

V.E. RELATIONSHIPS BETWEEN MEMBERS OF THE UNIVERSITY COMMUNITY AND INTELLIGENCE ORGANIZATIONS

(Source: University Council Resolution, January 19, 1979 and Offices of the President and Provost, 1979 Handbook for Faculty and Administration)

I. Introduction

The generation, preservation, and dissemination of information and ideas are primary functions of an academic institution. They are also primary functions of intelligence organizations. From this functional congruence have stemmed relationships between the academic and intelligence communities which in many instances are both proper and beneficial. There are, however, profound differences between the two communities which invest such relationships with potential for harm to the integrity and/or effectiveness of both. Open and unfettered exchange of information and ideas is the life blood of the academic community. For the intelligence community, on the other hand, secrecy is an inescapable fact of life.

Furthermore, reports of questionable activities of intelligence organizations must influence consideration of relationships between such organizations and an academic community. It therefore is appropriate for the University to establish policies regarding issues of concern in relationships between itself and members of the University community and intelligence organizations in order to protect its interests in any such relationships.

In adopting such policies the University recognizes the importance to the nation of effective intelligence organizations. University policies regarding issues of concern in relationships between members of the University community and intelligence organizations must be consistent with the maintenance of individual rights and freedoms. In addition, the University recognizes that some of the issues raised by relationships with intelligence organizations are not specific to such organizations and that, therefore, policies designed to govern these issues should be more broadly based.

These considerations have guided the development of the following policies that shall govern issues of concern in relationships between the University of Pennsylvania and members of the University community, and intelligence organizations.

II. Definition of Terms as Used in This Section

University: The corporate entity formally known as the Trustees of the University of Pennsylvania.

Intelligence organization: Any organization or part thereof which has as its primary function the collection, analysis, or dissemination of information in aid of the security objectives of a domestic or foreign government.

University community: The set of individuals who are employed by, or who participate in the educational and other activities of, the University, at times when they are, or may reasonably be thought by others to be, acting in their capacity as employees or participating in such activities.

Explanatory Note: The definition of University community is intended to reflect the fact that relationships between members of an academic community and intelligence organizations may pose a threat to the integrity of that community and to the academic community at large, even at times when the individuals in question are, in their own minds, pursuing private interests or conducting personal affairs. In attempting to achieve a balance between this concern and its concern for individual rights and freedoms, the committee who wrote this section concluded that adherence to policies in this area could legitimately be expected when individuals are conducting University business or participating in University activities and also when they "may reasonably be thought by others to be doing so."

The committee appreciated the difficulty of applying the definition of University community in some cases but nevertheless believes that it provides necessary and useful guidance. As an example, consider a situation in which a University faculty member and an employee of an intelligence organization find themselves participating as members of a church choir, a patently non-University activity. In terms of our definition, the faculty member could not normally be construed to be a member of the University community in these circumstances. However, if the employee of the intelligence organization were to take advantage of his proximity to question the faculty member about a University student or colleague for intelligence purposes, in the committee's view the faculty member should reasonably be thought to be responding as a member of the University community because the information in question would normally have been learned at a time when the faculty member was acting in his capacity as an employee of, or was participating in the activities of, the University.

III. Research and Technical Service Agreements

The University may properly enter into an agreement with an intelligence organization for the conduct of a research program or for the provision of technical services, provided that the terms and conditions of such agreement are consistent with the Guidelines for the Conduct of Sponsored Research and with any other University policies and practices governing agreements with extramural organizations.

Consultation

Individual members of the University community may properly enter into an agreement with an intelligence organization to act as a technical or professional consultant or practitioner, with or without fee, provided that the general nature of the proposed agreement is reported to the appropriate dean (for faculty or students) or other administrative officer (for others) prior to the provision of any services thereunder. The dean or other administrative officer shall consider whether the proposed agreement is consistent with existing University policies, e.g. the Conflict of Interest Policy for Faculty Members (section II. E. 10) or the Conflict of Interest Policy for Trustees, Associate Trustees, Officers and other University Employees (adopted by the Trustees, June 19, 1981). The dean or other administrative officer shall also consider whether the proposed agreement would compromise the individual's participation in, or the integrity of, University programs or activities. If the proposed agreement appears to be in conflict with existing policies or to be inappropriate on the grounds stated in the preceding sentence, and if the matter cannot be

resolved with the member of the University community, the dean or other administrative officer shall report that fact to the Provost and President and recommend appropriate action.

Explanatory Note: Existing University policies require reporting of extramural consultative and business activities for a fee by full-time members of the faculty, and reporting of such activities, whether compensated or not, by administrative and professional staff. Their purpose is to prevent excessive diversion of effort into extramural activities and to avoid conflicts of interest. Because recent events have raised concerns about the potential effect of agreements with intelligence organizations on an individual's ability to function properly in a free and open academic community, the committee believes that a reporting requirement for such agreements should be extended to all members of the University community and should apply whether or not a fee is involved. Such reports are not intended for public release.

