

Proposed CAMPUS CODE OF CONDUCT

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TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES

Preamble. Conduct of the members of the Cornell community is an appropriate area of concern for the University. This statement sets forth several basic principles and important policies regarding the scope, manner, and standards of regulating that conduct.

This Title is necessarily general. Its purpose is to inform the Cornell community of the general principles and policies upon which the Cornell judicial system operates, and to give general guidance to the judicial system as it handles specific cases arising under regulations authorized by the Board of Trustees, including legislation adopted by the University Assembly (or its successor) and approved by the President as representative of the Board.

Article I. Fundamental Principles

A. The Essential Purpose

The essential purpose of the University's governing of community conduct is to protect and promote the University community's pursuit of its educational goals. The University, as an educational institution, has a special set of interests and purposes, the protection and promotion of which are essential to its effective functioning. These interests, with respect to the governing of community conduct, include the following:

1. the opportunity of all members of the University community to attain their educational objectives;
2. the generation and maintenance of an intellectual and educational atmosphere throughout the University community; and
3. the protection of the health, safety, welfare, property, and human rights of all members of the University community, and the safety and property of the University itself. These general interests, of course, are also the subject matter of the public laws of the state and nation.

B. The University's Role

The University's role in regulating community conduct is distinguishable from society's. Therefore, the powers of the University's judicial boards shall be limited to the enforcement of University conduct regulations and shall not extend to the enforcement of public laws, except to the coincidental extent that such University conduct regulations are similar to provisions of the public law.

C. The Principle of Freedom with Responsibility

The principle of freedom with responsibility is central to Cornell University. Freedoms to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully are essential to academic freedom and the continuing function of the University as an educational institution. Responsible enjoyment and exercise of these rights mean respect for the rights of all. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

Article II. Supporting Policies

A. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement

The following basic policies will apply in situations where misconduct violates both a University conduct regulation and the public law:

1. The following kinds of offenses are adjudicated in the public courts: all felonies, controlled substance offenses, motor vehicle moving violations, assaults upon a peace officer or resisting arrest, refusals by persons to identify themselves, as well as cases in which the complainant wishes to proceed in the courts and cases involving accused persons who are not members of the University community. Nonetheless, such kinds of misconduct can also be pursued under the Campus Code of Conduct.

2. When the Judicial Administrator determines that misconduct does not constitute a serious breach of the law and that the interests of justice would be served by handling such misconduct within the University jurisdiction, he or she shall:

- a. attempt to exercise jurisdiction in a manner to avoid dual punishment for the same act;

- b. cooperate with public officials so that the exercise of University jurisdiction ordinarily will not be followed by public prosecution of the individual's misconduct; and

- c. withhold the exercise of University jurisdiction, when prompt public prosecution is anticipated or is under way, until public officials have disposed of the case by conviction or otherwise.

3. Policies covering conduct that violates both a University conduct regulation and the public law, where feasible, should be based on jurisdictional understandings and procedures jointly developed and periodically reviewed by University and local officials. To the maximum extent feasible, jurisdictional understandings shall be made known to the University community.

B. Other Policies on the University's Role in Public Law Enforcement

1. When public officials apprehend an individual for a violation of the public law, whether or not the misconduct is also a violation of a University conduct regulation, the University shall neither request nor agree to specially advantageous disposition of an individual's case by police, prosecutors, or judges solely because of that individual's status as a member of the University community. Nonetheless, the University stands ready to assist student defendants and to cooperate with public officials to promote equitable application of the law. Should a student charged with law violation request assistance from the University, a representative of the Office of the Dean of Students or Office of the University Ombudsman will meet with such student and may advise him or her and, if requested, may facilitate the student's retention of suitable counsel. If the law violation does not also constitute a violation of a University conduct regulation, and if the student defendant consents, the University ordinarily will cooperate with the request of appropriate law enforcement officials for programs of probation or rehabilitation. Notwithstanding the above provisions, if the prosecution, the complainant, and the accused all consent, minor breaches of the law may be handled exclusively within the University jurisdiction, except in case of repeat offenses.

2. The University's cooperation with law enforcement, at the request of public officials, shall be exercised in each particular case with a view to safeguarding the interests of the educational community, especially that community's confidence in the University.

