaints against specific faculty members? Again, clarification of the intent to use the disciplinary process only for serious or repeated violations of widely observed university policy would help to prevent the possibility of selective enforcement.

The Procedures

On October 15, the Senate began a series of deliberations and conversations about the draft conduct procedures formulated by the Ad Hoc Committee and distributed to the Senate for comment and deliberation in early October. At that meeting, and during subsequent conversations, several questions and suggestions have emerged, aimed at bringing greater transparency and accountability to the procedures:

1) Do the procedures concentrate too much authority in the office of the dean? Under the current proposal, the dean may bring a complaint, appoint the review panel to adjudicate

that complaint, and overrule the panel's recommendation in the same complaint if so desired.

2) Should members of the review panel be elected rather than appointed, or perhaps some combination of the two?

3) How will the appeals process work? Currently the procedures specify that any party to a complaint “may appeal the Dean's decision by submitting a letter to the Provost within seven days after receiving the decision.” It is not clear how the appeal process proceeds from that point, whether or not an appeals board will exist, who might be included on that appeals board, or what the provost’s expectations will be.

4) Should the procedures match particular “offenses” to particular “punishments”? At the moment the standards include a list of possible forms of misconduct, and the procedures include a list of possible sanctions, but there is no specified relationship between the two.

The above questions are not intended as a comprehensive list of issues, but as a prod to further deliberation and consideration of the procedures.

CONCLUSION

The Senate’s study group thanks the hard-working members of the Ad Hoc Committee for their many hours of deliberation and care. However, we believe that the standards and procedures require further review as well as a more active role for the faculty in creating and adopting the procedures that will govern us all.

APPENDIX B

Comments from FAS Webform Regarding the Proposed Review Procedures for Complaints about Violations of the Standards of Faculty Conduct

Circulated to all FAS ladder and full-time multi-year non-ladder faculty by the FAS Dean's Office

2/12/2016

Overview

Below is a complete set of the comments posted on the FAS webform for discussion of procedures concerning the faculty conduct standards. The comments are completely unedited except for a very few sentences that mentioned specific faculty or student individuals by name.

Where faculty submitted their comments anonymously we have maintained that confidentiality. Where faculty voluntarily signed their comments, their names have been preserved.

All comments have been numbered so that they can be easily cross-referenced, and they appear in reverse chronological order.

Comments

1) Friday, January 29, 2016 - 11:20pm

I believe that the proposed Faculty Standards Review Committee will create more problems for the FAS than it solves. An Administrator Review Committee, on the other hand, would help to curb faculty abuse.

Under the current proposal, the vast majority of complaints about faculty misconduct are likely to be substantially untrue, yet their investigation will consume an extraordinary amount of faculty time and create an enormous burden of anxiety for innocent faculty. Even the threat of charges and a potential investigation might be enough to intimidate some faculty. This kind of pressure is precisely what tenure was meant to eliminate.

Of course some professors abuse their power, and we should find ways to combat this abuse, even if it means threatening a few faculty. The system that has been in place for 300 years to address potential abuse essentially relies on chairmen and deans to challenge bad behavior. Chairmen and deans do currently have power to punish their faculty, for example in setting salaries and assigning teaching and committee work; in egregious cases, a faculty member can even be dismissed. Nevertheless, I was moved by the testimony that some chairmen fail to confront some badly behaving faculty.

The question is what to do when chairmen and deans fail? The natural solution is to create an Administrator Review Committee, which would investigate chairmen or deans who fail to respond properly to complaints from the vulnerable, rather than investigating the faculty.

An Administrator Review Committee would incentivize chairmen and deans to take complaints seriously and to solve problems quickly. By contrast, the proposed Faculty Standards Review Committee encourages chairmen and deans to pass the buck and ratchets up potential confrontations. Many complaints about faculty abuse will turn out to be misunderstandings which can be smoothed over if they are addressed informally and quickly by someone known to accuser and accused. The proposed Faculty Standards Review Committee is too remote to resolve issues quickly, and so threatening that it is hard to imagine its intervention ever leading to reconciliation between accuser and accused.

One might well ask whether chairmen and deans might be intimidated by the Administrator Review Committee in the same way I fear faculty will feel intimidated by a Faculty Standards Review Committee? The answer I think is no. In the case of a chairman, the charge would be a failure to supervise or to prosecute. This is not likely to be damaging to the chairman's reputation and psyche if it turns out to be false. A charge of misconduct on the other hand is likely to haunt a professor for years even if it is held to be false.

2) Friday, January 29, 2016 - 9:17pm

I am concerned that the effect of the standards for faculty conduct and their accompanying enforcement procedures will be to create an atmosphere of conformity that will chill free expression and discourage the pursuit of ideas that run counter to the prevailing wisdom. The vaguely-worded standards and the lack of due process in their enforcement are strong motivators for self-censorship and avoidance of expressing controversial opinions. While I understand these standards are intended to give the administration power to deal with the occasional faculty who abuse their freedoms, the potential for harm to the university is far greater than the severity of the problems they are trying to address.

I fear the long-term effects of these and other measures to corporatize Yale's faculty will be to reduce the distinctions between academia and industry. If they happen, Yale's ability to be a beacon of truth and light in a troubled world will be diminished. Yale will also suffer financially, since if Yale acts like a corporation, then it will have to pay like a corporation in order to attract the top people. I would hate to see Yale lose those very properties that have made it great.

3) Friday, January 29, 2016 - 2:56pm

I will briefly summarize here a few comments I have made in other fora related to the matter of faculty conduct standards and procedures. I count myself among those faculty who believe that a sensible set of standards for faculty conduct is necessary and important, as is a reasonable, equitable set of procedures for addressing violations of those standards, with appropriate sanctions when and if warranted. The existing standards and draft procedures represent important strides in this direction, but they need some additional work. Many of the suggestions for modification and improvement made by my fellow FAS Senators and others strike me as constructive and worthy of incorporation into the final set of procedures, and I defer to those who have studied the issues most closely on which items are of most concern moving forward.

My own suggestion is that, in addition to working on the standards and formal procedures, the committee should revisit and expand the sections that concern informal resolution. (As near as I can tell, informal resolution is currently mentioned only in passing.) I think our response to issues of faculty misconduct should include not only establishing equitable formal complaint procedures for occasions on which they are needed, but also providing improved ways in which issues and incidents might be resolved without recourse to the formal procedures. This might involve providing additional resources, training, and support to chairs and others in leadership positions, making potential complainants aware of possibilities for informal resolution and support/advice they can find if they want to pursue this avenue, etc. There are doubtless some issues and incidents that cannot/should not be resolved or even addressed informally, but a good number probably can, at least as a first step. Our overall approach to faculty conduct standards and redress procedures should pay more attention to this possibility than it currently does.