The requirement that the dean or other administrative officer "consider whether the proposed agreement would compromise the individual's participation in, or the integrity of, University programs or activities" reflects a standard that is, at least in part, already embodied in the existing University policies mentioned in this section. However, these policies presently apply only to Standing Faculty, Standing Faculty-Clinician-Educators, and full-time members of the Associated Faculty and the Academic Support Staff contemplating an extramural consultative or business activity for fee and to administrative and professional staff. The committee's intent here is both to extend the standard of existing policies to all members of the University community in the case of a proposed relationship with an intelligence organization and to make it clear that in exceptional cases such a relationship may be objectionable for reasons not reflected in existing policies.

V. Information Concerning Members of the University Community

Members of the University Community who provide any factual information or opinion about other members of the University Community to extramural organizations or individuals (e.g., in connection with possible employment) must at all times exercise good judgment and discretion and distinguish clearly between factual information and opinion. In addition:

- A. Any member of the University Community who has an agreement or understanding with an extramural organization or individual to provide any factual information or opinion about other members of the University community on a regular basis, for recruiting purposes, must identify him or herself to the appropriate dean or other administrative officer and to the appropriate University placement officer as a recruiter for the specified extramural organization or individuals.
- B. Members of the University Community should require extramural organizations and individuals soliciting any factual information or opinion about another member of the University Community to identify themselves fully and accurately and to indicate the expected use of the information or opinion.
- C. A member of the University Community who is asked by an intelligence organization or representative thereof to identify for recruiting purposes or to provide factual information or opinion about another member of the University Community should consider whether the exercise of good judgment and discretion requires obtaining the prior informed consent of the individual in question. If the individual in question is a currently enrolled student,

prior informed consent should always be obtained before factual information (including the individual's name) is provided.

The requirement of prior informed consent is not applicable where information is sought by an intelligence organization in connection with the investigation of alleged specific criminal activity. The requirement of prior informed consent shall be deemed to have been satisfied if the person requesting information provides proof that the student has given written consent (which may be a blanket consent) or, in the case of an application for employment, proof of such application.

The committee understands that the identity of "recruiters" is a matter of public record within the University. This record shall include the names of all recruiters for extramural organizations as defined in that subsection.

The University Guidelines on the Confidentiality of Student Records (IV.J.), which reflect and elaborate the requirements of federal law, specify the circumstances in which personally identifiable information may be disclosed from a student's education records without prior written consent. Even in such circumstances, the guidelines require the exercise of informed discretion by the person disclosing the information. The guidelines do not apply to information that is not part of or derived from a student's education records and, although individual departments of the University have policies regarding the confidentiality of other (e.g., employment) records, there is no comprehensive University policy with respect to such records.

We believe that the standard set forth in this section provides appropriate guidance for those providing factual information or opinions about any member of the University community to any extramural organization or individual. In light of reported abuses in the use of information provided to intelligence organizations by academic institutions or persons affiliated with them, particularly information about students, we believe that the requirement for the exercise of good judgment and discretion set forth in the section above applies with particular force in this context.

The committee notes, for example, that the director of the Central Intelligence Agency has recently confirmed that the agency currently has and intends to maintain secret contacts with University personnel for the purpose of recruitment of students, including foreign students. For this reason, we believe that a requirement of informed consent prior to the release of factual information about currently enrolled students (including students on summer recess or approved leave of absence) is appropriate. Unless students can be assured that activities of this sort will not be abetted by other members of the University community, the atmosphere of trust that is essential to the academic enterprise will suffer.

In cases where there is doubt about the purpose of an investigation, members of the University community who are requested to provide information shall refer the person making the request to the General Counsel, who shall determine whether a response is appropriate under these guidelines.

VI. Operational and Other Activities

Members of the University Community may not undertake activities on behalf of an intelligence organization that are inconsistent with their normal University activities.

Members of the University Community may not knowingly lend their efforts, names or positions to the production or dissemination of information known by them to be false or misleading.

Members of the University Community may not cooperate with an intelligence organization in obtaining the unwitting services of any other individual.

VII. Interpretation of These Guidelines

In the first instance, the responsibility for interpretation and implementation of these guidelines rests with the appropriate dean or other administrative officer. If such interpretation is disputed, all parties to the dispute have the right of appeal to the President of the University, who has the ultimate responsibility for interpretation of these guidelines.

It is understood that any member of the University Community who is party to a dispute over interpretation and implementation of these guidelines may have recourse to one or another of the existing University mechanisms for resolution of disputes, e.g. a committee on academic freedom and responsibility, a grievance procedure or the office of the University Ombudsman.