C. Limitations and Exceptions

1. Overriding Laws

a. It is understood that the Board of Trustees, under sections 5708 and 5709 of the New York Education Law, is responsible for the protection of the grounds, buildings, and property of Cornell University, including state property under its supervision and control, and for the prevention of crime and the enforcement of law and order. These and other statutory provisions regarding law enforcement led to the creation of the Cornell Police, staffed by peace officers who are deputy sheriffs of the county. Under section 6430 of the New York Education Law, adopted in 1969, the Board must also adopt regulations for the maintenance of public order and provide penalties in addition to those for the same misconduct under the New York Penal Law. State law makes the trustees responsible for the enforcement of such rules and regulations as the Board makes from time to time. These state laws cannot be superseded by actions of the Board, nor may the Board evade its legal responsibilities by delegation.

b. Under state law, public servants who knowingly refrain from performing a duty imposed upon them by law, or a duty clearly inherent in the nature of their

office, may be guilty of a criminal offense. Accordingly, any inflexible internal rule that precludes a peace officer from making an arrest when a crime has occurred would be contrary to law. It is understood, however, that as to minor offenses, law enforcement authorities are permitted a degree of discretion in determining whether to prosecute an offender or to pursue some other appropriate remedy when an alternative disposition would further the interests of justice. Accordingly, the policies enumerated above are understood to constitute policy guidelines to be applied in good faith, and not prohibitions upon the exercise of the law enforcement responsibilities vested in the Board of Trustees and exercised by its authorized peace officers. That is, such peace officers must retain the sole discretion to determine the circumstances in which the public laws must be enforced.

2. Presidential Overrides

a. Public Disorder

The President may alter or suspend the implementation of the policies enumerated above when the President finds that the Regulations for Maintenance of Public Order, constituting Title Four hereof, are insufficient to maintain public order and when there is an imminent and sufficient threat to the University community's pursuit of its educational goals to warrant such action. Any such action of the President shall be subject to and consistent with the applicable laws of the state and nation.

(1) Should the President exercise such authority, such action shall be made known to the University community immediately, together with a statement explaining the basis of such action. Such deviation from the implementation of said policies should last no longer than necessary to alleviate any pending threat.

(2) It is not intended that the President will seek to suspend the general application of said policies except in cases in which the President finds a threatened imminent and general breakdown in the University's capacity to enforce law and order. It is not intended, therefore, that the President will exercise such authority in cases involving individual misconduct.

b. Grave Misconduct

An individual's exceptionally grave misconduct, particularly misconduct that threatens or attempts to cause physical or mental harassment, may demonstrate such flagrant disrespect for the basic integrity and rights of others as to call into question continuance of the individual's membership in the University community, because (1) his or her presence would adversely affect the ability of others to pursue their educational goals or (2) his or her misconduct grossly violated standards of behavior requisite to the maintenance of an educational

community. In the event of such conduct, if the conduct is not covered by any specific provision of a University regulation or statement regulating conduct or if the relevant regulation does not provide a sanction adequate to protect the safety of the University community, nothing in this Code shall preclude the President or his or her designee, under the authority of the Board of Trustees as expressed in the University Bylaws, from taking appropriate and lawful action.

Article III. Responsible Speech and Expression

A. Public Speaking Events on Campus

1. Arrangements for Invited Speakers

Any recognized campus organization is free to invite a speaker to address its own membership in a private, closed meeting under ground rules set by the inviting organization. A closed meeting can serve many legitimate purposes, including creation of a more informal atmosphere, maximizing the opportunity of organization members to ask questions, allowing the speaker to talk “off the record,” and ensuring a particular kind of discussion because of advance preparation by the organization’s membership. If a speaker is likely to attract widespread interest among nonmembers, however, the group would often be wise to open the meeting to nonmembers, including those with views contrary to those of the speaker. Nevertheless, the University does not insist that the group do so.

If the group chooses to open the event to the University community, it should seek to arrange adequate space to accommodate the reasonably expected audience. In such a public event, the inviting group may also decide whether there is to be a question-and-answer period and, if so, its length and general format. The speaker or moderator should also be allowed reasonable discretion in requiring questioners to be concise, not to abuse the speaker, and not to monopolize the proceedings or otherwise interfere with their purpose. If a question-and-answer period is held, however, neither the speaker nor the moderator should be allowed in recognizing speakers to discriminate on such grounds as ethnicity, gender, national origin, political persuasion, race, religion, sexual orientation or affectional preference, or other suspect or invidious categories. By the same token, at a public event, the sponsoring organization should not be allowed to bar attendance or give preferred seating on the basis of such suspect or invidious categories.

2. Disruption of Invited Speakers

Freedom of speech, within commonly accepted limits of safety and civility, is a paramount value in a university community. In a university community, as in society as a whole, freedom of speech cannot be absolute. Speech that is libelous, or that incites a crowd to riot, deserves no protection. Perhaps no one, in real life, has ever falsely shouted “Fire!” in a crowded theater, but surely no one has a right to do so.

Within such commonly accepted limits, however, freedom of speech should be the paramount value in a university community. Because it is a special kind of community, whose purpose is the discovery of truth through the practice of free inquiry, a university has an essential dependence on a commitment to the values of unintimidated speech. To curb speech on the grounds that an invited speaker is noxious, that a cause is evil, or that such ideas will offend some listeners is therefore inconsistent with a university's purpose. One may argue against inviting a speaker on the grounds that the speaker has nothing of importance to say. But once members of the university community extend an invitation, others may not disrupt the speech on the grounds that they find it stupid, immoral, or dangerous.