Doug Rogers, Anthropology

4) Friday, January 29, 2016 - 2:23pm

Now that we have spelled out standards of behavior, we need a clear, fair process to deal with those who do not keep these standards. The disciplinary process should include clearly defined decision makers (they could be deans or faculty committees with sign off by deans), a process that protects both those who bring complaints and those

accused, an appeal process and most importantly a clearly articulated, graded series of penalties that escalate from a reprimand to involuntary leaves of weeks to months without pay and even to dismissal. The purpose of these penalties would be to act as a deterrent to reduce the chances of misbehavior. Our current problem is that we only have reprimands (which have been ignored by some badly behaved faculty) and the University Tribunal that is rarely used. Therefore, our current process neither deters bad behavior nor punishes those who abuse our standards. You might examine the disciplinary process in place at Cornell University since the 1950s as an example that has stood the test of time.

5) Friday, January 29, 2016 - 2:18pm

I fully endorse the comments of Professor Nordhaus who has raised serious objections to both the content and process by which the new standards of conduct were established. i.e. I concur with his recommendation that "the current standards should be vacated and a new set of standards should be developed."

Mark Mooseker

Ross Granville Harrison Professor

MCDB Professor

Depts. of Cell Biology and Pathology

School of Medicine

6) Friday, January 29, 2016 - 12:46pm

As I read them, the procedures seem to be directed toward adjudicating specific instances of interactions between two people that leaves one of them significantly unhappy. On the other hand, during discussions of this issue, there was a lot of reference to preventing patterns of behavior. I don't see this issue recognized very distinctly, either in the Standards of Conduct themselves, or in these proposed procedures. I would like to see a process that creates institutional memory of types of undesirable behavior. That is, someone who feels someone else is acting inappropriately could file some letter of complaint. The goal would not be to achieve individual redress, but to record the poor behavior. The complaineer could be advised of the complaint, and informed that another similar complaint would be receive greater attention than the first one. The details of how this would work over time would require careful thought, but I would much rather see this as an institution trying to create a process to educate its members, than a system to deal with specific adversarial relationships. At the same time, of course, certain individual incidents might rise to the level of requiring correction, but I hope these would be rather carefully defined. - Roger Howe

7) Friday, January 29, 2016 - 10:22am

I have a preliminary observation on this process of comment, as the Dean's Office has set it up: I note that the title and headnote for this invitation identify the subject for comments to be "Proposed Procedures" rather than BOTH the standards themselves and the procedures for responding to violations. And yet, over and over again throughout the development and institution of these Standards--when the draft of the Standards was first circulated, when a modestly revised version of the Standards was simply incorporated into the Faculty Handbook and published without any faculty vote and despite those strong objections, and throughout further discussions this fall at the Faculty Senate, within individual department meetings, and at other forums--a large number of faculty have repeatedly expressed serious concerns with the Standards themselves, as well as with the nature of the proposed procedures. It seems characteristic--and objectionable--to me that the Dean's Office continues to fudge the question of whether the Standards themselves are open for ongoing discussion. How can we have real, substantive, consequential, deliberative discussion as a community of thoughtful intellectuals when our administrative leaders are constantly managing, containing, deflecting faculty engagement with the issues at hand?

Problems with the process of developing and instituting these Standards and procedures are tightly bound up with deep problems both within the Standards themselves, as articulated, and with the egregious set of proposed

procedures. Everything is conceptualized and managed top-down, as if the mandate for faculty at Yale to fulfill their responsibilities within the whole range of their activities must be imposed from high above, by a small cadre of responsible, intelligent, and hypervigilant administrators who must scrutinize, remind, berate, regulate, reward and punish. When that cadre of administrators has itself failed, sometimes publicly, in their own responsibility to respond to specific, identified cases of faculty members' repeated abuses of power--...-- they then redouble their efforts to suggest that unnamed faculty in general, below them, cannot be counted on to fulfill their responsibilities and proceed ethically (thus the annoying and demoralizing trickle of castigating emails about our duties! thus, more seriously, this proposed top-down new bureaucratic system for punishing as yet hypothetical offenders!). The automatic train of thought seems to be: What's needed is more regulation (even though there are quite clearly-delineated regulations about sexual harassment already)--more cherry-picked committees to deliberate and produce something pleasing to the administrators, etc. I believe that we need a fundamental shift in thinking about how a university community can thrive, draw on its members' deeply internalized pride in and devotion to their chosen vocations, address problems and failures, and consider how to make the big changes our times demand.

As for the specific mechanisms that have been proposed for responding to alleged violations of the faculty Standards: any committee that would hear and deliberate about alleged violations by individual faculty should represent that faculty itself, as a trusted group of faculty members ELECTED by the faculty and not chosen and reporting to the administrators in power. The proposed procedures involve circles of power coming from and repeatedly returning to the same administrators--mostly the Dean of the Faculty and in some cases the Provost. This circle needs to be broken for any Faculty Standards of Conduct truly to represent the values of the faculty as a whole and to serve to call individuals back to those values. We need to rediscover the broader base of the body of the faculty themselves.

The worst cases of faculty misbehavior typically involve abuses of institutional and professional power. The consequences for an untenured or nonladder track faculty member who fails to fulfill his or her responsibilities are already serious--such a person risks losing his or her position, or meeting with serious professional setbacks. The danger of the University permitting abuses to continue lies in how University administrators, Chairs, and even committee members appointed from above apparently cannot resist taking into account the possible losses to the institution when a powerful, grant-producing, or prestigious and well-known faculty member is punished for misbehaving. ...

The current Standards of Conduct (in a feeble response, I take it, to comments on the draft) include a footnote stating that administrators who are faculty are themselves subject to the Standards. In the recent actual cases I can think of involving bullying, intimidation, or retribution against faculty who take an opposing or unpopular position on some institutional matter--all prohibited by these Standards--it is a faculty member in an administrative role who has committed these infractions. (Those without institutional power are not subject to temptation to abuse that power in these ways!) So, whatever this footnote may specify, how would a committee appointed to and reporting to an administrator go about investigating and potentially issuing judgments against such infractions?

Please let's not make this process of gathering "Comments on Proposed Procedures" one more empty gesture or charade of community "discussion." There needs to be some effect of the views expressed. I eagerly await the experience of seeing how that would work.

Jill Campbell, Professor of English

8) Friday, January 29, 2016 - 10:03am

I greatly appreciate the Committee for putting these guidelines forward. I strongly believe that having the campus-wide guidelines that are explicitly stated will encourage faculty members to pay more attention to these concepts throughout the year. Most importantly, these guidelines should be developed and maintained with a goal of providing tangible reference points for faculty members. I think one of the keys to make this successful is to remind faculty members about these guidelines on an annual basis or per semester (e.g., an official email or a required

mention of this topic at the first faculty meetings for each academic year by the Departmental chairs).

All the best,
Steve Chang (FAS, Psychology)

9) Friday, January 29, 2016 - 8:38am

David Bromwich

Statement on Faculty Standards to FAS Senate

November 19, 2015

I address the concerns that were raised by Professor Gilmore at the last meeting of the FAS senate. The main questions have arisen from the difficulty of getting a precise idea of what actions may constitute a violation of the standards of faculty conduct.

How can one know the sort of thing that may count as an infraction and how can one understand the punishment affixed to a given violation? In the present state of discussion, one can acquire this knowledge only by reading the faculty standards closely and imagining a failure of compliance, cooperation, or conformity with any one of the standards. Fair judgment, at that point, is entrusted to a panel of the FAS faculty appointed by the dean.

