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☞ Details: Proposed Audit: Personnel Policies and Practices, University of Wisconsin System

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee on Audit...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)



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September 22, 2005

John Wiley, Chancellor  
UW-Madison  
161 Bascom Hall  
Madison, WI 53706

Dear John:

On July 8, 2005, Attorney Susan Steingass was appointed to investigate a personnel matter involving former UW-Madison Vice Chancellor Paul Barrows. Among other items specified in her charge, she was asked to determine the facts regarding Dr. Barrows' leave from the university during the period November 2, 2004 to June 20, 2005, and further to investigate the university's application of leave policies as they relate to Dr. Barrows. Attorney Steingass has now completed her investigation, and has forwarded her report to me and to Provost Peter Spear for appropriate action.

Attorney Steingass found that an issue of concern involving leave usage arose in connection with sick leave. Except for the months of January and February, 2005, when he was on vacation, Dr. Barrows used sick leave for the period November 2, 2004 to June 20, 2005. Under the applicable statutes, and university rules and policies, an employee cannot take sick leave unless he or she is sick, i.e., for reasons of personal illness (including physical and mental illness), injury, disability, or pregnancy (see, s. 36.30, Wis. Stats., and UWS 19.01, Wisconsin Administrative Code). Supervisors, who must approve sick leave use, are responsible for affirming that an employee on sick leave is actually sick.

The investigative report indicates that Dr. Barrows' use of sick leave from November, 2004 to the first of January, 2005 was justified, given Dr. Barrows' mental stress. After that time, he was apparently not sick as defined in the statutes and rules, or in a way that would have prevented him from working. Although you continued to allow him to use sick leave for the period March, 2005 to June, 2005, you never obtained appropriate documentation of his need to use sick leave. In June, 2005, an unsigned letter from a physician was produced. The letter was never signed, thus leaving no medical justification for the use of sick leave for such an extended period.

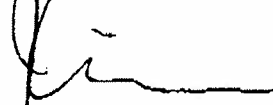
John Wiley, Chancellor  
September 22, 2005  
Page Two

Attorney Steingass notes that you might have placed Dr. Barrows on paid administrative leave, rather than allowing the use of sick leave. You chose not to do so, though, because you believed that it would be better to require Dr. Barrows to use his sick leave, a valuable benefit available upon retirement to pay health insurance premiums, rather than to have taxpayers pay for an extended period of administrative leave. You have agreed that you should have acted sooner than you did either to secure more information about sick leave use, or to bring Dr. Barrows back to work in some capacity.

I have reviewed the statute and administrative rules on sick leave, and I agree that it is plain that a University employee must be sick in order to use sick leave. University policies regarding the medical documentation of illness necessary to support the use of sick leave are under review and we expect them to be revised at the October, 2005 Regents' meeting, in accordance with the actions taken by the Board at its September, 2005 meeting. Nevertheless, you and your administrative team should have been aware of the requirement that an employee must be ill in order to charge an absence to sick leave, and should have acted promptly either to obtain the appropriate documentation on Dr. Barrows' situation, or to require his return to work. The failure to do so has hurt the University's reputation.

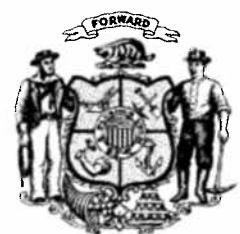
I also have concluded that, after Dr. Barrows had resigned from the position and the position had been abolished, you took an inordinate amount of time to place him in his back-up appointment, continuing to pay him while on leave at his Vice Chancellor of Student Affairs salary of \$191,749. I expect, John, that you will take immediate steps to ensure that UW-Madison has in place mechanisms for the proper documentation of, and accounting for, the use of leave and appropriate salary rates while in that status; that UW-Madison will promptly implement the new systemwide policies regarding sick leave we expect the Board will approve at its October meeting; and that you will report to me on corrective measures you have taken no later than October 21, 2005.

Sincerely,



Kevin P. Reilly  
President

Copy: UW Board of Regents





September 22, 2005

**To: Media Representatives**

**From: UW System President Kevin P. Reilly  
UW-Madison Provost Peter D. Spear**

**Subject: Steingass Report Review and Actions Taken**

Since November 2004, the University of Wisconsin-Madison has been involved in a protracted and painful personnel matter that has been difficult on the individuals, the university, and UW System.

Before we address the substantive nature of the report submitted, we want to thank Attorney Susan Steingass for her professional attention to this matter and for her thoughtful presentation of the facts of the investigation.

We have reviewed the report, accepted the conclusions as presented, and have based our decisions upon those conclusions.

In accordance with state law, we have notified all individuals whose names appear in the Steingass Report, have followed all university rules regarding procedures in investigation and disciplinary matters, and have filled the pending public records requests that had been withheld during the investigation process. Dr. Barrows and his attorney received an unredacted copy of the Steingass Report on Sept. 6. Provost Spear followed up on the investigation, including meeting with Dr. Barrows and his attorney on Sept. 8 (investigatory meeting) and on Sept. 16 (predisciplinary meeting). Provost Spear consulted with university legal counsel and human resources personnel to ensure that due process was followed and outcomes were appropriate.

A summary of the decisions, including key findings and actions, is outlined below:

### **Conclusions as they relate to Dr. Barrows**

- Provost Spear concurs with the report's conclusion that Dr. Barrows' conduct toward one individual "could reasonably be regarded as unprofessional" and that, if part of a pattern, "could reasonably be seen as violative of the university's sexual harassment policies and rules." Provost Spear also accepts the report's conclusion that Dr. Barrows' conduct toward a second individual, "no matter how intended, would be received by a reasonable person as sexual harassment."

### **Actions taken**

In making his determination as to the appropriate response to Dr. Barrows' actions, Provost Spear took into account the nature of the behavior, Dr. Barrows' nearly 17 years of distinguished service to UW-Madison, and the fact that no other complaints had been made against him in that time. Provost Spear determined that there are insufficient grounds for dismissing Dr. Barrows from the university at this time. However, based on these considerations and the above conclusions, the following formal actions have been taken,

- Provost Spear reaffirms the following employment actions regarding Dr. Barrows:
  - Dr. Barrows was removed from his vice chancellor position; annual salary of \$191,749.
  - The university withdrew an offer to Dr. Barrows of a consultant position; annual salary of \$150,000.
  - Dr. Barrows was placed in a contractually required backup position; annual salary of \$72,881.
- A formal letter of reprimand has been sent to Dr. Barrows and placed in his personnel file indicating that future conduct of this sort will result in dismissal.
- Dr. Barrows will be required to undergo sexual harassment training by Dec. 31, 2005, because his behavior reflects a lack of understanding of policy and the impact of his actions.
- Provost Spear has instructed staff to replace 92 hours of sick leave, used by Dr. Barrows in March 2005, with 92 hours of floating holiday/Annual Leave Reserve Account (the amount Dr. Barrows had available at the time).

## **Conclusions as they relate to Chancellor Wiley**

- The report indicates that Chancellor Wiley allowed Dr. Barrows to inappropriately use sick leave from March 2005 to mid-June 2005. In the report, Chancellor Wiley appropriately takes responsibility for not following up soon enough with Dr. Barrows for medical confirmation of Dr. Barrows' continued need to use sick leave.
- As a result of the report, President Reilly concludes that, after Dr. Barrows had resigned from his Vice Chancellor for Student Affairs position and the position had been abolished, Chancellor Wiley took an inordinate amount of time to place him in his backup appointment, continuing to pay him while on leave at his Vice Chancellor salary of \$191,749.

## **Actions Taken**

In making his determination as to the appropriate response to Chancellor Wiley's actions, President Reilly considered Chancellor Wiley's handling of this personnel matter within the context of his overall performance. Chancellor Wiley has spent more than 30 years at UW-Madison as an outstanding faculty member and administrator. Since 2001, he has done an exemplary job of overseeing a campus of more than 40,000 students and 16,000 employees, and an annual budget of nearly \$2 billion. He has demonstrated consistent and strong leadership in challenging times.

- President Reilly has sent Chancellor Wiley a letter criticizing his application of leave policy in this case and directing him to take corrective measures to prevent such problems in the future.
- President Reilly has directed Chancellor Wiley to report back to him on these corrective measures by Oct. 21, 2005.





**INVESTIGATIVE REPORT**

**Submitted by Susan R. Steingass  
Habush Habush & Rottier, Of Counsel  
August 29, 2005**

## INVESTIGATIVE REPORT

On July 8, 2005, I was appointed by University of Wisconsin-Madison Provost Peter Spear to investigate a personnel matter involving Dr. Paul W. Barrows. I was charged to: 1) determine the facts regarding allegations of inappropriate behavior made against Dr. Paul Barrows, former Vice Chancellor for Student Affairs; 2) determine the facts regarding all aspects of Dr. Barrows' leave from the University of Wisconsin-Madison; 3) identify appropriate standards of conduct and applicable policies and laws; 4) investigate all allegations of violations of applicable rules, policies and procedures by Dr. Barrows related to his employment at the University of Wisconsin-Madison; and 5) investigate the University's application of leave policies as they relate to Dr. Barrows.

I had full access to university employees though I obviously had no subpoena powers to compel cooperation. I reviewed any documents I deemed relevant. I reviewed many individual files. I looked at any other documents anyone called to my attention. I reviewed individual's calendars for relevant periods. I researched applicable rules, law, procedures and policies. These are applied below, as relevant and consistent with my charge.