Those who dislike what an invited speaker is saying also have rights. The rights include distributing leaflets outside the meeting room, picketing peacefully, boycotting the speech, walking out, asking pointed questions, and, within limits set by the moderator, expressing displeasure with evasive answers. Those who oppose a speaker may thus make their views known, so long as they do not thereby interfere with the speaker's ability to be heard or the right of others to listen. Name-calling and the shouting of obscenities, even when they are not carried so far as to abridge freedom of speech, are nevertheless deplorable in a community devoted to rational persuasion and articulate controversy. Civility is a fragile virtue, but one upon which a university ultimately depends.

The American conception of academic freedom includes the principle that professors may participate in political demonstrations and speak out on controversial issues without jeopardizing their employment. In a campus setting, however, academic freedom carries with it certain responsibilities. Scholars not only should respect the professional demands of their discipline and the pedagogical requirements of the teacher-student relationship, but also should not encourage efforts to abridge the free expression of controversial viewpoints. As citizens, professors may or may not be especially solicitous about freedom of speech; as scholars, they are morally bound to defend it. Professors traduce their calling by any deliberate action demonstrating contempt for freedom of speech.

Civil disobedience is not a ground for exonerating one from penalties for violating conduct regulations regarding free expression, nor should it be a circumstance mitigating the penalty. Although nonviolent civil disobedience can be an honorable way of expressing moral outrage, in a university community where the free flow of ideas is paramount, it is contradictory and misguided to employ it to deny that very right of expression to another.

B. Protests and Demonstrations on Campus

1. Protected Expressive Conduct in General

The University will treat as within the basic protection of a right to free expression such lawful conduct as satisfies the following tests, where lawful means not in violation of state or federal law. The conduct should (a) be intended for expressive purposes, (b) be reasonably understood as such by the University community, and (c) comply with such reasonable time, place, and manner restrictions as are consistent with the other provisions of this Article and as may be authorized from time to time by the President.

Even in regard to conduct that is intentionally expressive and perceived as such, the University should impose reasonable time, place, and manner restrictions on such conduct to preserve other important values and interests of the University community. An accused charged with such conduct may assert as a defense that he or she has complied with such time, place, and manner restrictions.

All protection and regulation of expressive conduct should be content-neutral. A group's persuasion or point of view should have no bearing on the grant of permission or the conditions regulating that group's expressive conduct.

2. Symbolic Structures

Symbolic structures will be allowed in accordance with an express permit issued by the Vice President for Student and Academic Services or other presidential designee. Such structures must be temporary and must conform to the conditions contained in the permit. In regulating by permit the duration, size, location, and other features of symbolic structures, the administration will be guided by attention to the following, or similar, kinds of University community interests that such structures could infringe upon:

- (a) protecting health and safety;
- (b) preventing damage and risk of damage to University grounds and property;
- (c) preserving unimpeded mobility on pathways and streets, entrance to and departure from buildings, and unimpeded mobility within buildings;
- (d) providing for competing uses of campus grounds and property;
- (e) avoiding interference with other University activities;
- (f) reasonably limiting costs to the University of increased campus police protection, potential University liability, insurance coverage, and cleanup and repair after an event; and
- (g) preserving campus aesthetic values.

In addition to such limits, other restrictions on symbolic structures may also be imposed. For example, depending on experience and context, the President may impose any of the following restrictions: requiring portability so that structures do not remain overnight; prohibiting overnight sleeping in structures; and requiring continual daytime physical presence of persons responsible for the expressive activity.

3. Demonstrations Not Involving Structures

Picketing, marches, rallies, and other demonstrations are traditional and legitimate forms of self-expression and dissent on campus. The limiting principle for such activities is that demonstrators must not disrupt other University functions, including, without limitation, regular and special curricular activities, extracurricular activities, academic processions and events, conduct of University business, and employment interviews. The right to free expression here, as in other contexts, requires respect for the rights of others.

Because outdoor picketing, marches, rallies, and other demonstrations generally pose no threat of long-lasting exclusive use of University grounds or property, there appears to be no need for a mandatory permit procedure for such outdoor activities.

As to indoor demonstrations such as sit-ins, owners of private property, and even the administrators of public property, are not required to permit the occupation of buildings by those who are not present to transact the business or pursue the other purposes that the offices in the building are intended to serve. Classrooms, libraries, laboratories, living units, and faculty and administrative offices are dedicated to specific purposes, which the University must be free to pursue without disruption. The law of trespass and the right of free speech are not mutually exclusive and, indeed, have always coexisted in our legal system.

Accordingly, the President may authorize regulations permitting the use of specific portions of University buildings, provided that such regulations shall not permit the occupation or disruption of classrooms, libraries, laboratories, living units, or offices and shall ensure the continuing conduct of University business. No such use shall be permitted beyond 5:00 p.m. or the close of normal business hours, whichever is earlier. Nevertheless, as pointed out elsewhere in this Article, University rooms set aside for the purpose of gatherings involving speech and expression should not be licensed in a manner to deny access to groups sponsoring an unpopular point of view.