But there is a difficulty already present in the published standards of conduct. Terms that have a vague and not a legal sense as applied to the work of research, teaching, and learning in a college – such as the display of non-collegial “animus” -- are here given a quasi-legal application.

Just a word on the need for clarity in opening up to penalty such acts of omission as the failure to appear at prescribed office hours and delays in supplying a letter of recommendation or an official progress report. Most of my office hours for the past several years have been by email appointment; and I’ve had trouble with some progress reports owing to centralized computer glitches at the graduate school. The conduct standards need to be brought into line with the ordinary expectations on campus (which include considerable variability within what may be responsible conduct). The draft procedures ought to be reserved for imputed violations that demonstrate gross irresponsibility, or a deep pattern of irresponsible conduct.

For the improvement of procedural fairness in judgments by the panels, I suggest four revisions in the draft procedures.

--First, revise the procedures to say that “both the complainant and the respondent are permitted to be accompanied by an adviser, and the advisers can participate in the process in the same manner and to the same extent.”

--Second, revise the document to say that “not only the panel’s findings but also its recommendations will be furnished alike to the complainant and the respondent.”

--Third, revise it to say “the dean will convey her decision to the complainant, the respondent, and the panel, and will also explain the reasons for her decision.”

--Fourth, insert this sentence in the procedures: “A transcript will be made of the panel proceedings which can be consulted by the complainant or the respondent for the purpose of appeal.”

Postscript:

A letter from a legal adviser to the AAUP, distributed by Professor Gilmore at the same session of the senate, took grave exception to the proposed admission of anonymous reports of misconduct. Anonymous reporting is subject

to consistent abuse and has long been discountenanced by the AAUP.

In the discussion by the senate itself, cogent objections were put forward against the sanctification, in the "misconduct" draft, of the codes of conduct published by various academic professional organizations. Most professors do not memorize these codes, and a self-governing faculty ought to be responsible for its own.
DB

10) Thursday, January 28, 2016 - 11:59am

Control of the review process is placed entirely in the hands of two individuals: the Dean, who can dismiss the complaint and chooses the composition of the Review Panel, and the Provost, who receives appeals. There is no direct involvement of the faculty, which would be best represented by the faculty Senate. Whether or not the Dean and Provost will use their power wisely, this procedure appears, from the outside, undemocratic and open to manipulation. Therefore, it may be more likely to open the door to litigation in court. A decision will be more likely to be accepted without further ado if the sanctioned faculty member knew that it came from a body that represents, albeit indirectly, the values of the entire faculty. So I recommend an amendment to give the Senate oversight over the composition of the Review Panel and the outcome of appeals.

11) Thursday, January 28, 2016 - 10:34am

I support the proposed procedures. I have personally witnessed a small number of senior faculty who repeatedly exhibit abhorrent behavior without fear of substantive consequences. The persistence of this behavior makes Departmental self-governance difficult and highly inefficient. Few faculty want to serve in positions of leadership knowing that they will be responsible for managing the Luddites and that they will get little support from either the Dean's office or the Provost's office. I know for a fact that in our Department much of the opposition to the new procedures is being waged by the unproductive cranks.

12) Thursday, January 28, 2016 - 8:32am

About the disciplinary procedures I have just a few comments:

1. The grounds for appeal of the Dean's decision on a complaint strike me as too narrowly technical. If either party believes simply that the decision was in error, it seems to me that this should be grounds enough for an appeal. Given that the appeal is to a higher level, this process will not go on forever. 2. In general, I feel a certain concern that in these procedures power is concentrated a little too much, and that not enough protection or "due process" is extended to the parties; but this is just a general feeling. I would very much like to hear a more professional perspective from our colleagues in the law school.

Regarding the standards themselves: I feel that, although in some formal sense they have been accepted into the Faculty Handbook, in a larger sense they have not really received a full discussion by the faculty nor a real acceptance. The standards seem somewhat open-ended: the sentence "The examples of conduct listed here are not exhaustive, and other behaviors may also violate the principles set forth here", which appears near the beginning, can be read somewhat ominously, if one is of a suspicious mindset. Thus I think it is important that the standards be reconsidered, amended, and put to a full vote of the FAS faculty in a way that makes it clear that the full faculty is aware and involved.

The best proposal I have heard to restore a feeling of trust and mutuality in these standards is to add an explicit listing of faculty rights, along the same lines as the listing of types of improper conduct. The introductory section on freedom of expression is a good start in this direction, but I think more can and should be added. For example, under teaching and training standards, it is important to explicitly recognize a faculty member's rights to structure

their teaching according to their own professional judgement. It is also important to recognize their right to criticize the administration (or others), even in their own classes, without this being interpreted, as in 1d), as "preventing the orderly conduct of teaching or training". I'm sure that one could come up with a longer list of examples.

Yair Minsky
Professor, Mathematics
Member, FAS Senate

13) Wednesday, January 27, 2016 - 11:12am

My major concerns are with the procedures by which the Standards, and the Procedures for responding to charges of violation of the Standards, are being put into place. It is my view that the Standards themselves need faculty endorsement, in order to function effectively. Standards of Ethical Conduct that apply to a given body of society typically are standards that the body itself develops and endorses, not something handed down by others. I am in favor of the ideas behind the need for having standards (ideas which I believe the faculty at large have not been clearly informed of); and the committee of faculty who developed the standards (and who are now working to develop the set of procedures for investigating violations) is a committee of thoughtful, committed, responsible individuals. But they are only a subset of the faculty. It is my strong conviction that for the Standards themselves to carry meaningful weight for the faculty, they need to be collectively constructed and endorsed by the faculty - NOT "accepted by the president and provost" - they need to be a statement of the ethical standards to which faculty wish to hold themselves and each other. They can't serve their intended function if they are imposed upon faculty from the outside. Thus, there needs to be extensive faculty input, and most important of all, a faculty vote to approve them.

The same is called for in adopting a set of Procedures. There must be extensive faculty discussion and conversation, and in the end a vote of endorsement.

In my view, this conversation cannot adequately happen via private comments (even if those comments are made public after they've been collected). What is needed is an active, interactive conversation. I recommend having all faculty comments made available publicly, online, at the same website (i.e., this one) where they are contributed, so that faculty can hear, think about, and respond to each others' views and contribute their own, informed views as part of an ongoing conversation, rather than as individual thoughts contributed in isolation.

With appropriate procedures for adopting the Standards of Conduct and the Procedures for violations - significant faculty input and collective faculty endorsement as a requirement of adoption - they will be stronger in both their content and their potency as meaningful principles of faculty conduct. Respectfully,
Karen Wynn

14) Wednesday, January 27, 2016 - 10:22am

The Procedures as currently drafted put too much power with the Dean, and not enough protections for due process for the accused. I am very interested in the Law School faculty sense of the proposed Procedures and how they would like to see them improved.