I interviewed or spoke with 27 people. Two of these were not interviews as such. One person gave information that confirmed information obtained elsewhere. Another provided university telephone records. Most were employees of the university. Some were former employees. Others were individuals whose names were suggested to me. Their names appear at Appendix 1 at the end of this report. There I refer to them by title. Here, for clarity and brevity, they are referred to by name only. I mean no disrespect to anyone by this. Many I interviewed more than once. All were generous with their time. Their input was totally critical to this report and I thank them for it.

There is one important exception to the naming of names. I interviewed five people who either claimed to have been, or were claimed by others to have been, the subject of Paul Barrows' inappropriate conduct toward women. Not one of them has filed a complaint against him. One of them denied the conduct alleged by others.

I told four of these women that I would do what I could to protect their identities at this stage by using synonyms or initials<sup>1</sup>. I expressly said that this is no guarantee of their anonymity down the road and that their identities will become known in the future, at least in some quarters. If further events make their names relevant, I ask that their identities be protected in very way possible. The ramifications of disclosure can be far reaching and are much feared by at least some of these women. The fifth is Luoluo Hong, former Dean of Students, who alleges that Paul Barrows' conduct, the University's lack of forthrightness about the circumstances under which he resigned on November 1, 2004, and the University's lack of support made her workplace toxic and hostile. She is named.

For context, I begin by determining the facts regarding "all aspects of Paul Barrows' leave from the University of Wisconsin-Madison" then determine the facts regarding "allegations of inappropriate behavior made against him." I identify applicable rules, policies and procedures and analyze whether Dr. Barrows violated one or more of them where that is within my charge. Last, I identify applicable leave policies and analyze the university's application of them to Dr. Barrows.

#### **I. Facts Regarding Dr. Barrows' Leave from the University of Wisconsin-Madison.**

I begin by noting the difference between fact and suspicion and rumor in an important area: why Vice Chancellor for Student Affairs Paul W. Barrows (Barrows) was asked to step down as Vice

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<sup>1</sup> I have also referred to Dr. Barrows' partner by her initials. Her identity should also be protected if she desires.

Chancellor as of November 1, 2004.

I found no evidence, or reasonable inference from the evidence, that his position as Vice Chancellor for Student Affairs was in any jeopardy until approximately November 1, 2004. While several people told me that they had heard that his performance was questioned, I found no such evidence. To the contrary, Chancellor John Wiley (Wiley), his Special Assistant Casey Nagy (Nagy), Provost Peter Spear (Spear) and others told me there was no major dissatisfaction with his work and no job performance issues that threatened his position until the true nature of the Jane Doe relationship came to the fore. During his seventeen years at the university, he had been rewarded by increases in responsibility and pay. He was a key member of Wiley's team, as he had been of Chancellor Ward's and Chancellor Shalala's. He was respected and trusted by Wiley with whom he shared a friendship. In fact, before these events many regarded Barrows as "untouchable," incorrectly as it turned out, because of Wiley's regard for Barrows and his accomplishments. His resume showed his excellent qualifications and his extended and ever growing responsibilities.

Some interviewed speculated that Barrows' forced step down and removal were caused by turf wars, power grabs or personal vendettas. Barrows sincerely believes that there are people out to get him, or to ruin him. While I readily concede that it is difficult, if not impossible, to accurately divine the secret machinations of the human heart and mind, I found no evidence of this.

Nor did I find any evidence that race had anything to do with Wiley's or other university administrators' conduct. I well understand why Barrows believes that much of the negative press coverage of these events is race related. Even so, Barrows does not believe that race was involved in Wiley's decisions. Again there was no evidence, or reasonable inferences from the evidence, that Wiley's actions were racially motivated. In fact, Wiley and Barrows were friends. As Darrell Bazzell

(Bazzell), Vice Chancellor for Administration said, if anything Wiley had a harder time "pulling the trigger" on Barrows because of this friendship.

Turning to the evidence, I conclude that sometime in the winter of 2003-2004 through June of 2004, Barrows had a relationship with a forty year old graduate student who, in this report, is called Jane Doe. Section II below contains detailed facts regarding this relationship and my basis for concluding that these are the operative dates. Suffice it to say for now that in the summer of 2004, after the relationship ended, Jane Doe was distraught and spoke of it to many people. On either September 2 or 3, 2004, she went to see Don Schutt (Schutt) in the Office of Human Resources who suggested they go see Luis Pinero (Pinero) of the Equity and Diversity Resource Center. She recounted the details of her relationship with Barrows and confirmed those details by electronic mail. She said the relationship was consensual, said she did not want to file a complaint, and said that she did not want anything bad to happen to Barrows.

Pinero, Jane Doe and Schutt had a number of meetings in September 2004. They told Doe that they did not think the relationship violated the university's Consensual Relationship Policy because Barrows neither supervised nor evaluated her work. She was a graduate student and he was Vice Chancellor for Students Affairs at the time.

Schutt and Pinero contacted Casey Nagy (Nagy), the Chancellor's Assistant. On September 20, 2004, Pinero and Jane Doe met with Nagy. Pinero took detailed notes, which I have reviewed, of her account. On October 4, 2004, Nagy, Pinero and Doe met again. Nagy said he had apprised Wiley of the matter and that Nagy had talked to Barrows. He told them the behavior was "incredibly inappropriate" and showed "bad judgment." Pinero and Schutt asked for Nagy's assistance in getting funds from the Dean of Students' Crisis for Jane Doe's [REDACTED]. Nagy met with Dean of Students

Luoluo Hong (Hong) about the Barrows/Doe relationship on October 27 or 28, and on November 3, 2004. While I am satisfied that these dates are confirmed on individual calendars, there may have been other meetings.

Nagy observed that Doe was in a fragile state and he did assist her in getting emergency financial aid through the Dean of Students' Crisis Fund. This was used to pay for [REDACTED] for Jane Doe and [REDACTED] as well as tutoring and emergency assistance. It is still being used for Jane Doe's [REDACTED] through the end of the fall semester of 2005, after which her [REDACTED] will be through Student Health Services.

Barrows says he met with Nagy about the relationship in September, 2004. Nagy gives a more detailed account. He says he asked Barrows "point blank" in September whether he had a relationship with Jane Doe. Barrows said that he had, that it was consensual and abbreviated, and that she had pursued him. While Barrows says that Nagy had no problem with the relationship, I think it better stated that Nagy told Barrows that it did not appear to violate university rules, policies and procedures, but that he and Wiley thought it showed bad judgment. Nagy says that he warned Barrows near this time that "containment" of information about this relationship was desirable because if it were broadly known, that would be destructive of Barrows' efficacy as an administrator and an individual. He also said he would take it as retaliatory if Barrows contacted Jane Doe or went to any part of [REDACTED] where she was.

Barrows went to Olin House in September, 2004 to tell Wiley of the relationship. He told Wiley it was consensual, brief, and that Jane Doe pursued him. He says that Wiley was relaxed about the relationship, saying there were "no issues here." Again I think it better stated that Wiley told Barrows that he did not think it violated the university's Consensual Relationship Policy, though he

thought it showed poor judgment. He counseled Barrows to better consider whom he had relationships with in the future. Wiley says he asked whether there was anyone else, or any more to it, and Barrows said "absolutely not."

On October 18, 2004, Hong asked Nagy about his request to use money from the Students' Crisis Fund. Nagy said it was to pay for [REDACTED] for a student whose name he did not disclose. On October 22, 2004, Hong consulted her boss Barrows about Nagy's request. Barrows then disclosed that he was aware of the circumstances and that he had a brief consensual relationship with Jane Doe for whose needs the funds were sought. Barrows again said that Jane Doe was a graduate student, that they only had sex a couple of times, that she came on to him, that he was not dating his partner [REDACTED] (whom Hong knew) at the time, and that he had asked Doe to sign a consensual relations form. Barrows says Hong had no issues with the relationship. I think it better said that she heard his version and took no action at the time.

That changed on October 26, 2004 when Jane Doe came to Hong as Dean of Students to discuss changing the Consensual Relationship Policy. She shared a very different story of the relationship. Doe told Hong that the relationship lasted for several months, that he called her late at night and early in the morning, that when she tried to break up with him he would pull her back in, and that she felt used. Hong believed Jane Doe, not Barrows. Hong says she was "shocked, appalled, devastated, disappointed, disillusioned and disturbed" by Barrows' behavior. She concluded that the relationship was predatory and that Barrows had taken advantage of Doe's insecurities and exploited his power and position. Jane Doe signed a consent form allowing Hong to speak with Nagy, Pinero and Schutt. Hong did.

Hong wrestled with what to do after hearing what she thought was the true account of the

Barrows/Doe relationship. She understood that Wiley did not intend to engage in any formal response. Her file contains an October 28, 2004 draft of a letter raising this and other issues with Wiley and Nagy. This was not sent. A virtually identical letter dated November 1, 2004, and stamped "Confidential" was delivered to Wiley the same day. It contained the following notation: "Given the highly sensitive nature and contents of this document, I request that this letter not be shared with others in its entirety or in part without my consent." Her file copy shows, in her handwriting, that the document was blind copied to Pinero, Schutt and Melanie Newby (Newby), Vice Chancellor for Legal Affairs. I cannot tell for certain, but a reasonable inference is that it was sent to them by Hong at the same time it was delivered to Wiley and Nagy.