Deans, directors, or other heads of each college, school, or other academic unit described in Article I, section 7, of the University Bylaws may submit proposals to the President on the promulgation of such regulations for the use of University buildings assigned to the use of such college, school, or unit. No such regulation shall take effect or continue in effect without the approval of the President.

The President may promulgate regulations governing the use of Day Hall or any other University building not otherwise governed by such regulations. As a practical matter, although demonstrations inside virtually any University building would be disruptive, the working space within Day Hall is especially compact. Almost any assemblage of demonstrators inside the building could be disruptive to Day Hall staff and to others, especially students, seeking access to a Day Hall office for normal business purposes.

4. Disruption of Recruiters

As long as a recruiter is on campus in accordance with ordinary University processes, a demonstration or protest that intentionally disrupts recruitment activity should be and is a violation of University conduct regulations and should not be tolerated.

The right to express one's views should not extend so far as to infringe upon another University community member's right to participate in a recruitment interview or information session with a recruiter who is on campus in accordance with ordinary University processes.

C. Consultation Groups

The President is authorized and encouraged to appoint a standing committee to study and report to the President on significant policy issues concerning the protection of freedom of expression on campus. The committee should study any issue presented to it by the President. It should also receive petitions or inquiries from members of the University community, but should limit its attention to issues that involve important matters of a policy nature. Thus, the committee could study an individual's charge that University officials are not adequately enforcing the policy against disrupting public speakers or that they are imposing unreasonable constraints upon the right to protest or demonstrate peacefully and lawfully on campus. The committee should not function as an adjudicatory body, or receive any complaint about or continue considering any issue arising from a campus incident after a disciplinary proceeding growing out of that incident and involving the same or similar issues has been initiated, until any such disciplinary proceeding has been completed. Any report issued by the committee should go to the President and should be available thereafter to the University community. The report would be advisory only.

The President may consult with the Executive Committee of the University Assembly, or appoint an ad hoc committee to advise the President, concerning appropriate administrative policy in the face of protest and demonstrations.

Article IV. Amendment of Code

A. Title Four

The Regulations for Maintenance of Public Order were adopted by the Board of Trustees and may be amended only by action of the Board of Trustees, upon the recommendation of or after consultation with the University Assembly.

B. Titles One, Two, and Three

All other Titles of this Code may be amended by the University Assembly, subject to the approval of the President.

TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM

Article I. Judicial Jurisdiction

A. Jurisdiction in General

All violations of the Campus Code of Conduct by a student, member of the University faculty, other employee of the University, or University-registered organization shall be processed through the campus judicial system, consistent with the principles stated in Article II of Title One, except as otherwise provided in Section C below. Any defense of lack of jurisdiction, or other inapplicability of this Code, shall be deemed waived if not raised by the accused at least three business days prior to the hearing.

B. Jurisdiction over Students

1. The term student shall be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as:

- a. a degree candidate in any of Cornell's undergraduate or graduate divisions;
- b. a special student in the undergraduate divisions; or
- c. a non-degree-candidate in the graduate school.

2. The term student shall be interpreted to mean also persons not officially registered, and not faculty members or other University employees, if they are:

- a. currently enrolled in or taking classes at the University;
- b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities; or
- c. currently on leave of absence or under suspension from being a student of the University.

C. Jurisdiction over Faculty and Other Employees

1. Faculty members and other University employees include those who are incidentally taking classes at the University.

2. The procedures of this Code shall not apply to faculty members or other University employees who are accused of employment-related misconduct. Instead, an administrative process shall apply.

a. Should any accusation or complaint of a Code violation be made to or by a department head, dean, supervisor, or the Judicial Administrator and involve conduct by a faculty member or other University employee clearly arising in the course of employment, then the department head, dean, or appropriate University administrative authority shall determine whether there was a Code violation and shall also assess penalties and/or remedies where appropriate.

(1) The accused may make a jurisdictional appeal to the Judicial Administrator, i.e., raise a question whether the alleged conduct arose in the course of employment and so call for rechanneling into the judicial system.

(2) The accused may make an appeal on the merits of the administrative disposition through appropriate faculty channels or the employee grievance procedure, but not through the judicial system.

b. If an accusation or complaint of a Code violation comes before a department head, dean, or supervisor about conduct by a faculty member or other University employee not arising in the course of employment, or there is uncertainty whether it does, the accusation or complaint shall be referred to the Judicial Administrator for channeling into the administrative process or the judicial system.

c. The criterion on which the Judicial Administrator shall channel between the administrative process and the judicial system is whether the conduct is employment-related. In reaching such a decision, the Judicial Administrator shall consult with the Dean of the Faculty if the case involves a faculty member or the Vice President for Human Resources if the case involves a nonfaculty employee. The Judicial Administrator shall make his or her own decision after such consultation.

d. Upon imposition of a penalty of suspension or dismissal upon a faculty member by the University Hearing Board, the faculty member may choose to appeal to an arbitration committee (as described in Cornell University Policy 6.2.10) in lieu of appeal to the University Review Board. Any penalty imposed on a nonfaculty employee is subject to review either pursuant to applicable grievance procedures or by appeal to the University Review Board, as the employee may choose.

