

NATIONAL  
ASSOCIATION  
of SCHOLARS

September 18, 2019

Jodi Magness, President  
Archaeological Institute of America  
44 Beacon Street  
Boston, MA 02108

Dear President Magness,

This August, the Archaeological Institute of America and the Society for Classical Studies Board of Directors both approved a new Joint Harassment Policy (JHP), to apply to your joint annual conference.<sup>1</sup> To my knowledge, you did not adopt the JHP with the discussion or vote of your membership. The JHP, unfortunately, is loosely worded. I fear that the JHP, as written, will allow arbitrary objections, personal or political, to prevent members from attending your annual meeting. I also fear that individuals accused of harassment will not receive proper due process protections to protect against false accusations. Since the SCS-AIA meeting is also the major venue for Classics and Archeology job interviews, I also fear that the JHP will serve as a *de facto* bar to employment to any Classicist or Archaeologist accused of harassment, even on specious grounds.

These fears are grounded in the experience of individual colleges and universities in the last several decades, where similarly loose harassment policies have resulted in an outbreak of false, arbitrary, and/or politically motivated charges of harassment—many of which have been accepted by colleges, but subsequently overturned in the courts. I urge the Archaeological Institute of America, in coordination with the Society for Classical Studies, to revise or rescind the JHP so as to avoid the proven missteps of too many colleges and universities.

I am also sending this letter to your counterparts at the Society for Classical Studies.

I write as President of the National Association of Scholars (NAS). NAS is a network of scholars and citizens united by our commitment to academic freedom, disinterested scholarship, and excellence in higher education.

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<sup>1</sup> Joint Harassment Policy, Society for Classical Studies, <https://classicalstudies.org/annual-meeting/2020/joint-harassment-policy>.

## Background

NAS has been concerned since its foundation in 1987 about vaguely worded harassment policies, not least because they often serve as the pretext for ideological persecution of dissenters who cause subjectively and imprecisely defined “offense.” Our published statements include:

- 1) Our 1993 public statement “Sexual Harassment and Academic Freedom,” which expresses in broad terms the nature of our ongoing concerns;<sup>2</sup>
- 2) Our 2013 statement opposing the federal government’s 2013 letter requiring colleges and universities to use vague and expansive definitions of sexual harassment and misconduct;<sup>3</sup>
- 3) Our 2017 support of the Department of Education’s rescission of its 2011 “Dear Colleague” letter;<sup>4</sup> and
- 4) Our 2018 support of the Department of Education’s proposed revisions to Title IX regulation, to strengthen due process.<sup>5</sup>

We also believe that K. C. Johnson and Stuart Taylor, Jr.’s *The Campus Rape Frenzy: The Attack on Due Process at America’s Universities* provides a good recent narrative account of the effects in higher education of loosely worded harassment policies, without proper due process protections; Johnson and Taylor provide substantial factual corroboration for the NAS’s longstanding concerns.<sup>6</sup>

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<sup>2</sup> National Association of Scholars, “Sexual Harassment and Academic Freedom,” January 1, 1993, [https://www.nas.org/blogs/statement/sexual\\_harassment\\_and\\_academic\\_freedom](https://www.nas.org/blogs/statement/sexual_harassment_and_academic_freedom).

<sup>3</sup> Peter Wood, “Sexual Harassment—The Feds Go Way Too Far,” June 5, 2013, [https://www.nas.org/blogs/dicta/sexual\\_harassment\\_the\\_feds\\_go\\_way\\_too\\_far](https://www.nas.org/blogs/dicta/sexual_harassment_the_feds_go_way_too_far); and see FIRE Coalition Open Letter to Office for Civil Rights Assistant Secretary Russlynn Ali [NAS co-signatory], January 6, 2012, <https://www.thefire.org/fire-coalition-open-letter-to-office-for-civil-rights-assistant-secretary-russlynn-ali-january-6-2012/>.

<sup>4</sup> National Association of Scholars, “DeVos Rescinds Disastrous “Dear Colleague” Policy on Campus Sexual Misconduct,” September 25, 2017, [https://www.nas.org/blogs/press\\_release/devos\\_rescinds\\_disastrous\\_dear\\_colleague\\_policy\\_on\\_campus\\_sexual\\_misconduct](https://www.nas.org/blogs/press_release/devos_rescinds_disastrous_dear_colleague_policy_on_campus_sexual_misconduct).

<sup>5</sup> National Association of Scholars, “Comments on the Proposed Title IX Regulations,” November 28, 2018, [https://www.nas.org/blogs/dicta/comments\\_on\\_the\\_proposed\\_title\\_ix\\_regulations](https://www.nas.org/blogs/dicta/comments_on_the_proposed_title_ix_regulations); and see Department of Education, “Notice of proposed rulemaking,” November 16, 2018, <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>.