In the letter Hong described her "extreme level of dismay, disgust and disappointment regarding the actions of Vice Chancellor for Student Affairs Paul Barrows." She described the true nature of the Barrows/Doe relationship as she understood it. She said Barrows was Jane Doe's [REDACTED] and reference and that her [REDACTED]. She said that in her view the relationship was not truly consensual. She said she thought Barrows' conduct violated the letter and spirit of the Consensual Relationship Policy. Hong said that "Dr. Barrows' behaviors have severely and irrevocably impaired his capacity and reliability to execute the duties and responsibilities incumbent upon a SSAO [Senior Student Affairs Officer]." She claimed he had violated principles of good practice for student affairs professionals; had demonstrated a lack of sensitivity and responsiveness to issues related to sexism, sexual harassment and sexual assault as they relate to students; and had compromised his ability to act as a role model for ethical decision-making, integrity and issues of gender equality. She asked that he be removed from his position as Vice Chancellor, that her reporting channel be reassigned to Wiley, that he be removed as the Senior



Student Affairs Officer, and that University Health Services, Orientation & New Student and PEOPLE/POSSE reporting channels be reassigned.

Wiley was at Hong's office within hours of receiving this letter on November 1, 2004. He told Hong that he had not before known that Doe was a student. He also said he had not known that Doe's [REDACTED]. Wiley told Hong that Barrows' behavior was "unacceptable" and that he was going to ask him to step down as Vice Chancellor.

When Wiley received the Hong letter, he says he "triaged" its contents. He called it a "kitchen sink" letter. As shown in his contemporaneous notes, his first priority was to protect Jane Doe, Hong and any other staff. His second was to reorganize the Vice Chancellor's office<sup>2</sup> and restore it to its pre-Barrows structure<sup>3</sup> and to reassess Barrows' responsibilities as soon as possible to reassure students and staff. His third was to check out other allegations in the letter and consider an investigation. He says he never did this because the allegations in Hong's letter were old and stale. For whatever reason, the third priority fell to the bottom of his list. While Bazzell did not see the letter until June 2005, it raised "climate issues." While Wiley says only the details about Doe caused him to ask Barrows to step down, others like Bazzell, Mercile Lee (Lee), Assistant Vice Chancellor for Academic Staff and Amy Toburen (Toberun) from University Communications, think the Hong

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<sup>2</sup> The reorganization of Student Affairs has been, and continues to be, a subject of great consternation and controversy. I was contacted by student organizations who wanted me to look at whether the university could reorganize students affairs so precipitously consistent with shared governance. That is not a subject of this report because I was not charged with addressing it. However it remains an issue to be addressed elsewhere.

<sup>3</sup> Wiley, Spear and others said that the position of Vice Chancellor for Student Affairs was reorganized with expanded responsibilities and reporting channels in order to retain Barrows. Barrows had an offer from the University of Illinois for such a position. The Wisconsin position was reorganized to keep him. Though others recalled otherwise, I credit the statement of those directly involved in the decision.

letter may have played a bigger part in Wiley's subsequent actions.

Nagy and Spear concurred with Wiley's decision that Barrows had to step down as Vice Chancellor and that his ability to lead had been compromised by staff and student knowledge of the relationship. Factions had developed between Barrows' supporters and detractors.

On November 4, 2004 there was a previously scheduled mock crisis drill at the Kohl Center. Wiley, Nagy and Barrows were all there. Wiley and Nagy took Barrows aside privately. Nagy says that while he attended, this was Wiley's meeting and that it was short and painful. Wiley told Barrows that he had to step down as Vice Chancellor. At no time between November 1, 2004 and June 19, 2005, was Barrows told about, or shown, the contents of the Hong letter. Barrows recalls asking Wiley "Why are you doing this to me?" Barrows says Wiley answered that Director of Student Health Services Kathy Poi and Hong came to Wiley separately and said they did not want to report to Barrows because of Jane Doe. Barrows asked Wiley why he would let this ruin his career and Wiley said he had to do it. Barrows says he was "stressed in a major way" by the demotion.

Wiley reports that Barrows looked like he had been hit with a sledge, that he teared up and sagged. Barrows said "I don't know how much I can stand." According to Wiley, Barrows' sister had just had life threatening surgery, he had family issues and was seeing a doctor, and he had to simplify his life.

At first Barrows says he just wanted to get away but ultimately he followed Wiley's suggestion that he stay and "help us work this out." Wiley told Barrows it was time for him to look for another job. At the time, Barrows and Wiley anticipated that Barrows would take sick leave until the first of the year, 2005, would readily obtain another position, and would be gone from the University of Wisconsin-Madison. However, Barrows had a right to return to his indefinite back up

academic staff position.

Barrows worked with university communications to draft his November 1, 2004 step down letter<sup>4</sup>. Wiley responded on November 2, 2004:

It is with mixed emotions that I accept your resignation as Vice Chancellor for Student Affairs.

While I believe that you have made a solid decision in light of your changing personal circumstances, for the past 15 years you have been a tremendous asset to the University of Wisconsin-Madison. You have served as part of three administrations, bridging changes in leadership with your unmatched commitment to increased campus diversity, strong relations with student government and improved student services.

I'll schedule a time to talk with you about your role going forward, but here is what I proposed for the short term: (1) you take leave as necessary to address your personal issues; (2) following the expiration of your leave, you complete fundraising initiatives currently underway, and you conduct a comprehensive feasibility study regarding the establishment of a Milwaukee-based field office for the PEOPLE Program; and (3) if, after completing the assignments above, you are interested in additional roles at UW-Madison, you should work with Provost Spear to address that interest as part of your academic staff backup appointment.

The Barrows/Doe relationship was never mentioned in these letters, even though it appears clearly to have been a precipitating event, along with Hong's letter. Only Barrows' "changing family circumstances" were given as the reason for his stepping down as Vice Chancellor. While I conclude that the letters were not a lie as far as they went, they were obviously not the whole truth. Wiley has consistently said that he thought his primary responsibility was to protect Jane Doe. Therefore, he

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<sup>4</sup> I note in passing an unresolved inconsistency in dates which, in the end, is immaterial here. While the letters between Barrows and Wiley are dated November 1 and November 2, 2004, The Kohl Center emergency crisis drill is shown on Wiley's calendar on November 4, 2004.

intentionally omitted any reference to the relationship. I conclude, based on numerous interviews, that Wiley also omitted the full reason for Barrows' resignation out of loyalty to Barrows.

Wiley's own statement, as well as those of Bazzell and Nagy, shows that Wiley remained loyal to Barrows. Immediately after Barrows stepped down and right up until the third week of June, 2005, Wiley began working to help Barrows get another position. Wiley was Barrows' number one reference. Initially, Wiley, Spear and Nagy believed that Barrows would be gone by the end of the academic year. However, they knew that if other employment did not work out, they would have to find a place for him at the University of Wisconsin. This is because Barrows had an indefinite backup academic staff position in the event his limited appointment was terminated. He had been granted this by then Chancellor David Ward on November 24, 1997:

Should you assume full time service in the backup appointment, a position and duties appropriate to your background and experience, with a salary range commensurate to that position, will be identified at that time.

Chancellor Ward had also confirmed in the letter that the backup academic staff appointment was "terminable only for cause under UWS 11 or for reasons of budget or program under UWS 12."

Barrows worked cooperatively with Wiley during this time. While he was angry about how he was treated, he felt Wiley was on his side to help in his job search and, alternatively, to find a position at the University of Wisconsin if his job search was unproductive. Between November of 2004 and June 22, 2005, I found a great deal of evidence of these cooperative attempts to see Barrows well placed, either inside the university or out. Bazzell, a man trusted by Barrows and Wiley and Barrows' friend, served as an intermediary through Barrows' leave period. Bazzell worked with Wiley and others to develop a position inside the University in the event Barrows did not get a satisfactory offer from elsewhere.

From early on, Wiley considered an alternative position if Barrows came back to the University. Wiley had long been interested in an important project: an outreach presence for the School on Education in Milwaukee and development of a middle school PEOPLE Program. This involved expanding the PEOPLE program to Milwaukee, raising funds for the PEOPLE and POSSE programs, and working with the community and Mayor Thomas Barrett. Wiley thought this position made good use of Barrows' talents and also had the advantage of keeping him off campus and out of Bascom Hall. Bazzell worked with Wiley, Spear, Steve Lund (Lund), Barrows and others to craft a position for Barrows.

Lund's file, as early as December 12, 2004, contains a document entitled "Options for Paul":

He holds a limited appointment as Vice Chancellor with an indefinite academic staff back up appointment in the Provost's office. As such, he can be removed from the limited appointment and assigned another limited title or an academic staff title. If assigned an academic staff title, the title and salary must be commensurate with the duties.

The title and salary options are described in relevant part as follows:

- Assistant or Associate Vice Chancellor (limited): requires System's approval for use of the title and for the assignment of a salary range. Paul's range as Vice Chancellor is 11 and he had an extraordinary salary range (ESR) based on his responsibilities as Chief Student Affairs Officer.
- Realistically, we could not expect a range higher than 10 (\$125,898) based on lesser responsibilities, An ESR would have to be based on the market for the new responsibilities.
- Senior Special Assistant (limited): We need System's approval to assign this title. This title is assigned to Range 10 (\$125,808 maximum). Paying more than the maximum of range 10 would require an ESR
- Consultant (limited): This is a seldom used title for persons employed for a short period of time to provide professional advice, assistance or other services for a specific program or project. While not the appropriate title for a long-term relationship, it does have the advantage of no salary maximum.