Article II. Judicial Offices

A. Office of the Judicial Administrator

1. The Office of the Judicial Administrator receives, investigates, and pursues accusations of violations of the Campus Code of Conduct, or of any other regulation as the University Assembly or Board of Trustees may direct. Anyone can direct such accusations, or any questions about the judicial system, to that office.

2. No employee of the Office of the Judicial Administrator shall be a member of the University, Student, or Employee Assembly, or any of their committees or boards, or of a judicial board.

3. The Judicial Administrator shall be appointed for a two-year term. A Judicial Administrator can be reappointed for additional terms. In October of the year preceding the expiration of the term of the Judicial Administrator, or upon the University Assembly chair's receipt of notice of the Judicial Administrator's resignation or removal, the chair shall convene a six-member search committee, including two members appointed by the President and four members appointed by the University Assembly, to propose two or more nominees to the President. The President shall appoint a candidate with the concurrence of the University Assembly. In the event of an unexpected vacancy, the Associate Judicial Administrator shall be appointed by the President, with the concurrence of the University Assembly, to serve until a permanent Judicial Administrator is appointed.

4. The Judicial Administrator shall be solely responsible for the Office of the Judicial Administrator. The Judicial Administrator shall be independent, although an administrative relationship should exist with the University administration that will support that office. He or she shall be subject to removal during the term of office only by action of the Board of Trustees upon recommendation of the University Assembly.

5. The Judicial Administrator shall annually report to the President, the University Assembly, and its Codes and Judicial Committee on the operation of the office and the judicial system as a whole.

B. Office of the Judicial Codes Counselor

1. The Office of the Judicial Codes Counselor provides free assistance and representation within the judicial system to those charged with violations of the Campus Code of Conduct and to students charged with violations of the Code of Academic Integrity.

2. To the extent permitted by law, the Judicial Codes Counselor shall not reveal any information provided by the accused, unless the accused expressly requests that the information in question be confided to another person. Although the Judicial Codes Counselor traditionally has had some legal training and is frequently a law school student, the services are not meant to be a substitute for professional legal advice or for the legal assistance provided by an attorney. The Judicial Codes

Counselor primarily explains how the judicial system works, and assists the accused in the selection of counsel or an advisor. With the consent of the Judicial Codes Counselor, an accused may choose the Judicial Codes Counselor as the accused's advisor.

3. No employee of the Office of the Judicial Codes Counselor shall be a member of the University, Student, or Employee Assembly, or any of their committees or boards, or of a judicial board.

4. The Judicial Codes Counselor shall be appointed for a two-year term. A Judicial Codes Counselor can be reappointed for additional terms. The President shall appoint the Judicial Codes Counselor with the concurrence of the University Assembly, following the procedures for the appointment of the Judicial Administrator.

5. The Judicial Codes Counselor shall be solely responsible for the Office of the Judicial Codes Counselor. The Judicial Codes Counselor shall be independent. He or she shall be subject to removal during the term of office only by action of the Board of Trustees upon recommendation of the University Assembly.

Article III. Judicial Participants

A. Complainant and Victim

1. Any student, member of the University faculty, or other employee of the University can allege a violation of this Code, of which he or she was the victim, by filing a complaint with the Judicial Administrator.

2. In cases in which such formal complaint is made by one or more individuals, such individuals shall be designated as the complainants. In cases in which no such formal complaint has been made or pursued, and an investigation is initiated by the Judicial Administrator, the University community shall be designated as the complainant. However, in cases concerning violations against the interests of the University, "Cornell University" (the corporation) may be named as complainant.

3. The complainant and the victim, whether or not he or she is a member of the University community, each shall have the right to be present at any relevant hearing. Each shall have the right to be accompanied at every stage by a personal advisor, but that advisor shall not be a witness and shall not participate in a hearing in the capacity of counsel. The Judicial Administrator shall provide to the complainant and the victim information about the University's Victim Advocate and other relevant resources, including information about how to file a police complaint.

B. Defense Counsel or Advisor

1. When an accused appears before the Judicial Administrator, the University Hearing Board, the University Review Board, or other University officials acting in a judicial capacity, the accused has the right to legal counsel or to advice by an individual of the accused's choice. The counsel or advisor for the accused may be any member of the University community or general public.

2. The accused shall have the right to act as his or her own counsel.

Article IV. Judicial Boards

A. University Hearing Board

A five-person panel of the University Hearing Board shall adjudicate cases under the Campus Code of Conduct. The President shall name at least one person, who is a senior member of the faculty recommended by the Dean of the Faculty and not a member of the University administration, to be a Hearing Board Chair presiding over five-person Hearing Panels' proceedings but having no vote; that chair shall be appointed for a two-year term, but can be reappointed for additional terms.