<sup>6</sup> K. C. Johnson and Stuart Taylor, Jr., *The Campus Rape Frenzy: The Attack on Due Process at America’s Universities* (Encounter Books, 2017); and see also Jacob Gersen and Jeannie Suk,

### Particular Concerns About the JHP

I am particularly concerned by these components of the JHP:

- 1) The JHP does not properly define individual terms such as *abuse, atmosphere, bullying, discomfort, environment, hostile, hostility, humiliation, intimidating, objectionable, offensive, sexual behavior, stalking, and unwelcoming.*
- 2) The JHP includes as an essential component the vaguely worded phrase, “Harassment under this Policy refers to any behavior by an individual or group that contributes to a hostile, intimidating, and / or unwelcoming environment.”
- 3) The JHP includes as an essential component the phrase, “Offensive jokes, teasing, or innuendos directed at other conference participants that are offensive or objectionable to the recipient, or which cause the recipient discomfort or humiliation.”
  - a. This phrase renders the JHP entirely *subjective* in its dependence on the judgment of the complainant.
  - b. This phrase is also far too broadly worded, since it includes expansive categories such as *jokes, teasing, and discomfort.*
- 4) The JHP conflates “harassment” and “sexual harassment.” This conflation tends to apply the sanctions appropriate to gross sexual misconduct to any sort of disagreement, including political or scholarly disagreement, which can be labeled as causing “discomfort.”
- 5) The JHP includes no provision for defense against false accusation.
  - a. The role of your Ombudsperson “is to provide support to those who witness or have experienced harassment or feel unsafe for any reason at the conference.” No member of the AIA or SCS is charged to defend the rights of members accused of harassment, much less to “support” them.
  - b. You mention no procedure by which persons accused of harassment may defend or vindicate themselves, or bring their own counter-claims of misconduct, to the Joint AIA-SCS Harassment and Discrimination Committee.
  - c. Your “Joint AIA-SCS Rapid Response team ... members may recommend that the AIA and SCS Executive Directors notify an individual or individuals that they should no longer attend sessions, events, and meetings at the annual conference currently in progress.” You do not spell out the procedures and standards that this Rapid Response Team (RRT) will use, and you do not charge the RRT to ensure that AIA and SCS members are not subject to false accusation.
- 6) The JHP encourages “Conference attendees who experience or witness harassment as defined above ... to make contact during the conference with the Joint Annual Meeting

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“The Sex Bureaucracy,” 104 *Calif. L. Rev.* 881 (2016), <http://dx.doi.org/10.15779/Z38HV80>; Laura Kipnis, *Unwanted Advances: Sexual Paranoia Comes to Campus* (Harper, 2017).

Ombudsperson.” This allows someone to be charged with harassment by someone other than the person allegedly harassed, thereby increasing the likelihood that the misunderstanding of a bystander will lead to unwarranted sanctions on supposed “harassers.”

- 7) The JHP mentions no sanction for false accusation. This encourages malicious false accusation, since there is no incentive to prevent it.
- 8) The JHP states that “Individuals who are currently or have been sanctioned for assault or harassment by an adjudicating institution (e.g., a university, court, or other recognized adjudicating body) will be barred from taking part in the AIA-SCS Annual Meeting and will have their registration revoked if they register.”
  - a. The JHP outsources the AIA’s and SCS’s judgment to institutions with loose evidentiary standards and definitions of harassment, and renders their members subject to adjudicating bodies with insufficient defenses against false accusation.
  - b. The JHP subjects the members of the SCS and the AIA to the varying, unequal standards of separate institutions.
- 9) The JHP states that “Formal complaints should be specific as possible about how alleged behavior constitutes harassment as defined in the policy above.” This phrase registers the excessive vagueness of the JHP, and allows for arbitrary interpretation of the JHP by the Joint AIA-SCS Harassment and Discrimination Committee.
- 10) The JHP states that “Any report received will remain confidential to the maximum extent possible when the Joint AIA-SCS Harassment and Discrimination Committee considers and investigates the complaint.” No sanction is mentioned against revealing confidential information. This is particularly important for those charged with harassment, since their reputations may be ruined by unauthorized leaks, even where they remain formally unsanctioned.

These shortcomings in the JHP render it liable to substantial abuse.