The Consultant position was the option ultimately decided upon if Barrows did not find a satisfactory position elsewhere. This fit the multiple goals of getting Barrows to his salary objective of \$150,000 per year, performing a much needed job in Milwaukee, and using Barrows' talents to their best advantage.

Barrows' job search was difficult, as he told me he knew it would be in a situation where he was on leave from his position and his division had been disbanded and reorganized. In his resumes he listed his position as Vice Chancellor for Student Affairs on leave, and Wiley authorized this. Barrows also showed an anticipated return date to the University of Wisconsin-Madison on his resume, though that date kept moving forward.

Barrows says that after the first of the year, 2005, he wanted to, was able to, and affirmatively tried to, return to work. Wiley's November 2, 2004 letter said that he could return in another position after taking "leave as necessary to address your personal issues." It was anticipated that if Barrows did not have a position elsewhere, he would use sick leave for several months, returning in January, 2005.

Barrows says he did try to return at the first of the year. Bazzell confirms that Barrows told him several times that he was ready to return to work. Wiley says that Barrows never attempted to return. Nagy says Barrows' claims that he tried to return to work are "fanciful." However, the better evidence shows that on at least several occasions Barrows did try to return to work. The first attempt on January 5, 2005, is memorialized in contemporaneous electronic mail exchanges between Barrows, his assistant Paula Gates (Gates) and his Associate Vice Chancellor Rudy Paredes (Paredes). He thanks them for the birthday flowers delivered to his office on January 5, 2005. There is also an electronic mail dated May 2, 2005 from Paredes to Barrows titled "First day" where she says "it's

your first day back full time- just wanted to wish you a good day.” While I can see that Paredes remains loyal to Barrows, I think these electronic mails speak for themselves: Barrows was ready to return and tried to do so. Another attempt to return to work is corroborated by Hong who says that Barrows told her face to face in April, 2005 to her great dismay that he was returning to campus.

Barrows says that between January and June, 2005, when he discussed returning with Wiley, Wiley always told him that he was getting “too much heat,” that it was not the right time, and that Barrows could not return yet. Wiley does not remember these conversations.

By April of 2005, the internal option, which was the Milwaukee position, was at the fore. However, Barrows continued to apply and interview for other jobs. On April 13, 2005, Barrows had an offer from Hunter College in New York City. He says he spoke with Wiley on April 20, 2005 and told him of the Hunter offer and that Wiley then offered him the Milwaukee position for a \$150,000 annual salary and Barrows accepted that offer. Wiley admits that he told Barrows in that time frame that it was the Milwaukee position to which Barrows would return and that Barrows agreed to take when, and if, he returned. The salary seems to have been worked out in this time frame as well. Wiley admits that a “general agreement” was made, though the details remained to be worked out. I think these versions are consistent and come to the same bottom line – agreement was reached in April, 2005, that Barrows would return to the Milwaukee position if outside options did not pan out, but that he would continue his job search. Wiley recalls Barrows saying “If Texas falls through, I’ll be back.”

Barrows recalls a second meeting on April 25, 2005 with Wiley, this time at Olin House. He says he told Wiley that he had turned down the Hunter College offer in reliance on the Milwaukee job. He said the Hunter College offer for \$150,000 a year was not attractive when compared with the

Milwaukee position.

Barrows did continue his job search. He was a finalist for a position at the University of Toledo. He interviewed there on April 27 and April 29, 2005 but another finalist was ultimately selected. He was a finalist for a position at the University of Texas in Austin, and remained in the applicant pool at California State University Monterey Bay. While he was a finalist at Texas, the student newspaper there inquired about his leave status, and there was negative publicity. Barrows withdrew his name from consideration at Texas on June 15, 2005. When he withdrew, it was obvious that he was coming back to Wisconsin. He was to return in the Consultant (limited) position in the third week of June, 2005.

The internal controversy about his return, not to mention the press coverage, escalated. In early June, 2005, Hong, Newby and Toburen asked Yolanda Garza (Garza), Assistant Dean of Students, about a time some years before when Akbar Ally (Ally), former Vice Chancellor for Students Affairs, had allegedly spoken with Barrows about an alleged relationship with a student. Hong was also pressed by Wiley for names of "other women" she claimed had been victims of Barrows' inappropriate behavior. She refused to divulge other names for confidentiality reasons, but when further pressed, finally told Wiley that she was the second name.

The barrage of press coverage about the Barrows' leave and the university's conduct was in full swing. On June 16, 2005, Nagy held a press briefing. For the first time that I could find, reporters were told that Barrows had a relationship with a graduate student and that it was implicated in his November, 2004 resignation.

Wiley's June 23, 2005 letter said that Barrows was to begin his "Consultant Limited Appointment" position on June 23, 2005. Based on Toburen's statement to me and the fact that



Barrows reported to work on the June 20, I conclude that Barrows' true return date was June 20, 2005.

Preparatory to this return, Barrows, Wiley and Nagy met on Sunday, June 19, 2005, at Olin House. Wiley, Bazzell, and Nagy had all questioned Barrows before about any other relationships or inappropriate behavior toward women. Bazzell confirmed what Wiley told me, that while they got a "bad vibe" from Barrows' responses, Barrows denied that there was anything else out there. At the Olin House meeting, for the very first time, Barrows was made aware of the November 1, 2004 Hong letter. He was shown the letter and allowed to read it but was not allowed to have a copy. He described the allegations in it as "scurrilous" and "untrue." He was understandably shocked and outraged that he was not told about or shown a copy of it until June 19, 2005.

Wiley asked Nagy, a lawyer by training, to question Barrows "like a lawyer" at this meeting. Nagy and Wiley asked Barrows whether there were any others out there, to which he responded "absolutely not." They asked whether he had ever acted in such a manner that might cause another to think his behavior was sexually harassing, to which he responded "no." They asked whether anyone had ever talked to him about his behavior with woman, to which he responded "no." He said "I swear on my mother's soul, I swear to you there is nothing".

On June 20, 2005, Barrows returned to work at Bascom Hall. While his primary office was to be in Milwaukee, he had a small backup office in Madison in the lower level of the Chancellor's area in Bascom Hall. The telephone was not hooked up and there was no door so he went up to his former office to work. He was on the job June 20, 21, 22 and 23, 2005.

Press coverage and events escalated even further as the week went on. Wiley learned from Hong that there had allegedly been another instance involving a student five or six years ago and that

Paredes and Garza had asked Ally to speak with Barrows about it. Wiley concluded that if this had happened, Barrows had lied to him at Olin House on June 19 when he answered "no" when asked whether anyone had ever spoken with him about alleged conduct toward women. Wiley called Ally who confirmed that he indeed had spoken with Barrows in around 2000. Wiley concluded that Barrows had lied to him.

Wiley also spoke by telephone during that week with [REDACTED] who said Barrows had sexually harassed her and engaged in "stalking" behavior. Wiley set up a meeting with [REDACTED] but the meeting was canceled. Based on this conversation, Wiley concluded that Barrows had lied to him again at Olin House on June 19, 2005. Wiley decided he could not use Barrows in the important, high visibility, high profile Milwaukee position.

On June 22, 2005, after he hung up with Ally, Wiley telephoned Barrows and told him that he had lost confidence in him. Wiley said Barrows had lied to him, that there were other women prepared to come forward, and that he was going to place him in his academic staff backup position. That is the last time they spoke. The next day, June 23, 2005, Wiley sent Barrows the following letter:

As you know, we anticipated you beginning the Consultant Limited Appointment on June 23, 2005. Before providing the appointment letter and formally implementing the employment change, I lost confidence in your ability to carry out the duties associated with the Consultant position. As a result, I write to inform you that, effective immediately, I am ending your limited appointment as Vice Chancellor and am placing you in your academic staff back-up position beginning June 24, 2005.

As also stated in that letter, your back-up appointment is an indefinite academic staff position in the Provost's office.

Your initial responsibility in this position will be to develop transfer agreements with technical colleges. Provost Peter Spear will assign additional responsibilities as needed. Your title will be Senior Administrative Program Specialist, at a salary of \$72,881.

I must also inform you that during the last 24 hours I have received information that, if

true, is inconsistent with answers you have given me regarding your conduct. Therefore, I will begin an investigation to determine whether disciplinary action, up to and including dismissal, is appropriate. Effective immediately, I am placing you on administrative leave with pay for the duration of the investigation. During this leave you will have no university responsibilities and should not be on campus.

## **II. Appropriate Standards of Conduct, Applicable Laws, Policies Rules and Procedures.**

Applicable laws, rules, policies and procedures governing Barrows' conduct and the university's application of leave policies are found in many places. I found no general standard of conduct except one regarding financial self dealing. There are, however, what I construe as standards of conduct in the university's sexual harassment and consensual relationship policies and rules. Other laws, rules, policies and procedures are found in the Wisconsin Statutes, UWS 16 and 19 of the Wisconsin Administrative Code, Unclassified Personnel Policies and Procedure (UPPP), Academic Staff Policies and Procedures (ASPP), sexual harassment policies and rules, Faculty Legislation, and Board of Regent Resolutions and Policies. These cover several subject areas germane to this matter: leaves, consensual relationships, sexual harassment, limited appointments at the pleasure of the appointing authority, and academic staff indefinite back up positions. These are identified and applied as relevant below.