B. University Review Board

A three-person panel of the University Review Board shall hear appeals under the Campus Code of Conduct. The President shall name one person, who is a senior member of the faculty recommended by the Dean of the Faculty and not a member of the University administration, to be the Review Board Chair presiding over three-person Review Panel's proceedings but having no vote; that chair shall be appointed for a two-year term, but can be reappointed for additional terms.

C. Pool of Board Members

1. The University Hearing Board and University Review Board pool shall comprise 50 members confirmed by the University Assembly: 20 students, 15 faculty members, and 15 nonfaculty employees. Faculty members are nominated by the Dean of the Faculty. For other candidates, the Office of the Assemblies will solicit written applications, and the Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly.

2. No person shall serve on the University Hearing Board and University Review Board pool who is at the same time a member of the University Assembly or its Codes and Judicial Committee or is an employee of the Office of the Assemblies.

3. Members of the University Hearing Board and University Review Board pool shall serve terms of office as follows:

- a. All members shall be appointed for two-year staggered terms.
 - b. Terms of office shall begin with the first day of classes in the next academic year. Any appointment to fill a vacancy shall become effective immediately.
4. All the members of the University Hearing Board and University Review Board pool shall annually elect one Administrative Chair from among those members.
5. Although the judicial boards decide cases and appeals when sitting in panels, the pool as a group, convened by the Administrative Chair, shall perform the following functions:
- a. The judicial boards shall be responsible for establishing their own internal rules and procedures not specified elsewhere, and making them available through the Offices of the Judicial Administrator and the Judicial Codes Counselor.
 - (1) Such rules and procedures must be published in the Cornell Chronicle before going into effect.
 - (2) Any changes in rules and procedures must be published in the Cornell Chronicle at least 30 calendar days before taking effect.
 - b. Upon request, the judicial boards shall report on their operations to the Codes and Judicial Committee of the University Assembly.

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

Article I. Applicability

This Title shall apply to all students, members of the University faculty, other employees of the University, and University-registered organizations, except that those of the Medical College and the Graduate School of Medical Sciences shall be governed by separate regulations with respect to property and facilities of the Medical College and the Graduate School of Medical Sciences.

This Title shall apply to conduct on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area.

This Title shall also apply to conduct elsewhere if the Judicial Administrator, with the approval of the President or his or her designated representative, considers the conduct to constitute a serious violation of this Title in that the conduct poses a substantial threat to the University's educational mission or property or to the health or safety of University community members.

Article II. Violations

A. Listing

1. It shall be a violation of this Title, as an offense against another person:
 - a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.3.
 - b. To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public place.
 - c. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable.
 - d. To harass intentionally another person (1) by following that person or (2) by acting toward that person in a manner that is threatening, abusive, or severely annoying and that is beyond the scope of free speech.
 - e. To assault or cause any physical injury to another person on the basis of disability, ethnicity, gender, national origin, race, religion, or sexual orientation or affectional preference.

f. To haze another person. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol, drugs, or other substances, or (4) violates any University policy.

g. To (1) endanger another person, including by such acts as violation of Life Safety regulations, theft or use of fire extinguishers, or use of firecrackers or flares, or (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.

h. To endanger or to cause damage to or loss of property of another person.

i. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.

j. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.

k. To defraud, including by such acts as failure to redeem a bad check.

l. To invade privacy or misappropriate property rights by videotaping, photographing, audiotaping, or otherwise making any picture or sound recording of another person without that person's consent.

2. It shall be a violation of this Title, as an offense against the University:

a. To endanger or to cause damage to or loss of property of the University.

b. To misappropriate University funds.

c. To bribe a University official.

d. To (1) forge, fraudulently alter, willfully falsify, or otherwise misuse University or non-University documents (including computerized or noncomputerized records, parking permits, dining cards, identification cards, other permits or cards, reserve books, or other property) or (2) possess such forged, altered, or falsified documents.

e. To furnish false information to the University with intent to deceive.

f. To claim falsely to represent the University or a University-registered organization.

g. To enter upon or make use of University property or facilities without authorization.

h. To fail to leave a University building after a fire alarm has sounded or other notice of fire has been given, whether or not a drill.

i. To commit a violation of Article II of Title Four.

3. It shall also be a violation of this Title:

a. To engage in disorderly conduct. Disorderly conduct means intentionally causing, or recklessly creating a risk of, disruption to the University community or local community, including by such acts as (1) violent, tumultuous, or threatening behavior, (2) unreasonably loud or belligerent behavior, or (3) obstruction of vehicular or pedestrian traffic.

b. To possess any alcoholic beverage by a person under 21 years of age with the intent to consume such beverage, except if that beverage was given to that person (1) by that person's parent or guardian or (2) as part of an official University course for which the person is registered and in which tasting or imbibing alcoholic beverages is required for instructional purposes.

c. To traffic, for profit or otherwise, in goods or services in a manner incompatible with the interests of the University community or local community.

d. To unlawfully manufacture, distribute, dispense, possess, use, or sell controlled substances as defined by state or federal law.

e. To publicly urinate or defecate.

f. To destroy evidence or otherwise obstruct the application of this Code.

g. To assist, urge, or incite another person to violate this Title.

h. To attempt to violate this Title.