### **Suggestions to Revise the JHP**

I strongly urge the AIA and SCS to take the following steps:

- 1) I urge you to define all key terms in your policy as precisely as possible, so that they are not susceptible to arbitrary interpretation.
- 2) I urge you to substitute objectively defined offenses for all offenses that depend upon a complainant’s subjective judgment.
- 3) I urge you to remove from your definition of harassment expansive categories such as *jokes*, *teasing*, and *discomfort*. A professional organization which respects the spirit of liberty should not attempt to ban or regulate such large categories of human behavior.
- 4) I urge you to distinguish “sexual harassment” categorically from “harassment.” I urge you to define “harassment” as precisely as possible, particularly to ensure that political or scholarly disagreement is not defined as harassment. I urge you to consider eliminating

all reference to non-sexual harassment from the JHP, as the surest way of ensuring that the JHP cannot be used to limit free speech.

- 5) I urge you to revise the JHP so as to remove all presumption of guilt of anyone accused of harassment. I specifically urge you appoint an Ombudsperson specifically tasked to defend those accused of harassment, so as to ensure they are not the victims of false accusation; to draft a procedure by which persons accused of harassment may defend or vindicate themselves, or bring their own counter-claims of misconduct, to the Joint AIA-SCS Harassment and Discrimination Committee; and to spell out the procedures and standards that your Rapid Response Team (RRT) will use, to ensure that AIA and SCS members are not subject to false accusation.
- 6) I urge you to clarify the precise procedures by which the AIA and SCS will determine whether a registrant will be pre-emptively barred from attending the Annual Meeting, or will be ejected from the meeting while it is in progress. I urge you to provide an explicit procedure for appeal to either action. I urge you to draft these procedures so as to provide the presumption of innocence to anyone charged with misconduct that justifies either pre-emptive barring or ejection.
- 7) I urge you to incorporate the “clear and convincing” standard of evidence in the JHP, and not the “preponderance of evidence” standard.
- 8) I urge you to restrict individuals with standing to file charges of harassment to the individuals who claim they have been harassed.
- 9) I urge you to provide sanctions for maliciously false accusations.
- 10) I urge you to provide sanctions for breaches of confidentiality in your harassment proceedings.
- 11) I urge you to adopt an explicit harassment code of your own, and not to outsource your judgment to other institutions.
- 12) I urge you, if you must recognize harassment charges from other institutions, only to recognize charges conducted by institutions with strict due process standards to defend the accused. In particular, I urge you only to recognize harassment charges from institutions that use the “clear and convincing” standard of evidence, and not to recognize charges secured under the “preponderance of evidence” standard.
- 13) I urge you to take into account the Department of Education’s November 2018 Draft Rule on Title IX, which significantly increases due process protections. The AIA and SCS should revise their JHP to harmonize with the spirit and the letter of this Draft Rule.
- 14) I urge you to eliminate your requirement that registrants to your Annual Meeting “check a box on that form indicating that they have read and will abide by the terms of the policy.”<sup>7</sup> Given the very large flaws in the JHP as now drafted, it is not proper to require

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<sup>7</sup> AIA-SCS Joint Harassment Policy for Annual Meeting, Society for Classical Studies, <https://classicalstudies.org/scs-news/aia-scs-joint-harassment-policy-annual-meeting>.

would-be registrants to assent to a policy susceptible to gross infringement on individual liberty.

- 15) I urge you to suspend the JHP until it is revised to take account of these suggestions. I urge you to submit it to your full membership for discussion and revision, and only to enact it when it has received the assent of a majority of your membership.

### **Suggestions for Thoroughgoing Revision**

I make these above suggestions on the assumption that the AIA and SCS should continue to have a JHP of some sort. Given the sorts of abuse to which any JHP is liable, I also strongly urge you to consider rescinding your JHP entirely. If criminal behavior occurs at your Annual Meeting, any individual has the option of summoning the police. All other behavior ought to be considered presumptively in the realm of individual liberty, and not properly the subject of your regulation. The proper role of professional academic societies is to defend freedom, not to set up bureaucratic structures which tend to restrict it. I urge you to present your membership with the option of terminating the JHP, as most in suiting with the AIA's and SCS's traditions of liberty. The NAS's judgment is that it is usually the better course to rescind entirely harassment policies such as the JHP, since attempts to reform them so that they protect due process and free speech properly have usually failed.

I urge you instead to draft a formal affirmation of the value of professionalism and courtesy, free speech, and intellectual diversity, and to affirm that worries about "offense" or "discomfort" must and should yield to these fundamental principles.

### **Concluding Thoughts**

All these suggestions are intended, above all, to ensure that the AIA and SCS continue to protect their own members from false accusations of harassment or other misconduct. Given the gravity of such charges, I am sure you will agree that the AIA and SCS are duty bound to protect their members from having their reputation wrongly besmirched and their opportunity to seek jobs groundlessly impaired. Indeed, I am sure the AIA and SCS are eager to take all steps they can to protect their members from such dangers. I am sure you also agree that the AIA and SCS should seek to express that duty and that eagerness in proper administrative language.

Yours,



Peter Wood, President

National Association of Scholars