## **III. Allegations of Violations of Applicable Rules, Policies and Procedures by Dr. Paul Barrows.**

Based on the above, I conclude that the only alleged violations of laws and rules and policies by Barrows concern his alleged conduct towards women. The rules regarding leaves and particularly sick leave are discussed and evaluated at Section IV below and are not included here. While none of the women below filed a formal complaint against Barrows, at least two of them have spoken about it to other students and university personnel. The sexual harassment rules and policies and the consensual relationship rules and policy are germane and are quoted as relevant below. Below I also report five women's descriptions of Barrows' conduct. I assess their credibility and resolve disputed fact. I then

analyze which, if any, rules and policies have been violated by Barrows.

I also describe Barrows' alleged inappropriate conduct. I found no rule definition of "inappropriate conduct." It is for others to determine whether Barrows conduct was inappropriate and what, if anything, is to be done about it. That was not within my charge.

#### **A. Relevant Rules and Policies.**

##### **1. Sexual Harassment.**

University of Wisconsin System Regent Policy Document 81-2, res. 2361, amended 5/18/81 provides, "consistent with its efforts to foster an environment of respect for the dignity and worth of all students and employees of the UW system..." that "sexual harassment of students and employees is unacceptable and impermissible conduct which will not be tolerated." Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other physical conduct and expressive behavior of a sexual nature..." where submission is related to the individual's employment or education, or where submission/rejection is a basis for academic or employment decision, or where such conduct creates a hostile or demeaning employment or educational environment.

The Regent Policy required implementation by the various institutions. The University of Wisconsin-Madison's rules and policies are found in Sexual Harassment: Defining and Addressing a Community Concern. These are the product of a working group and are based on EEOC rules and policies. In 2003 and 2004 Sexual Harassment: Defining and Addressing a Community Concern was sent by Provost Peter Spear to all employees and all administrative leaders of the university. In it sexual harassment is defined in the same language as in Regent Policy Document 81-2. However, the University policy differentiates between Tangible Action or Quid Pro Quo Sexual Harassment and Hostile Work Environment Sexual Harassment. It also provides that some behavior may not violate

University policy but still be “unprofessional under the circumstances.” The consequences “of such unprofessional behavior may include poor performance evaluations or possible discipline.”

Policies and rules are found for faculty and classified employees. See Prohibited Harassment Policy, Faculty Document 458a, 2 November 1981; Faculty Document 1402c as amended, 1 March 1991. See also Sexual Harassment Policy for Unclassified Employees. I found no policies specifically applicable to Limited Employees but conclude that the general policies and rules above apply to them as well.

## **2. Consensual Relations.**

University of Wisconsin Regent Policy Doc. 91-8, res. 5867, adopted 7/21/29, provides “clear direction and educational opportunities to the university community about the professional risks associated with consensual romantic and/or sexual relationships where a definite power differential between the parties exists.” It articulates two “primary reasons” why such relationships are of concern: 1) the conflict of interest that may arise where one person in a consensual relationship evaluates or supervises the other’s work, and 2) the abuse of the power differential that can arise in a consensual relationship even where conflicts of interest are resolved. Under Guidelines for Implementation, each institution is instructed to develop and publish a Consensual Relationship Policy.

Unclassified Personnel Policies and Procedures (UPPP) sec. 15.05 is the relevant Consensual Relationship Policy for the University of Wisconsin-Madison. The text of the rule focuses on the inherent conflict of interest where one person in a consensual relationship supervises or teaches the other, or; where one votes on or substantially influences the other’s salary, job contract, or; where one effects the other’s condition of employment, or; where one member of a couple is the grader or instructor of the other; or where one “is in a position to influence the other’s academic progress....”

## B. Womens' Accounts of Barrows' Behavior.

### 1. [REDACTED]

[REDACTED] never filed a sexual harassment complaint against Barrows. [REDACTED] graduated from the University of Wisconsin-Madison in [REDACTED]. In [REDACTED] she worked in Barrows' office. She described Barrows as kind and kind to her. This is part of the reason that when he started asking her out for dinner in the winter of 2000 or 2001, at first she rationalized that his interest was platonic and out of kindness. She also knew he was married and had children. Ultimately she realized that his interest was not platonic. He was flirtatious when they were alone but professional in front of others. He never touched her. When she declined his invitations, he persisted. She estimates that he asked her to dinner ten times during the winter and spring of 2001.

On one occasion, by coincidence, they were stranded at an airport together. She was returning from spring vacation. Barrows was overtly flirtatious and kept insisting that she have a drink with him and sit with him in the front of the plane. She declined. When they got to Madison, he offered her a ride home. She does not remember whether she accepted this or not, but things went no further.

All of this made her intensely uncomfortable. She developed a schedule that kept her from being alone in the office with him as much as possible. She described herself as young (22 years old) at the time. She had never had any sexual harassment training. She consulted her [REDACTED] Elaine Klein from the College of Letters and Science (Klein). She told Klein what was happening. Klein told her that she could report this conduct or not because it was "borderline." [REDACTED] decided not to report as she had only two months left until graduation. She continued to deal with the situation by keeping a schedule where she was not in the office alone with Barrows.

I interviewed [REDACTED] by telephone. Of course, I would have preferred to speak with her in

person. However, I found her sincere and her detailed account credible. I also confirmed her account with Klein who adds that when [REDACTED] consulted her, she was sufficiently "creeped out" that Klein thought it might make her worse to report. She advised [REDACTED] to consider telling Barrows that if his conduct got any closer to the borderline, she would report him. She does not believe [REDACTED] decided to do this. Klein concluded from [REDACTED] account that Barrows was good at negotiating the borderline.

Barrows never made overt sexual advances. However, it was reasonable for [REDACTED] to conclude that Barrows' behavior was sexual. I conclude that [REDACTED] was reasonable in construing his conduct as she did, without regard to how Barrows might say he intended it. Certainly Barrows' conduct created a very uncomfortable work environment, as shown by her strategy of trying not to be in the office alone with him. He never touched her and seemed not to have been deterred by her repeated rejection of his invitations. At a minimum, his conduct could be reasonably regarded as unprofessional. Certainly if perceived as part of a pattern, it could reasonably be seen as violative of the university's sexual harassment policies and rules.

2. [REDACTED]

[REDACTED] and Barrows dated briefly after she graduated from the university. She never filed a sexual harassment complaint against Barrows and told me that he did not sexually harass her. So why is her description here? Because it fills in what would otherwise be a hole in the story.

I am satisfied by a congruity of events that [REDACTED] is likely the woman Garza and Paredes asked Ally to speak with Barrows about in approximately 2000. When I interviewed Ally, I found his credibility impeccable. His only interest when he spoke with Barrows in approximately 2000 and when he spoke with me was in the University as an institution. He told me he never knew the name of the woman about whom he spoke with Barrows. He did not know if the allegations were true or

not. He told Barrows that if it were true, he needed to "make it disappear." He says Barrows neither denied nor admitted that he had a relationship with a student but asked "who told you?"

Though neither Garza nor Ally knew the woman's name, Paredes apparently did. At our second interview, Paredes said she remembered her [REDACTED] first name, which is [REDACTED] first name as well. Barrows knew her name because he dated her later. Barrows gave me her name and, after our second interview, his attorney gave me [REDACTED] telephone number.

[REDACTED] told me that she was a student in 1998-1999. She worked in the Dean of Students' Office and was President of the [REDACTED]. In that capacity she met with Deans and Vice Chancellors, including Paul Barrows. She says he worked very well with her organization and other [REDACTED] organizations.

After she graduated in 1999, she ran into Barrows and they began dating. This was either in the winter of 1999-2000 or 2000-2001. They had a romantic relationship. She says she heard he was married. Because she was interested in a serious relationship, she confronted him. Barrows told her he was not going to get a divorce because his daughter was still in high school. Dating married men was against her values and she called it off. She did not care for the fact that he was not straightforward about being married and then not wanting to get a divorce.

She told me that Barrows had called her shortly before she and I spoke on August 17, 2005. This appears to have been between the time of my second interview with Barrows and the time I found out [REDACTED] telephone number. [REDACTED] told me that in this conversation Barrows claimed that Garza had said he had sexually harassed [REDACTED] and had complained about him. I conclude that, in fact, Garza said no such thing. [REDACTED] also told me that Barrows told her in this telephone conversation that "If I had wanted to get to you through your son, I could have." This refers to the fact that Barrows



agreed to mentor her 19 year old son in the summer of 2000 when he applied to the [REDACTED] [REDACTED] son was admitted and graduated from the [REDACTED] in December 2004 with a 4.0 average. [REDACTED] did not like it when he made reference to her son that way. She thought he handled the telephone call on August 17, 2005 poorly, and that he was fishing. After speaking with [REDACTED], I asked Barrows if he had a relationship with [REDACTED]. He admitted he had after she graduated.

Given that both parties characterize this relationship as consensual and that [REDACTED] was not a student at the time of the relationship, I conclude that the relationship does not violate the university's Consensual Relationship Policy. They both deny there was any sexual harassment. Obviously, the relevant rules and policies are not concerned with consensual relationships between university employees and persons outside the university where there is no sexual harassment.

3. [REDACTED]

I conclude that [REDACTED] is the woman Wiley spoke with on the telephone during the week of June 20, 2005. [REDACTED] and Wiley never met, though she recounted Barrows' conduct. This conversation was one of a number of reasons Wiley decided he had to remove Barrows from his position and that Barrows could not assume the Consultant position designed for him.