15) Tuesday, January 26, 2016 - 10:47am

As chair of the new FAS Senate, I have had a chance to observe and participate in ongoing discussion of the conduct standards and procedures. The comments below are my own individual observations, however, not an official comment or report of the Senate. Like many faculty, I support the aims behind the conduct standards. It is important for all members of the Yale community to be safe and respected on campus, and for each faculty member to participate fully in the process of teaching and learning. It is also important for the university to have a

fair and thoughtful process for addressing those instances in which faculty fall short of these standards. I admire and appreciate the work of faculty members who have devoted valuable time and energy to this endeavor, notably Deputy Provost Stephanie Spangler and Committee Chair Margaret Clark.

However the standards and procedure as currently proposed--and perhaps most importantly, the process by which they have been introduced--raise concerns that require further attention. The thoughts below are intended as a supplement to the comments of other faculty, not as a comprehensive list of recommendations.

1. Context and explanation. Though it has now been almost a year since the conduct standards were first presented to faculty for online comment, many faculty members--myself included--have expressed frustration about the lack of written explanation and evidentiary context for the initial conduct standards effort. When the standards were presented to faculty last spring, they were offered as a stand-alone document, with little information about why this effort was being initiated, and no empirical report about either the kind or frequency of faculty conduct that the new standards were meant to address. Perhaps unsurprisingly, this produced a great deal of suspicion and concern among faculty: Why, after some 300 years of muddling along without such a policy, did Yale suddenly need a faculty conduct policy? Without sufficient context or official explanation, many faculty have interpreted the effort as an instance of administrative overreach, the latest in a string of initiatives in which faculty received insufficient consultation and information to participate fully in university governance.

Recommendation: That the president's office or the Committee on Faculty Conduct Standards present to the faculty a full written account of the reasons for initiating the conduct standards policy, along with the types of existing issues that the standards are designed to address.

2. Defining misconduct. The current faculty conduct standards offer a wide range of potential misconduct, ranging from serious abuse and neglect of students, bribery, plagiarism, and discrimination, to far less serious behaviors such as failing to hold office hours or to submit letters of recommendation by an agreed-upon deadline.

Recommendation: That the current conduct standards be revised to emphasize egregious, ongoing, and serious misconduct.

3. Equity. Under the current standards and draft procedures, complaints against a faculty member may be filed by a student (graduate or undergraduate), a fellow faculty member, a department chair, a dean, or another member of the campus community. This raises fundamental questions of equity and fair treatment. Will enforcement of existing policies occur only when a complaint is filed? How will the new system prevent inequitable treatment between faculty members? How will it track or prevent bias in terms of race, gender, sexuality, employment status, and other categories of difference? Despite the intention to produce a more just and respectful campus, it seems possible that without careful attention to these issues, the new process may replicate and reinforce existing campus inequalities. For instance, it will still be much less daunting to file a complaint against a junior faculty member, or a member of the faculty perceived to be lacking institutional power, than against an influential member of the senior faculty.

Recommendation: That issues of equitable treatment be addressed specifically within the revised conduct procedures.

4. Faculty governance. The Senate's interim report on the faculty conduct standards recommended that the FAS be afforded an opportunity to vote on the final conduct standards and procedures before they become official university policy. This is a basic right of faculty governance, and Dean Gendler has indicated her willingness to hold a vote if the FAS desires to do so. However, there are two troubling aspects of the current situation that stand in the way of full faculty participation in this governance process. The first is that the conduct standards themselves are already in the Faculty Handbook, and therefore have been established as university policy without a vote or meeting of the faculty. The second is that both the standards and procedures have been introduced as a university-wide policy; therefore a vote of the FAS, while a useful indication of FAS sentiment, will not necessarily determine

whether or not the conduct standards and procedures are put into effect. This raises the possibility of a situation in which the FAS will vote against the proposed conduct procedures, but these procedures will nonetheless become university policy, and will become the process by which faculty conduct is governed at Yale. Over the next few months, we should make every effort to avoid this outcome. While it is true that the FAS does not include the faculty of the entire university, the FAS faculty should have the right and opportunity to determine the standards by which they will be governed, and by which they will be asked to govern each other.

Recommendation: That the full FAS be afforded the opportunity to vote on both the conduct standard and procedures, and that this vote should be considered a binding vote that determines the future policy of the FAS.

Finally, I would like to restate my overall support for the recommendations and concerns raised in the Senate's interim report on faculty conduct standards and procedures.

Beverly Gage

Professor, Director of Undergraduate Studies, History
Chair, FAS Senate

16) Tuesday, January 26, 2016 - 8:45am

The Procedures violate our constitutional rights to due process, including the active role of counsel at trial, the right to hear and question witnesses, speedy trial, appeal, prevention of double jeopardy, equal justice, and a jury of our peers.

They center power with various deans and do nothing to insure training among those deans in evidentiary standards and trial procedures. Nor do the Procedures insure that the deans will administer equal justice across the university.

Let me be specific on the violations of civil rights incorporated in the document and civil rights not granted by the document. I will submit these written remarks to the Senate.

The deans both initiate trials and judge them. They may bring complaints themselves and overturn review panels.

There is no provision for a jury of our peers—representative faculty—because the deans also appoint the Faculty Review Panel, chosen from a pool picked by the provost. If the respondent—the faculty member accused—objects to anyone on the Panel, the dean may overrule that objection.

The Panel, but not the accused, has a right to procure and review confidential university documents concerning the accused.

The accused may have an “adviser,” –I would certainly choose an attorney for this role—but the adviser has no guaranteed right to speak.

The accused has no right to call witnesses, but the Panel does. The accused may propose witnesses, but the Panel has the right not to call them.

The Panel has the explicit right to exclude the accused from its examination of witnesses against the accused. The accused has no right to hear or read their testimony.

In fact, there is no written transcript of this testimony or the proceedings.

The Panel should decide on “clear and convincing evidence,” but has no training in determining what clear and convincing evidence is. The procedures for submitting evidence violate the accused’s legal rights and evidentiary

standards going back to the Bill of Rights in the Constitution.

The process does not allow for separating the decision on liability from the decision on punishment, so the accused has the serious dilemma of deciding whether to present mitigating evidence that might affect punishment, at the same time that the accused is denying liability. In other words, if the accused brings in context surrounding a complaint, it appears to be an admission of guilt.

The Panel has the power to recommend sanctions that will ruin the career of the respondent and significantly damage in the short and long run his or her livelihood.

The entire trial may last three months or more, if it's summer.

Upon receipt of the Panel's findings, the Dean may ask for more evidence, which again, the accused has no right to review.

The Dean may overturn Panel's findings or punishment recommendations.

There is no mechanism by which the accused can introduce evidence on the comparative past discipline of others similarly accused, practically inviting unequal punishment among the faculty.

The standards for appeal are so limited that no effective appeal is possible.

The AAUP, the Faculty Senate, and a large body of faculty oppose these standards, which eliminate faculty governance, put extraordinary power in the hands of a few deans, and threaten to create more problems than they will solve.

Glenda Elizabeth Gilmore
Peter V. and C. Vann Woodward Professor of History
Department of African American Studies
Department of American Studies

17) Sunday, January 24, 2016 - 2:57pm

Dear Faculty Standards Committee,

Thank you for your work on the procedures. For my part, I believe they are absolutely necessary. While I respect the concept of departmental autonomy, I have in my time here seen it abused on numerous occasions. Some form of outside-the-department authority in extreme cases is the only way to address those sad situations that, unfortunately, human nature will continue to produce. Absent clear, strong procedures, there are some who will continue to put the university and its reputation at risk. In both the long and the short term, that is unacceptable.

