

### Appendix 3 to the Faculty Senate Minutes of October 14, 2008

It is clear that much of the proposed (and previous) SIU Sexual Harassment Policy contains many of the problems explicitly spelled out in the National Association of Scholars 1993 statement on Sexual Harassment and Academic Freedom.

Specifically:

"College and university authorities should respond to instances of genuine sexual harassment firmly and immediately. It cannot be tolerated. However, academic freedom and the rights of individuals are violated when institutions adopt vague and arbitrary definitions of harassment that can be applied to attitudes or even to a scholar's professional views."

"Too many institutions have adopted vague definitions of harassment..."

"The criteria for identifying "harassment" are often nebulous, allowing for expansive interpretations..."

"Some definitions of sexual harassment embrace a wholly subjective test of its occurrence--for example, the complainant having been made to "feel uncomfortable." Proof relies not on the objective behavior of the alleged harasser but on how one person perceived that behavior."

"The resulting confusion of genuine harassment with less serious acts, and even with beliefs, brings anti-harassment policy into needless conflict with academic freedom."

Thus, they recommended (among other things):

"- define sexual harassment precisely, confining it to individual behavior that is manifestly sexual and that clearly violates the rights of others"

"- set a reasonable statute of limitations on bringing sexual harassment charges"

"- punish those who knowingly lodge false accusations of harassment"

Why are we not using the legal definition of sexual harassment as specifically spelled out in Section 5/2-101E of the Illinois Human Rights Act: "unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." Or in Section 5/5A-101(E) where it defines it in the educational environment: " 'Sexual harassment in higher education' means any unwelcome sexual advances or requests for sexual favors made by a higher education representative to a student, or any conduct of a sexual nature exhibited by a higher education representative to a student when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment; or when the higher education representative either explicitly or implicitly makes the student's submission to such conduct a term or condition of, or uses the student's submission or rejection of such conduct a basis for determining:" (12 items listed from admission to grades to sports, etc.) ?

Why did we leave out statements from the previous policy, such as:

"behaviors, or physical conduct commonly understood to be of a sexual nature"

"this policy shall not abridge any individual's right under the first amendment, academic freedom, or the university's educational mission"

"conduct that would annoy or humiliate a reasonable person"

(italics added for emphasis) ?

Why are we now outlawing "prohibiting" consensual sexual or dating relationships?

In my department, we just hired a chair who is having sex with his first hire (his wife). I know of two faculty members in my department and the closest related department who married students.

Why do we have to prove "knowingly" making false sexual harassment complaints? The false accuser should be punished and there should be no burden to have to prove that they "knowingly"

falsely accused. And the punishments should be as severe for the accuser as the potential severity of having had the false complaint accepted.

Why are we using words like "expressive behavior", "need not be direct or explicit", and "facial expressions"?