B. Interpretation

Because the judicial system utilizes the decisions of the University Hearing and Review Boards to define or interpret violations, public records of all decisions of those boards shall be kept on file in the Office of the Judicial Administrator, including a brief

summary that describes the nature of the case and its disposition but with names of individuals and other identifying information redacted.

Article III. Procedures

A. Initial Investigation

1. The Judicial Administrator shall promptly cause an investigation to be made:

a. upon receiving a complaint alleging a violation of this Code by a student or University-registered organization or a non-employment-related violation by a faculty member or other University employee;

b. upon determining that a complaint referred to him or her by a department head, dean, or supervisor, or by means of a jurisdictional appeal, is non-employment-related; or

c. upon receiving information that a violation of this Code may have occurred when no formal complaint has been made or pursued.

2. During the course of an investigation, the Judicial Administrator, before filing formal charges, may interview the persons involved. Prior to any such interview the Judicial Administrator shall, in writing, inform the person of:

a. the matter to be discussed and the person's alleged relationship to it; and

b. the services of and contact information for the Office of the Judicial Codes Counselor.

B. Interim Measures

1. The Judicial Administrator shall work with Campus Life, in cases in which the victim and the accused live in the same residence hall and there is a substantial danger of future harm or misconduct, to determine whether Campus Life should relocate the victim or the accused to another residence hall.

2. Temporary Protection Directive

a. In cases involving allegations of harassment, abuse, assault, rape, or other menacing activity, the Judicial Administrator, after making a reasonable effort to meet with the accused if appropriate to do so, may issue a Temporary Protection Directive.

b. The Judicial Administrator shall make available to the accused the exact terms of the Temporary Protection Directive, as soon as it is issued.

c. In the event the Judicial Administrator is notified of a violation of the terms of the Temporary Protection Directive, the accused shall be provided with an opportunity to review the matter with the Judicial Administrator within two business days. If the Judicial Administrator determines, based upon the information available, that the Temporary Protection Directive has been violated, he or she may suspend the accused temporarily, pending resolution of the underlying case.

d. In the case of such suspension, the accused may petition the University Hearing Board in writing for a review of the decision. That board shall meet to consider the petition as soon as possible, but no later than five business days after it receives the petition. However, that board may grant an adjournment upon the request of the accused, to a date not later than 21 calendar days after the petition is received. If that board determines that the Temporary Protection Directive was not violated or the suspension was improper or is no longer necessary, it shall lift the suspension immediately.

e. The Judicial Administrator may, in his or her discretion, rescind a Temporary Protection Directive or lift such a suspension if he or she determines that the circumstances no longer require such action.

3. Temporary Suspension Pending Resolution

a. Suspension of an Individual

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or designee.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion.

b. Suspension of a University-Registered Organization

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative, after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate, shall have discretionary power to suspend the activities of a University-registered organization pending resolution of the underlying case.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate.

c. When the President or his or her designee exercises this power to suspend temporarily, these procedures shall be followed:

(1) In the case of such suspension, the accused may petition the University Hearing Board in writing for a review of the suspension. That board shall meet to consider the petition as soon as possible, but no later than five business days after it receives the petition. However, that board may grant an adjournment upon the request of the accused, to a date not later than 21 calendar days after the petition is received.

(2) If the University Hearing Board determines that (1) good cause has not been shown for the exercise of the President's suspension power or (2) that circumstances have changed so that suspension is no longer necessary, the suspension shall be lifted immediately.

(3) If the suspension remains in effect after the University Hearing Board's initial meeting, that board may decide to reconvene, upon motion by any member or the chair of the panel or upon the request of the suspended person or University-registered organization, to determine whether circumstances no longer require suspension.

C. Summary Decision

1. The Judicial Administrator and the accused may agree, in writing, to a summary decision before formal charges are filed. If a Summary Decision Agreement is reached, the Judicial Administrator shall:

a. send a notice of formal accusation and of the provisions of the summary decision to the accused; and

b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

2. In the event that this summary procedure is employed:

a. All penalties and remedies listed in Article IV may be assessed via summary decision. In the case of suspension or dismissal, however, the Judicial

administrator must obtain the prior approval of a Hearing Board Chair, to insure against the possibility of intimidation or coercion in the negotiations.

b. A summary decision shall not become final until two business days after reaching agreement.

3. The Judicial Administrator shall determine, without undue delay, whether to offer a summary decision, to file formal charges, or to take no action.