Yours truly,
Sue Byrne

18) Friday, January 22, 2016 - 11:24am

I have been alarmed at the slightly paranoid response of the faculty to the standards: but I agree that to alleviate that response it is imperative to add 'egregious' or 'repeating pattern of egregious bad behavior' somewhere in the standards. As for the procedures, I think that there should be wider consultation with other universities to see what they do -- it certainly seems to me that the Dean, however well intentioned and careful, should not be burdened with/entrusted with so much responsibility for choosing and judging as the current procedures suggest.

19) Friday, January 22, 2016 - 10:46am

Bill Nordhaus's analysis of the of the standards of conduct make it clear that they were not thought through sufficiently before being accepted by the president and provost. The analysis from the AAUP carries the same implication. My own reading suggests that the lack of appropriate process is sufficiently egregious that the university might, and perhaps should, be legally vulnerable if and when they are enforced against a faculty member. I believe that it would be a mistake, therefore, to continue the process of designing procedures for the implementation of these flawed standards. Instead, a committee with strong faculty representation should be appointed to review the proposed standards in light of the the difficulties that have been raised. Ian Shapiro

20) Thursday, January 21, 2016 - 1:25pm

This proposal represents the most staggering usurpation of the power of the faculty that I have seen in over thirty years at Yale. The proposal not only concentrates tremendous power in the hands of the Dean, but it opens up the door to a wide range of potential abuses all in the name of providing "uniform rules" for faculty conduct. Consider just some of the following:

"The Dean may initiate the review process. . ." The review panel will consist of members "chosen by the Dean." If someone objects to a panel member, the objection must be submitted to the Dean on whose "sole discretion" the matter will be decided. If someone is excused from the panel, "the Dean may designate a substitute." "The Dean may accept, modify, or rejects the conclusions of the Panel." The Dean may also "discuss [matters] with the Panel in advance of the final decision." And so on.

The opportunity for the abuse of power by the Dean in conjunction with the Provost strikes me as far in excess of any real or actual problem that this new procedure is designed to solve. This proposal fails even to address one of the oldest problems of governance, namely, who will police the police. Even more worrying, I see no evidence that this committee has addressed issues of fairness, privacy, or the dangers of administrative oversight into unspecified areas of faculty life. I do not believe that occasional instances of faculty misconduct, whatever these may be, justify the immense concentration of power in the Dean's office contained in this proposal. Anyone with any concern for the rights of the faculty should oppose this proposal.

Steven B. Smith

Alfred Cowles Professor of Political Science

21) Wednesday, January 20, 2016 - 5:28pm

Comment on the Yale Faculty Standards of Conduct and the Proposed Review Procedures for Complaints about Violations of the Standards of Faculty Conduct

William Nordhaus

Sterling Professor of Economics

January 20, 2016 Over the last year, Yale University has adopted a new set of Faculty Standards of Conduct. These have been widely criticized by the faculty in the FAS and by the FAS Faculty Senate. At present, the administration is considering procedures to implement the standards. In an email to the faculty of the Faculty of Arts and Sciences on November 13, 2016, Dean Tamar Gendler invited members of the FAS faculty to submit comments.

This submission focuses primarily on the faculty conduct standards and not the procedures. It examines the background and substance of the faculty standards that were inserted into the Yale Faculty Handbook in the fall of 2015. It argues that the faculty standards are defective. They need to be replaced with ones that are based on evidence, that are aimed at major misconduct, and that reflect the consensus of the faculty.

This comment emphasizes the standards as a prior matter because the procedures need to be tailored to the standards. It is not sensible to adopt procedures until the standards themselves have been discussed and adopted by the faculty.

I. Lack of evidence for the standards

The report on standards was drafted by the Ad Hoc Committee on Faculty Standards of Conduct (Standards Committee) of faculty and administrators and released in early 2015. The history of the standards was reviewed by the Report of the FAS Faculty Senate and will not be repeated here (see <http://fassenate.yale.edu/sites/default/files/files/FASS-Procedures%20Report-AMENDED%2011-25.pdf>).

The report of the Standards Committee consisted solely of principles of good behavior and examples of misconduct. Unlike most other committee reports at Yale, the report provided no analysis to support the recommendations. Nor did it present any evidence or conduct a survey to indicate the nature or gravity of faculty misbehavior at Yale. Nor was there a comparison of the proposals with faculty standards at other universities. Without any background argument or evidence on the frequency or severity of misconduct, it is not possible to appraise the need for the proposed standards.

II. The principles behind the standards

Given the lack of an evidentiary basis for the standards, the actual standards emerge as a disconnected and poorly rationalized list of principles and examples. Without attempting to provide a comprehensive list of defective elements, I will first point to problems with the general principles.

The principles present high-level aspirational standards. There are three sets of general principles (teaching and training standards, scholarship and professional standards, and standards in respect to colleagues and the university). While many of the principles are unobjectionable, they are generally too vague to be useful for purposes of setting standards.

At the same time, some aspects of the general principles are inappropriate. For example, in the principle of scholarship and professional standards, it states that “members of the Yale faculty abide by the stated standards of their professional organizations.” This is doubly objectionable not only because most faculty members do not know the standards of their professional organizations, but also because the University does not know exactly what standards are being endorsed.

Another example of a defective standard is the “Principles Pertaining to Faculty Members in Their Role as Members of the Yale Community.” Faculty members are required to “accept their share of responsibility for University governance.” There is no discussion of what this responsibility is. Does it include setting faculty standards of conduct? Another principle is that faculty members “have the right and obligation to criticize their colleagues, staff members, and the University, but they endeavor to do so without personal animus ..” It is poor policy to base rules on feelings (“personal animus”) rather than actions. Additionally, the notion of prohibiting behavior seeking to coerce the University seems far-fetched.

In summary, the principles of faculty conduct are vaguely worded, contain some principles that are objectionable in the context of faculty conduct, and are so aspirational that they cannot be easily applied. They do not distinguish between casual error and repeated, intentional, and egregious violations. They need to be pared down to a set of concise principles that can apply to major cases that may arise.

III. Examples of standards

The next concern is the examples themselves. These fall into three categories:

1. Listing of existing policies on faculty or employee conduct. These include (i) Academic misconduct as defined by Yale’s Policies and Procedures for Dealing with Allegations of Academic Misconduct; (ii) Deliberate misuse of research funds or other violations of Yale’s policies on sponsored research; (iii) Violation of law, Yale policies, or professional requirements protecting patients or human or animal research subjects; (iv) Violation of Yale’s Policy on Conflict of Interest, including requirements regarding the disclosure of research support and other financial interests that might influence the conduct of research; (v) Violation of Yale’s policies on conducting research that the government has classified as secret or conducting research with the understanding that the funder will decide if the results may be published; (vi) Violation of Yale’s policies on conflicts of commitment or intellectual property; and (vii) Violation of Yale’s Standards of Business Conduct.