Reaching [REDACTED] was difficult. I left multiple call back messages but got only one call back message from her on August 8, 2005, explaining that she had been out of town. Several inferences could reasonably arise from her silence: that she was not getting my messages, that she did not want to speak with me because she had no legitimate complaints against Barrows, that she avoided speaking with me because she was afraid and/or feared retaliation, or that she did not trust me to be objective in evaluating her accounts. For reasons of fundamental fairness, I had concluded that I

would not use her account of Barrows' conduct as told to me through others.

By August 19, 2005, I had almost given up when she called. It was late in the afternoon on a Friday and she said she only had a brief time to talk because someone was picking her up to go on a camping trip. As I had so much difficulty connecting with her, I asked if she would answer a few questions on the phone. She agreed but said that she could not speak to me at length until late in August at the earliest, after my deadline for filing this report.

She had some hesitance to speak. She expressed substantial concern about Barrows' and his allies' ability to influence her future employment. She feared "backlash" from his allies in Bascom Hall. However, she told me what happened to her and gave me permission to use the information she provided in this report.

She worked in the [REDACTED] in Bascom from December of 2002 until June of 2003 and in the [REDACTED] thereafter. When she first arrived at Bascom Hall, she reports that on two occasions Barrows came to the door of her office area and stared at her in a lewd and suggestive manner. The first time when asked "May I help you?" he replied "I'm just checking it out." All the time he stared at her and looked her body up and down. The second time she was alone in the office when he again leaned against the door and stared at her in a suggestive manner. She asked "Can I help you?" and he again responded "I'm just checking it out." She says that while he was avuncular with students, it was an "open secret" that he had "issues with women."

In the summer of 2004, she attended a campus event where Barrows was a speaker. As he went up the aisle of the auditorium, he stared at her in a provocative way. When he was about three feet away, he kissed the air and looked at her. His lewdness made her very uncomfortable.

After the office moved to [REDACTED], she was on State Street when she saw Barrows

walking toward the University. When she saw him, she crossed the street so they would not meet. When she crossed the street, he crossed with her. When she crossed again, he again crossed with her. Finally, she crossed a third time and went into a tee shirt store where she intended to confront him in a safe place, but he did not come into the store. She estimated that this happened in the summer of 2004.

█ reports another incident in the summer of 2004. She was on campus for a student orientation. At a reception, she had to move three times to get away from Barrows as he followed her with his eyes and his physical presence around the room. He stared at her and she tried to evade his stare. At one point she was standing and speaking with someone and had her back to him. He touched her back and side with his elbow or some part of his body and she walked away. He circled the room again then left.

She describes his behavior as "lewd" and "stalking." She said there was "no question" that his behavior was sexualized. She says she came forward not for herself but for women on campus and to articulate the sexualized atmosphere that surrounded Barrows.

I must stress that this conversation was brief and on the telephone. Even so, I found her account credible, detailed, and corroborated by Hong's handwritten file notes of her telephone interview with █ on June 22, 2005. The account she gave Hong was more detailed. Hong's notes recite that the event where Barrows blew her a kiss was Supersoar 2003. █ account to me was also quite consistent with her account to Wiley.

When I interviewed Barrows the second time, he identified █ as one of four employees who worked in the █. Because I had not spoken to █ at that time, and because I did not intend to use her account if it remained only hearsay through Wiley and Hong, I did not probe the

subject with him. However, I do take his comments elsewhere as a complete denial.

The conduct described by [REDACTED] certainly constitutes sexual harassment. It violates Regent Policy Document 81-2 and rules and policies found in Sexual Harassment: Defining and Addressing a Community Concern. By blowing her a kiss, looking her body up and down, following her on State Street, generally following her, and leering in what she took as a "lewd" manner, Barrows engaged in what can reasonably be regarded as an "inappropriate introduction of sexual activities... into the work or learning situation." This all happened during her university work and while he was Vice Chancellor.

There was a relationship of unequal power. [REDACTED] was a staff employee of the university and Barrows was her boss, the Vice Chancellor for Student Affairs. It involved "unwelcome expressive conduct of a sexual nature" in a situation where "such conduct had the purpose or effect of substantially interfering" with [REDACTED] work performance. She, as [REDACTED], had to devise a strategy to avoid being alone with him and to avoid places where he was. His conduct also created a "demeaning employment or educational" environment for [REDACTED]

Barrows has denied any conduct which others might construe as sexually harassing. As to [REDACTED], the only inferences that arise are that the conduct never occurred, that it occurred but Barrows does not remember it, that it occurred in some form but Barrows does not think his conduct toward [REDACTED] could be construed as sexual harassment or that Barrows was not candid in denying that any such conduct occurred. I was satisfied by the specificity and consistency of [REDACTED] account that the probabilities are that the conduct did occur. While some might say that Barrows may not have intended his conduct to be harassing and that [REDACTED] was being oversensitive, I think not. As university policy notes, whether the conduct is violative or not does not depend only solely on how it is

intended but also on how it is received. The standard is whether a reasonable person would have construed the described conduct as sexually harassing. I conclude that Barrows' conduct, no matter how intended, would be received by a reasonable person as sexual harassment.

#### 4. Jane Doe.

The relationship with Jane Doe is at the heart of this matter. For this reason, I spoke at length with Barrows, Doe, and others about it. I will give Barrows' account of the relationship first, then Doe's. I assess their relative credibility then discuss whether the relationship violated sexual harassment policies or the university's Consensual Relationship Policy. Where there are disputes of fact, I try to resolve them and to say why.

Barrows was adamant that this was not an affair but a relationship, that Jane Doe was about 40 years old at the time, that the relationship was consensual and brief, that she initiated it and that he ended it. He says that she began it by hugging and kissing him in the office, that she "courted" him with gifts and visits. He says they had sex only a few times, four to five at the most, and that he could not be wrong about this by more than a factor of one. He says that Doe could not let the relationship go when he ended it and decided to get back at him, to bring him down.

As discussed in more detail above, Barrows says he told Wiley and Nagy about the relationship and described it as above in September of 2004. He says neither saw a problem at the time. I conclude elsewhere that while neither Wiley nor Nagy thought the relationship violated the Consensual Relationship Policy, they did believe, and told Barrows they believed, that it showed poor judgment.

Jane Doe's version of the relationship is starkly different. She says she first met Barrows in the fall of 2000 when she was a [REDACTED] student. She describes him as extremely nice, kind and

supportive. She liked him a great deal. He showed sincere affection for her and for [REDACTED]. He served as her mentor and her reference and wrote graduate school and job recommendations for her. She felt that if she had a problem, he would take care of it.

She received her master's degree in 2003 then went to summer school. She came to his office to tell him goodbye and to express her gratitude. She gave him a hug and a kiss on the cheek. On July 18, 2003 she had a luncheon party at the University Club and invited people who had helped her, including Hong, Barrows, Paredes (who was unable to attend) and Schutt. When she went to Barrows' office to ask if he would be attending her party, she says that Barrows kissed and hugged her and said "I'm nervous and I don't know if I should have done that." She also says that during October and November of 2003, he grabbed and fondled her on University property. He gave her his cell phone number and on November 12, 2003 she called and left her cell number on his cell. He called her back. He asked her to come over to his place.

She was both embarrassed and flattered by his attention and wanted him to be part of her life. He called three times the night of November 12, 2003, and she went over to his residence. She went again on November 21, December 19, January 2, 2004, January 20, January 30 or 31, February 14, February 27, March 26, and May 20 or 21, 2004. On each of these occasions they were intimate.

They always got together at his home or apartment. He would be loving when he wanted her to come over and when they got together. After he would not return her calls or respond and would be cold when she did reach him. When he called, it was often late at night or in the early hours of the morning. He was often sexually explicit on the phone.

He claimed to have feelings for her and claimed he was confused but wanted to do the right thing and disclose the relationship. However, over time she came to conclude that their relationship

was about sex for him. She tried to break it off and asked him not to contact her on several occasions, but he always brought her back in. She alternately felt that she was being used for sex and that she was in a relationship.

On June 6, 2004, Barrows called. She told him she had to hear him say that he did not want to be in a relationship with her. He admitted "I don't want this relationship." He said he would not call and never did again. He said, as does she, that she made many phone calls to him between November of 2003 and June of 2004. Barrows told her on June 6, 2004 and told me, that she had called him 90% of the time and he had called her 10% of the time. It is true as he says that she was persistent in pursuing the relationship. Both Paredes and Gates confirm this and Doe does not deny it.

In July of 2004, Jane Doe went to a party for graduating classmates. [REDACTED] was there and Jane Doe heard [REDACTED] describe Barrows as a "lech" who was always looking at women. This caused Jane to finally realize that Barrows had been using her for sex and in her view only pretended to want a relationship.

There are numerous reasons I find her version, as a whole, more compelling than Barrows'. First, she has told the account in detail with great consistency. Hong's notes, Pinero's notes and their memories as well as Shutt's bear this out. Their memories and notes match the account Jane Doe gave me. Second, I specifically find her description of their encounters and the level of detail more persuasive because she brought her calendar. She explained that she was a secretary and it was and is her habit to write down in her calendar what happens and when. She made contemporaneous notes of his late night and early morning calls and their meetings at his residence along with dates of meetings and events after the relationship ended. This makes her dates and descriptions more credible and of far greater evidentiary value than Barrows' general comments from memory. Third, I found

her demeanor credible and appropriate to what he said: she was clearly upset and full of regret.