It is useful to list the existing policies and regulations applying to faculty in one place. However, the list is

incomplete. Also, it is difficult for faculty to know exactly what the content of these standards are because there are no references to websites with complete statements of the policies.

2. New policies or ones that may come from other sources but are not referenced. These include (i) Discrimination, including harassment, against a student on political grounds, or for reasons of sex, race, color, religion, national or ethnic origin, age, disability, veteran status, national or ethnic origin, sexual orientation, or gender identity or expression; (ii) Deliberate use of the position or powers of a faculty member to coerce, exploit, intimidate, or harm a student or trainee; (iii) Participating in behavior that is intended to interfere with freedom of expression by preventing the orderly conduct of teaching or training (iv) Conviction in a court of law for, or admission to having committed, a criminal act that meets all jurisdictional requirements for review by the University Tribunal; and (v) Failure to provide professional colleagues with reasonable access to the University's scholarly resources.

While this list contains reasonable examples of misbehavior, it is not clear whether these represent new policies and regulations or are a collation of existing ones. If these are existing policies, then a reference needs to be made to the existing regulations. If these are new policies, then they need to be labelled as such, and the rationale for each new policy needs to be explicitly provided.

3. Statements of policy that are vague or minor relative to the gravity of the potential sanctions. These include: (i) The failure to meet reasonable deadlines in ... providing ... letters of recommendation; (ii) evaluation of student or trainee work by criteria not directly reflective of academic performance or academic requirements; and (iii) failure to conduct classes, keep office hours, or hold examinations as scheduled; (iv) arbitrary ... denial of access to instruction.

These and other examples are seen by most faculty as undesirable behavior, but to elevate them to formal misconduct subject to discipline is a major change in the culture of a University like Yale. While faculty would generally aspire to meet these goals, instances are likely to be infrequent and often arise because of pressures of time or inadvertence. In some cases, for example, a student may ask for 100 letters of recommendation, and the resources to prepare them in a timely fashion may not be available. Or a faculty member may need to miss office hours because of a sick child.

More generally, for each of the examples and principles, there is no measure of the frequency and gravity of the misconduct. To trigger a charge of faculty misconduct for most of the examples listed above, the behavior must be serious, intentional, and repeated.

IV. Process of adoption: opaque and insufficient

The faculties of the different schools have the responsibility for policies regarding academic affairs. According to the bylaws of the University, "The Board [of Permanent Officers] shall be the governing board of the school, entrusted with matters relating to the educational policy and government of the school..." This is also emphasized in the Faculty Handbook (bottom of p. 5 and top of p 6), which states that " The Yale faculty bears primary responsibility for preserving the conditions necessary to advance this mission, including ... participation in the governance of the University ...; and adherence to a shared set of principles governing faculty members in relation to each other, to their students and trainees, and to the University and its staff members." In fact, the faculties of the University were not centrally involved in determining or approving the standards.

The standards were announced by an email from the Provost January 15, 2015. Comments were solicited. The comments were not made public, nor was there any public analysis of the comments that faculty made on the standards. Indeed, to this day, the comments on the standards have not been provided to the faculty.

In response to the comments, a few small changes were made. Since the comments have not been made public, we cannot judge whether there were comments on other areas and whether the changes responded to major concerns. The revised standards were incorporated into the Faculty Handbook, dated September 18, 2015. They were not reviewed by or voted on by the Faculty of Arts and Sciences before promulgation. At a discussion of the standards at the FAS Faculty Senate, the Senate was told that the faculty standards are in place, and the Faculty Standards Committee is not charged to revise the faculty standards, which are in the Faculty Handbook. (Minutes, FAS Faculty Senate, November 2015)

A major concern is that the entire process was marked by opaque deliberations. Why was the committee created? What misbehavior was reported to the committee? What were the comments of the faculty in the first comment period? What were the responses? What was the process by which the standards were formally approved? Why were

the faculties of the University not consulted as faculties rather than through emails? If the faculty "shall be the governing board of the school, entrusted with matters relating to the educational policy and government," as Yale's By-Laws state, why were these not generated by and approved by the faculty?

V. Existing procedures

Many administrators are concerned that there are no existing procedures to deal with faculty misconduct that falls short of "career-ending." In reality there are several processes, such as those relating to scientific conduct, sexual harassment, and business standards. For unspecified misconduct, the University has an existing system for the most serious offenses, the University Tribunal. This was established in 1969, but has only been used once. It has been occasionally used as a threat in some cases of misconduct, in effect to secure a plea bargain for a lesser punishment.

To the extent that there are areas of misconduct which have no established disciplinary procedures, it would be useful to know what they are. However, the current standards mix new and old misbehavior, and mix those with existing procedures and those without procedures. It is necessary to identify misbehavior that is sufficiently grave to trigger discipline that is not covered by existing procedures. That has not been done.

VI. Conclusion

This brief analysis of the current faculty standards of conduct reveals that they have a non-existent evidentiary basis, weak substance, a confusing mixture of existing and new standards, and a flawed process of adoption. To be sure, many faculty and administrators believe that it would be useful to have an informal process for dealing with egregious, intentional, and repeated cases of faculty misconduct that are not appropriate for the University Tribunal or other existing processes. The existing standards and procedures do not meet that requirement. Therefore, the current standards should be vacated and a new set of standards should be developed.

22) Wednesday, January 20, 2016 - 4:17pm

My thought on reading the draft is that the Panel should not recommend specific disciplinary penalties, rather should communicate to the Dean or other authority either a "yes" or "no", whether or not it finds grounds for disciplinary action and for what reasons. It is the Dean's, Provost's, or President's prerogative to make decisions regarding disciplinary action, which the committee should not prejudge. I don't think it wise for Yale to set up a recommended list of penalties. This is all "in-house" and does not replace or preclude further civil judgments or criminal prosecution.

23) Wednesday, January 20, 2016 - 4:16pm

In the initial set of "standards for faculty conduct," I am quite concerned about the clause that provides for the censure or punishment of those who disrupt the "orderly conduct of a University function or activity." It seems to me that many acts of legitimate protest would fall into such a definition, and would therefore be censurable by the university. This seems quite wrong, and quite at odds with what the university ought to stand for.

I am aware that the committee has already established these standards, and that there may be a strong reluctance to revisit them; nevertheless, I think they very much deserve revisiting on this score, as part of the ongoing conversation. It seems to me that when the standards themselves are framed in this manner, it is very difficult to discuss the proposed procedures for responding to violations of them, since it is difficult to know what would or would not count as a violation - and indeed since many acceptable and even laudable activities would count as violations under the letter.

I would prefer that this comment remain anonymous.

24) Wednesday, January 20, 2016 - 4:15pm

In the initial set of "standards for faculty conduct," I am quite concerned about the clause that provides for the censure or punishment of those who disrupt the "orderly conduct of a University function or activity." It seems to me that many acts of legitimate protest would fall into such a definition, and would therefore be censurable by the university. This seems quite wrong, and quite at odds with what the university ought to stand for.