I would have liked to have had access to both Barrows' and Doe's cell phone records for the relevant period. Both told me that they had tried to obtain them but that they did not go back that far. I had no subpoena power and was foreclosed by their statements. I did obtain records for Barrows' University lines, but the University had no cell phone records. Cell phone records would have been telling, I suspect. Be that as it may, I had to proceed without them.

Based on the evidence I did have, I conclude that the more persuasive evidence about the nature of the Barrows/Doe relationship shows that the romantic encounters began in July of 2003 and continued up until November 12, 2003 when the relationship became sexual. The better evidence shows that they had sex at least ten times between November 3, 2003 and May 21 or 22, 2004, over more than six months. This belies Barrows' consistent statement that they only had sex four or five times and were only involved briefly.

Barrows says he considered a relationship with Jane Doe, but that it never "jelled" for him. He admits that he never took her out in public and never introduced her to his friends. He did not tell anyone about the relationship, as far as I discovered, until after it was over. Then he only told Nagy and Wiley because he feared how they would construe it if they heard about it from others. He has to have known that it might be seen by some as violating the university's Sexual Relationships Policy because he considered whether he had to report it, finally concluding that he did not have to do so. He certainly never shared this dilemma with anyone. While he says he eventually told his friend Mike Hempel, again that was long after the fact.

Mike Hempel confirms that Barrows told him that there was a woman who would not let go and later that the Jane Doe relationship happened before he had met his partner, [REDACTED]. Yet Barrows



admitted, after I spoke with Hempel, that there was some "overlap" in his relationship with [REDACTED] and Jane Doe. Barrows explained to me that he and [REDACTED] had an off again/on again relationship over this entire time, and that both saw others at times. Yet Barrows gave the opposite impression to his friends. Hempel and Andrea Christofferson told me that during all this time, they believed that Barrows was involved in a serious relationship with [REDACTED]. So did Barrows' former Assistant Vice Chancellor, Tom Scott (Scott). Andrea Christofferson and Mike Hempel told me that they were couples friends with Barrows and [REDACTED] and got together with them at Hempel's house for New Year's Eve, 2003. According to Christofferson, they appeared loving and demonstrative toward one another. Yet two days later, on January 2, 2004, Doe's calendar shows that she and Barrows got together at his residence<sup>5</sup>.

Hempel told me that he and his wife met [REDACTED] in June of 2003 and that the relationship between Barrows and [REDACTED] was serious. They began getting together as couples in the summer of 2003 and have done so from that time to this. I asked "If I told you that the relationship with Jane Doe was going on at the time of your New Year's Eve party in 2003-2004, would that be inconsistent with your memory and contradict what Barrows said to you?" He said that it would.

I now turn to whether the Barrows/Doe relationship violates the University's Consensual Relationship Policy. I conclude that it does not violate that rule as currently written. However, I conclude that while it does not, it certainly could reasonably be regarded by Wiley and Nagy as inappropriate and unprofessional. While I ultimately agree with Wiley, Nagy, and others that it did not violate the letter of the rule, I come to that conclusion more reluctantly than do they. I note that

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<sup>5</sup> I do not recite this to raise any moralistic issues. I raise it because I think it informs Barrows' credibility.

while Jane Doe was approximately 40 and a graduate student at the time of the relationship, and while Barrows did not grade or evaluate her work, he was her mentor and her reference. These are important functions that can make or break a career. One could regard Barrows as being, in the word of UPPP sec. 15.05, "in a position to influence [Doe's] career."

Regent Policy 81-2 also gives me pause. In it, the second reason for the concern with consensual relations is not conflicts of interest but abuses of power differentials that may exist even after conflicts of interest are resolved. Certainly there was a large power differential between Doe and Barrows. She was a student and he was the Chief Student Affairs Officer for the University. I was persuaded that the Barrows/Doe relationship likely would not have occurred were it not for his status and power. However, while the relationship may have occurred in large measure because of it, Jane Doe was not forced into the relationship or kept in it because of any power difference between them. She may have been, as she suspects, naive and gullible in believing him, but in the circumstances that is her responsibility, however much she later regretted the relationship.

While I conclude that the Barrows/Doe relationship did not violate the consensual relationship rules and policies of the University, Wiley and others could reasonably conclude that it showed bad judgment. It could also be construed as inappropriate and/or unprofessional by Barrows. I leave that to others as I have only been charged to determine the facts and assess violations of rules and policies.

##### 5. Luoluo Hong.

Hong says that Barrows' conduct, the university's lack of forthrightness in dealing honestly with it, and the factions that developed as a result, caused her to leave the University of Wisconsin-Madison and take another position at Arizona State University, Phoenix. There are rumors that Hong was asked by Wiley to resign, but they do not appear to be grounded in fact. Wiley says he wanted to

retain Hong. He wanted her to stay here. He thought he had addressed her concerns. I find this consistent with his actions.

Because much of Hong's account is found elsewhere, I focus on additional information about her claim that she was sexually harassed indirectly by Barrows, but directly by the University's mishandling of it. On October 26, 2004, as detailed above, when Doe described the relationship to Hong, Hong concluded that the relationship was predatory and that Barrows exploited Doe's insecurities and his position of authority and power. Hong knew Wiley was aware of the relationship and did not intend to engage in any formal response. Hong then wrote the November 1, 2004 letter to Wiley. This letter describing her understanding of the Barrows/Doe relationship was a precipitating event in Barrows' stepping down as Vice Chancellor.

Hong says that because the university failed to be forthright about the true reason for Barrows' resignation, she was blamed by Barrows' supporters for his demise. This came particularly from the very "colleagues of color" whose support she needed to be successful in her job. She believes that the University protected Barrows' reputation and privacy at Hong's expense. The extreme stress of being regarded as an institutional whistle blower caused her to take a physician-directed medical leave between February 25, 2005 and March 15, 2005. Upon her return she commenced her job search.

In June of 2005, when pressed about allegations in her November 1, 2004 letter that there were other women, she said that if they needed another woman, then she was one. In a conversation in June, 2005, Wiley told Hong that he had given her the solution she desired: Barrows' removal as Vice Chancellor and reassignment of Hong's reporting responsibilities. She stared at him and he had what he called a "lightbulb moment." He asked Hong "Am I part of the problem?" and she responded "Yes." It was then that Wiley says he fully understood that she also regarded herself as a victim.

I agree with Hong that there are gender and climate issues raised by this sequence of events. However I am charged to assess whether Barrows violated any University rules, policies or procedures. Certainly Hong was not the victim of unwanted sexual advances or physical conduct of a sexual nature by Barrows. Though sexual harassment may occur "when verbal, non-verbal, and/or physical conduct is sexual and/or based on gender, unwelcome, and sufficiently severe and pervasive to...create hostile, intimidating or offensive environment," I conclude by Hong's own claims that it was not Barrows' conduct, but rather the University's lack of forthrightness in dealing with it, that she believes created the hostile work environment that forced her to leave the University.

#### **IV. The University's Application of Leave Policy to Dr. Paul Barrows.**

There are at least two aspects of the University's application of relevant leave policies to Barrows: 1) permitting Barrows to be on sick leave at most times between November 2, 2004, and until June 20, 2005; and 2) placing Barrows on administrative leave with pay on June 23, 2005.

There is little question but that the second was in accordance with relevant rules and law. Barrows was a limited employee who served at the pleasure of the appointing authority. See Wis. Stats. sec. 36.17; UWS 15, Wisconsin Administrative Code; UPPP sec. 1.03. Upon termination of his limited appointment, there is no question that Barrows was entitled to return to another limited position or to the indefinite back up academic staff position granted to him by Chancellor Ward on November 24, 1997 and repeated in each of his yearly appointment letters from then to now. There is also no question but that Barrows has no right to appeal termination from his limited appointment either in November of 2004 or June of 2005. However, once he was placed in his indefinite backup academic staff position on June 23, 2005, he serves indefinitely and cannot be removed except for cause (UWS 11) or for reasons of budget or program (UWS 12). Thus Wiley's only choices on June

23, 2005, were to have Barrows start work at his academic staff position or place him in that position then place him on administrative leave with pay. He chose the latter.

The real issue here is Barrows' use of sick leave during much of the time between November 1, 2004 and June 20, 2005, and the university's part in that. It begins with Wiley's letter of November 2, 2004, accepting Barrows' resignation and instructing him to take "leave as necessary to address your personal issues" and after the "expiration of your leave" to complete certain projects. Nowhere is the nature or duration of that leave specified. The evidence shows that except for February, 2005, Barrows took sick leave and Wiley as his supervisor signed off on it. Except for February, 2005, Barrows took sick leave based on the substantial amount he had accumulated during his 17 years at the University.

Accrued sick leave is a major benefit to University and other state employees. This is a particularly valuable benefit because, upon retirement, the employee can convert the value of accumulated sick leave to pay for health insurance benefits past retirement. Wis. Stats. sec. 36.30 provides that sick leave shall be regulated by the Board "except that unused sick leave shall accumulate from year to year." Wis. Stats. sec. 40.05 (4)(b) provides that accumulated sick leave is converted at the highest basic pay rate "as of the date the Employee Trust Fund receives the application for an annuity, or retirement" Section 40.05(4)(bm) describes the use of accumulated sick leave under Wis. Stats. sec. 36.30. UWS 19.01, Wisconsin Administrative Code, as here relevant, says that sick leave "may be used for absences due to personal illness, injury, disability or pregnancy...."

Board of Regents Resolution #506, Guidelines Implementing UWS 19 of the Wisconsin Administrative Code, provides that "this policy" covers leave usage for faculty, academic staff and

limited employees like Barrows. Unclassified Personnel Guideline (UPG) #10, sec. 10.01, says that paid sick leave is a significant fringe benefit for unclassified employees "in accordance with statutory and administrative code provisions identified above." UPPP sec. 16.02 describes paid leave by saying "See Staff Benefit Booklet for Sick Leave." The UPG #10 and the Employee Benefit Booklet require each department or equivalent unit to maintain records of sick leave entitlement and requires that unclassified employees be provided with a report of sick leave balances at least once a month. Each institution is to establish sick leave procedures that require the signature of the unclassified employee and his or her supervisor. In this case Barrows was the unclassified employee and Wiley was his supervisor.

Personal illness, injury, disability or pregnancy are the grounds for sick leave. No rules or policies were found that require a doctor's excuse before an employee can take or continue to take sick leave. However, implicit in the rules and policies above is that mental stress or mental or emotional illness can be a personal illness or disability and thus be a basis for sick leave.

However, the only reasonable reading of the rules and policies is that an employee cannot take sick leave unless he or she is sick, i.e., suffering from physical or mental illness, injury, disability or pregnancy. Sick leave is different than vacation time or ALRA time (Annual Leave Reserve Account). Vacation time and ALRA are earned by accumulation. Sick leave is earned by accumulation but can only be taken when an individual employee is personally ill, injured, disabled or pregnant. While there are additional provisions under the Family Medical Leave Act which permit an employee to take leave to tend to an immediate family member's illness, these do not appear applicable here because Barrows has not claimed, as far as I know, that he took leave for this reason.

Also implicit in the rule is that when the employee's supervisor sign off on an employee's

monthly reporting of sick leave, the supervisor is the gatekeeper who indirectly affirms that he or she believes that the employee is sick. The lack of detail in the statutes, administrative code provisions, university rules and policies reflects that the taking of sick leave is typically, as many told me, a matter of trust. However, sick leave policy can be abused by an employee and/or a supervisor. It violates both the letter and the spirit of these rules for an employee to take sick leave when not sick and for a supervisor to sign off on that sick leave when the supervisor cannot reasonably conclude that the employee is sick or knows that, in fact, the employee is not sick.

I found sick leave forms filled out by Barrows and initialed by Wiley between November of 2004, and the end of May, 2005, as follows:

- 11/04: Sick leave: 84 hours (initialed by Wiley)
- 12/04: Sick Leave 164 hours (initialed by Wiley)
- 1/05: Sick Leave 148 hours, (initialed by Wiley), (later changes to Vacation hours)
- 2/05: Vacation leave, 36 hours; ALRA, 124 hours (initialed by Wiley)
- 3/05 : Sick Leave, 184 hours (initialed by Wiley)
- 4/05: Sick leave, 156 hours (initialed by Wiley)
- 5/05: Sick Leave, 168 hours (filed but not initialed by Wiley)
- 6/05: Sick Leave, no found forms

Wiley told me that he operates on trust, as do most others I interviewed, when it comes to sick leave. Though he does not investigate an employee's claim, he signifies that he has seen the form by initialing it. Wiley obviously became uncomfortable with Barrows' sick leave over time. In January he says he asked Barrows for medical proof but Barrows did not provide it and Wiley did not follow through until June of 2005 when he again asked Barrows for a medical excuse for the sick

leave he had taken since November of 2004.

Based on the evidence, I conclude that when Wiley wrote Barrows and instructed him to use "personal leave," that included sick leave. When Barrows took sick leave, that was confirmed when he submitted monthly leave forms which Wiley signed.

I am satisfied that the use of sick leave was totally justified, given Barrows' mental stress between November of 2004 and the first of the year 2005. It was reasonable for Barrows to use sick leave and for Wiley to sign off on Barrows' reporting form. After that time, while I am sure that Barrows found all these events stressful, he was not ill as that term is used in the statutes and rules. There is much evidence of this. Barrows said in a newspaper article that he was not sick when he used sick leave. He was not sick in a way that prevented him from working. As I find above, he made several attempts to return to work and was clearly physically and emotionally able and willing to do so. He was certainly well enough to apply and interview for jobs and to work with university personnel to help negotiate his position upon return. He was well enough to attend a conference between April 22 and 25, 2005. He came to the office now and then. Those who saw him frequently like Bazzell, Lee, Professor David McDonald and Hempel say Barrows, while understandably stressed over these events, was not ill in any way that appeared to prevent him from working.

While Barrows had a regularly scheduled physical examination on January 13, 2005, he was not under a doctor's care and did not return to a doctor until the middle of June, 2005. When he went to a doctor in June 2005, he went primarily because Wiley had asked him for a medical excuse justifying his sick leave, not for treatment.

When Wiley asked for a medical excuse in June, 2005, Barrows delivered a draft of an unsigned letter from his physician dated June 21, 2005 and addressed to Wiley:



[REDACTED]

Wiley forwarded it to personnel. Barrows says the letter was not signed because he and his doctor decided that it should not be signed. Therefore it cannot reasonably be taken as justification of any sort for sick leave.

I believed Wiley when he said that while he could have placed Barrows on paid administrative leave in November of 2004, he wanted Barrows to use his own accumulated sick leave, vacation and ALRA time because he wanted there to be a price to Barrows. Wiley thought Barrows should have to use his valuable accumulated sick leave instead of having the taxpayers foot the bill. Laudable as this motive may have been, it did not justify instructing and allowing Barrows to continue to take sick leave when people in Administration knew, or should have known, that after January of 2005 Barrows was not ill or disabled as that term is used in the statutes, administrative code provisions and rules and policies of the University.

I conclude that sick leave was appropriate through the first of the year 2005. Barrows then took sick leave in January 2005 as instructed. However, a note on his January form signed "mb" and dated February 17, 2005, says "Per Paul Barrows conversation w Paula Gates request all 148 hrs used as Vac not sick leave [sic]." However in March, 2005, Barrows went back on sick leave because he was running out of vacation and ALRA time. The University did not want him back at work, so there was little else Barrows could do. Wiley signed off on sick leave for March and April, 2005. Wiley did not ask for a medical excuse.

I conclude the onus of this misuse of sick leave is on the University, not Barrows. As Wiley

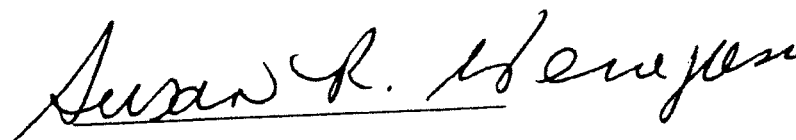
candidly admitted to me, the failure to follow up on Barrows' sick leave by making sure he had a medical excuse was "my fault. I should have pressed him on this earlier." He also admitted that he let the situation slide, that he kept thinking that Barrows would find a job elsewhere. When he did not, Wiley admits he let the situation go on too long and that he could have been more diligent in getting Barrows back to work in some capacity.

#### V. Conclusion.

Barrows engaged in some behaviors which could reasonably be regarded as sexual harassment. He pursued a relationship that could reasonably be regarded as the product of bad judgment. He either was not completely candid about his relationship with Jane Doe or failed to remember details about it that he logically should have remembered.

The University, because of a well motivated desire not to ruin Barrows and to help him find another position in or out of the University, told Barrows to take sick leave and signed off on his sick leave forms at times when it reasonably should have known that Barrows was not sick in the way the laws and rules contemplate. Sick leave became an expedient way to continue a situation that went on far too long. Good intentions caused bad results.

Dated this 29<sup>th</sup> day of August, 2005.



Susan R. Steingass  
Investigator

## APPENDIX 1

Akbar F. Ally, Assistant Vice Chancellor for Student Affairs, Emeritus

Paul W. Barrows, former Vice Chancellor for Student Affairs; Senior Administrative Program Specialist, Academic Affairs

Darrell L. Bazzell, Vice Chancellor for Administration

Andrea Christofferson, University of Wisconsin Press

Jane Doe, graduate student and university employee

██████ former student

██████, former student and former university employee

Paula A. Gates, Program Assistant, Diversity

Yolanda Garza, Assistant Dean of Students

Michael Hempel, Madison Area Technical College, retired

Luoluo Hong, former Dean of Students

Eden T. Inoway-Ronnie, Special Assistant, University Administration

Catherine R. Isenberg, Information Technology, University Administration

Elaine M. Klein, College of Letters and Sciences

Mercile J. Lee, Assistant Vice Chancellor, Academic Affairs

Stephen Lund, Academic Personnel, Office of Human Resources

David McDonald, Professor, History Department

Casey A. Nagy, Special Assistant to Chancellor Wiley

Ruby R. Paredes, Assistant Vice Chancellor, University Administration

Luis Pinero, Equity and Diversity Resource Center

Carla J. Raatz, Director, Office of Human Resources

, former university employee

Donald A. Schutt Jr., Office of Human Resources

Peter D. Spear, Provost

Thomas J. Scott, Co-Director, Application Development and Integration Technology

Amy E. Toburen, University Communications

John D. Wiley, Chancellor