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25) Monday, December 28, 2015 - 11:22am

There is wide latitude for the FAS Dean to determine what might constitute a violation of the Standards. Understanding would be helped by having judgments of a range of hypotheticals. For example, supposing I were habitually to:

come to campus just 2 or 3 days a week, or
 leave campus before the end of Reading Period, or
 have my TFs proctor my exams, or
 have my TFs give course lectures in my absence (w/o other faculty in attendance), or
 decline to attend departmental faculty meetings, or
 loudly and angrily berate colleagues in departmental faculty meetings, or
 fail to supervise a fair share of senior projects, or
 (the reader should be able to supply additional illustrative examples.)

26) Wednesday, December 16, 2015 - 4:23pm

The proposed procedures should, at a minimum, be revised consistent with the specific recommendations made by the AAUP in their letter to Prof. Gilmore (Dept. History) dated November 17, 2015. I would strongly urge that the entire procedures be compared to those standards adopted by Iowa State University in cooperation with the AAUP and be made consistent with them.

Richard Baxter, Asst. Professor of Chemistry, Molecular Biophysics & Biochemistry

27) Wednesday, December 16, 2015 - 1:39pm

I'm writing to express concern over section 3, point f, that "Behavior that is intended to prevent the orderly conduct of a university function or activity" is action that can instigate a complaint or investigation.

As written, this could potentially threaten freedom of expression and speech. This could be construed unbelievably broadly and in quite the political ways it allegedly is purporting to prevent. Do faculty not have the right to join with others in demonstrations, protests, sit-ins or pickets to express political views? By their nature, these do disrupt some of the "normal" functioning of teaching or other business. Yet, they are, in another form, not only expressions of ethical principles but also forms of teaching, inquiry, and analysis. How do we expect our students to take seriously the principles we teach in the classroom, if we are not willing to act on them ourselves? To me, this is the section of greatest concern.

What is further left unclear is whether this is supposed to function as a doctrine of suspension and dismissal. If that is the case, there are no clear procedures laid out, no institutions for deliberation and enforcement articulated, and no guidelines for "due process" considered. What constitutes "evidence" of these transgressions and who presents them? What is the relationship between this document and the "University Tribunal" document? Does it replace it? Act in conjunction with it? How so?

28) Wednesday, December 16, 2015 - 10:13am

Should there be a standard for social media groups whose members are exclusively Yale colleagues? For example, if a department at Yale has a social media group on WeChat and a colleague makes a racist remark, should he or she be disciplined? It's social media, but the group is all Yale people. Is the person who makes the racist remark still considered to be qualified to grade students' work and review colleagues work for promotion or reappointment?

Another thing, in the review process of a non-ladder faculty member for reappointment, what rights does the person being reviewed have to give his or her side of story before the department makes a decision on his or her reappointment based on what may be slanderous and false accusations from people in the department?

29) Wednesday, December 9, 2015 - 2:19pm

1. The description of qualifications for promotion and tenure in the Faculty Handbook (pp. 40-41) should be revised to include appropriate mention of conduct consistent with University standards. The senior faculty of departments and the divisional committees should be reminded to check for conduct issues and should be provided with documentation of the resolution of any complaints lodged against the person being judged for promotion or tenure. It is particularly appropriate to mention in this context any misconduct that degrades performance as a teacher, mentor, researcher, or scholar.

2. The accumulation of repeated humiliations, a characteristic of bullying behavior, can have lifetime consequences for the victim that are as serious as single instances of much more serious misconduct. Thought should be given to how best to handle cases where repeated bullying takes place, no single case of which might rise to the level of an offense that would be prosecuted by other mechanisms.

3. Just as those accused of misconduct deserve protection through due process, so do the victims of misconduct deserve justice. Thought should be given to how best to handle cases in which fear of retaliation prevents victims from coming forward with information about those who commit misconduct.

30) Tuesday, December 8, 2015 - 9:11pm

the proposed procedures are a disgrace. they remind me of the french judicial system, in which the judge and the prosecutor are the same person, so it makes the proceedings straightforward: the accused has to prove his innocence. the whole matter needs to be discussed by the faculty senate and some sort of informed review take place. there is no dean or anyone else in the present hierarchy who knows anything substantive about the evaluation of evidence and adjudication. these so-called standards are horrifying. ... are we supposed to believe that a professor of management, by virtue of his appointment, is magically a judge? so too of a professor of philosophy, who is magically a dean - is she thereby endowed with sublime wisdom? i would hope that she, at least, as a thinking person, would admit that she is not - there is no hope for this clueless provost. the fas standards committee, if it had any sense at all, would resign the task of deciding that they are qualified to carry out such a task. "university-wide" committee indeed.

31) Sunday, November 29, 2015 - 12:37pm

The Applied Physics department met to discuss the documents relating to standards for faculty conduct (SFC, Document A) and the procedures for responding to violations of these standards (Document B). While we generally understand the need for such documents, we observe there is currently insufficient context provided in the documents regarding the level of severity of violations and the threshold at which violations would lead to administrative sanctions.

The department believes that sanctions should only occur for serious, egregious, and/or repeated violations of the

SFC, and that this context needs to be articulated clearly in the documents. (As an example, a dissertation progress report that is 1 week late is technically a violation of the SFC, but not one that merits sanction.) In addition, to provide some balance to the regulatory nature of Documents A and B, we suggest a Bill of Rights that affirms the rights of the faculty to carry out their scholarly duties without fear of arbitrary or capricious intimidation or retaliation under Documents A and B. These should include the right to define a reasonable work schedule, professional standards, and structure for conducting mentoring duties and concomitant expectations for mentees. (As examples, a faculty member should not be obligated to publish results if the faculty member believes they are below acceptable standards or to write a letter of recommendation for a student who does not perform well.)

32) Wednesday, November 18, 2015 - 9:21pm

I am alarmed at the provision which stipulates that the determination of the duly-appointed committee can be overridden, anonymously yet, by a higher-level administrator at his or her discretion. I also have reservations concerning the procedure for appointing members to the committee. These do not inspire confidence, to say the least.

I would also like to point out that the recent, egregious misdeeds by members of the University faculty were serious infractions of previously-existing regulations. That did not deter the perpetrators from committing their misdeeds, nor were the penalties at all commensurate with the gravity of their actions, despite the fact that appropriate penalties were already in place.

More rules and regulations, more committees and processes are not, in my view, the answer.

Ruth G Koizim

Senior Lecturer and Language Program Director in French

33) Monday, November 16, 2015 - 10:34pm

I write concerning not so much the procedures (for which the text was quite legalistic but I guess that is inevitable) but the standards that the procedures deal with. It seems to me that despite all the process and good work undergone so far, the standards still need refinement and clarification.

There are two overall concerns I have with these standards.

(1) The most problematic ones are in section I.1.(i)-(v). The general issue is that there is no sense of how severe or unreasonable the behavior must be to merit a formal inquiry and potential punishment. For example, in point (v), one violation is that the faculty has failed to meet reasonable deadlines in evaluating student or trainee work, etc. This covers everything from being late with signing off on an annual dissertation progress report (a minor infraction most would agree) to not giving grades to students for over a year after a course ends (inexcusable). The other points in this section suffer from the same overall problem: there is no sense that the violation must be serious or egregious and not merely minor or "unreasonable" (which is pretty meaningless). I understand "egregious" or "serious" are also subjective to some extent, but I believe there must be a clear sense that trivial lapses are not the point. As written, one can imagine cases that would be rather trivial turning into a major headaches when a complaint is filed.

(2) It would be nice if the document was not only negative but had some affirmatives. For example, affirming the faculty member's right to freedom of expression and opinion and not just in principle but in practice. For example, in section 1.i.(v), it is considered a violation to not meet reasonable deadlines in (b) submitting for publication manuscripts authored by students or trainees. But what if the student or trainee wants to submit a publication that is wrong in content and keeps insisting? Will the faculty who delays or blocks the submission of a bad manuscript on which he or she is co-author be in violation? This is not simply a matter of having the student/trainee then submit the work as sole author: in many cases, the federal government (or other funding sources) paid for the student/trainee to do the work as well as the equipment/supplies that were used to do the research (plus use of the

faculty's laboratory facilities and knowledge where the work was done), so one can't simply *not* have the faculty be an author to acknowledge the support and sources of funding. The faculty member must have the freedom to reject being forced into being a co-author on such a work and, furthermore, from having the work done in her/his laboratory with funding he/she obtained being published without her/his consent or approval. Again, the main point I wish to make is to affirm that the faculty member does have rights like the the freedom of expression, thought, academic action, and the right to safeguard his/her reputation.

Sincerely,

Sohrab Ismail-Beigi
 Professor of Applied Physics
 Joint appointments in Physics and Mechanical Engineering and Materials Science

34) Monday, November 16, 2015 - 5:08am

These standards are excellent and needed at Yale. However, it is unclear how to bring issues of this nature to get help and what the consequences are for those that do not follow these standards of professionalism. Without consequences, there will be no change to the harassment that occurs often in depts on campus.

35) Saturday, November 14, 2015 - 11:12am

These are excellent guidelines. Stating this way will make more people to be aware of these guidelines everyday. Thanks.

36) Saturday, November 14, 2015 - 6:46am

“A Fair Trial for the Faculty”

Glenda Gilmore Published in the Yale Daily News, October 27, 2015

<http://yaledailynews.com/blog/2015/10/27/gilmore-a-fair-trial-for-the-faculty/>

The committee that produced the Standards of Faculty Conduct is now circulating the “Review Procedures for Complaints about Violations of the Standards of Faculty Conduct,” labeled “Draft: For Discussion Purposes Only.” These Procedures merit exhaustive discussion, since they will bind every faculty member in all of Yale’s schools. I recently spoke before the FAS Faculty Senate to encourage that body to vote against the Procedures because they fail to provide for fair hearings for those of us who teach at Yale.

It is important to note that cases of faculty sexual misconduct or academic misconduct will continue be tried before the University-Wide Committee on Sexual Misconduct or under the current university procedures for academic misconduct. The new procedures outline the rules for hearings of faculty members who violate the Standards of Faculty Conduct recently incorporated in the Faculty Handbook.

Those standards are capacious enough to invite complaints against faculty for failing to hold office hours as scheduled, being late with a letter of recommendation, breaking a departmental rule, intimidating a colleague, shirking committee responsibilities, or publically demonstrating or speaking in a way that disrupts the “orderly conduct of a University function or activity.” Anyone connected with Yale—student, staff member, administrator, or post-doctoral trainee—is allowed to file a complaint.

The Yale faculty overwhelmingly deplores bad conduct in its ranks and seeks to stop it when it occurs. However, it is equally important to provide a fair hearing for offenders.

Moreover, due process is equally crucial for an innocent faculty member unjustly accused. In addition, the system

must recognize gradations of seriousness in a single offense; for example, missing office hours one week does not constitute a pattern of being unavailable to students. Moreover, the judicial apparatus must incorporate the principle of proportional punishment across the cases it hears.

The proposed Procedures lack any of those protections, yet a guilty finding can result in a “combination” of punishments, from a verbal warning to “short-term suspension without pay.” But the Panel may do more, since its actions “are not limited to” those listed. The outcome of such a hearing could ruin an innocent faculty member’s career here at Yale or his or her prospects at other institutions.

The Procedures violate basic constitutional rights to due process, including the active role of counsel at hearings, the accused’s right to hear and question witnesses, timely hearings, fair appeals, double jeopardy, equal justice, and a jury chosen by a process untainted by bias.

Under the current Procedures, deans across the university, untrained in evidentiary standards and judicial fairness, may both initiate trials and ultimately judge them. Deans may bring complaints themselves and then overturn the Faculty Review Panels’ findings. The same deans appoint the Faculty Review Panel, which acts as prosecutor, judge, and jury. The Dean chooses the Panel from a pool appointed by the provost. If the accused faculty member objects to anyone on the panel, the dean may overrule the accused’s objection. The accused may have an “adviser,” but the adviser has no guaranteed right to speak.

The Panel, but not the accused, has a right to procure and review confidential university documents concerning the accused. The Panel may call witnesses. The accused may propose witnesses, but the Panel does not have an obligation to call them. The Panel decides on “clear and convincing evidence,” but has no training in evidentiary standards.

The Panel has the explicit right to exclude the accused from its examination of witnesses against the accused, who has no right to hear or read their testimony. There is no right to or provision for a written transcript of the proceedings. The entire trial may last three months, or even six months, if summer intervenes.

Upon receipt of the Panel’s findings, the dean may ask for more evidence, which again, the accused has no right to review. The dean may then overturn the Panel’s findings and/or punishment recommendations. There is no mechanism by which the accused can introduce evidence on the comparative past discipline of others similarly accused, propagating unequal punishment across the faculty.

The standards for appeal are so limited that no effective appeal is possible. They include “a procedural error” or “the discovery of material facts,” both impossible to prove without a transcript or allowing the accused to hear and question witnesses. Appeal can be made with proof of the imposition of a disproportionate penalty, however, no mechanism exists to introduce evidence that the penalty is disproportionate, since there is no right to discovery of the disposition of other cases or their penalties.

I urge faculty members in every school to become familiar with the as yet untested Standards of Faculty Conduct and to discuss and vote on the draft Procedures for Violations in their respective faculty meetings. There is still time to construct a fair system, one that incorporates the principles of due process, and one that empowers the faculty to assume responsibility for holding itself to the highest standards.

Glenda Gilmore

37) Friday, November 13, 2015 - 5:00pm

Dear Dean Gendler and Standards Committee,

I feel obliged to point out that during my years as a student during the turbulent 60s and 70, with protests against the war in Vietnam and the 68 Convention, for example, the word "safe" never came up, and "respect" was often

ignored. I would like to ask the committee what "safe" means. Are you intentionally or not going to limit vigorous free speech on any issue for the sake of these now seemingly dominant values? Isn't the country's civil code of laws sufficient to govern the behavior of the faculty? When contrary opinions and values are up for debate, isn't it natural for parties involved to feel anxious, uncertain, at risk -- and isn't this part of the free debate of ideas that characterizes the strength of a university? "Safety," do you mean physically? "Respect," do you mean a very mild challenge to opposing ideas? Your terminology is so unclear that it makes discussion of the standards very confusing.

Sincerely,

K. David Jackson, Professor of Spanish & Portuguese.