4. The Judicial Administrator shall notify the complainant no more than two business days after the summary decision becomes final or after he or she otherwise decides not to file charges.

5. If the complainant is dissatisfied with the summary decision or with the decision of the Judicial Administrator not to file charges, he or she may petition the Judicial Administrator in writing to show cause for the decision before the University Hearing Board. This petition must be received by the Judicial Administrator within three calendar days after the complainant's receipt of the Judicial Administrator's notice of the nonaction or summary action. The Judicial Administrator shall promptly forward the petition to a Hearing Board Chair. The University Hearing Board shall meet to consider the petition within 21 calendar days of receipt of the petition by the Judicial Administrator. That board can:

a. uphold the decision of the Judicial Administrator;

b. order the Judicial Administrator to reopen the investigation; or

c. order the Judicial Administrator to file charges so that the case can be adjudicated by the University Hearing Board.

D. Formal Charges

1. Notification of Charges

a. If, as a result of an investigation, the Judicial Administrator determines that there is reasonable cause to believe that a violation has been committed, and a Summary Decision Agreement has not been reached, then the Judicial Administrator shall promptly refer the case to the University Hearing Board by filing charges with a Hearing Board Chair.

(1) The Judicial Administrator shall make a good faith effort to serve notice of the charges on the accused (or on an officer of record of an accused University-registered organization) within seven calendar days of the filing of charges:

(a) by personal service; or, if personal service is impossible to effect after diligent effort,

(b) by certified mail, return receipt requested, to the accused's last known local or permanent address; or, if such mailed notice is impossible to effect,

(c) by a means reasonably calculated to result in actual notice.

(2) Notice of the charges shall contain:

(a) the charges in the form of a formal accusation;

(b) instructions to contact the Judicial Administrator within four business days of the accused's receipt of notice, so that a time for appearance of the accused before the Judicial Administrator may be agreed upon;

(c) notice of the nature of the evidence to be used against the accused; and

(d) a brief summary of the services of and contact information for the Office of the Judicial Codes Counselor.

b. The Judicial Administrator shall provide a copy of charges made against the accused on request of University officials, the Judicial Codes Counselor, or any other officer or board of the judicial system.

2. If the accused does appear, the Judicial Administrator shall again advise the accused of access to the Office of the Judicial Codes Counselor, and shall refer the accused to this Code and available supplementary information so that the accused can learn of:

a. the procedures of the Office of the Judicial Administrator and the judicial boards;

b. the accused's right to be accompanied by counsel or an advisor of the accused's choice;

c. the alternative administrative process provided for employment-related cases; and

d. other rights and options that may be available to the accused.

3. If the accused fails to respond within the four-day period or to agree to appear within a reasonable time, the Judicial Administrator may, in his or her discretion, forward the case to the University Hearing Board. In the alternative, deeming the accused to have waived the right to a hearing, the Judicial Administrator may

proceed to find the accused to have violated this Code and directly impose a penalty in the form of oral warning, educational steps, community work, or fine as listed in Article IV. Unless the Judicial Administrator, in his or her discretion, decides to set aside such default for good cause shown, such direct penalty will stand as the equivalent of a decision of the University Hearing Board, subject only to appeal to the University Review Board.

4. Limitations Period

Any charge of a violation of this Code must be initiated by the filing of charges by the Judicial Administrator within one calendar year of the date of the alleged violation. Exceptions to this policy that extend the period beyond one year are:

- a. In cases where the charge is fraud, the period shall be one calendar year from the alleged fraud or 60 calendar days from the discovery of the alleged fraud, whichever is longer, but in any event no more than three calendar years from the alleged fraud.
- b. In cases where the individual to be charged is absent from the University because of either (1) a leave of absence, (2) a termination of employment, or (3) a withdrawal as a student, a charge may be brought within one calendar year of the alleged violation or within 60 calendar days of his or her return to the jurisdiction of the University judicial system, whichever is later.
- c. In cases where the individual to be charged is facing public prosecution involving the same matters, a charge may be brought within 60 calendar days of the final disposition of such prosecution. Should it appear that the individual will leave the University before such time, the President or his or her designee may cause the individual's degree to be withheld for the period in which the Judicial Administrator may file charges.
- d. The Judicial Administrator may request a Hearing Board Chair to extend any limitations period by up to an additional six calendar months, without required notice to any other person but upon a showing of special circumstances justifying such an extension, provided that the Judicial Administrator delivers such written request to a Hearing Board Chair prior to the expiration of that period.

E. Hearing Procedures

1. Circumstances Requiring Hearing

- a. The complainant may petition in writing for a review of the nonaction or summary action by the Judicial Administrator on the complaint.

b. The accused may petition in writing for a review of his, her, or its temporary suspension imposed by the Judicial Administrator or by the President or his or her designee.

c. The offender may petition in writing for readmission from indefinite suspension.

d. The Judicial Administrator may request a hearing by filing charges.

2. Preparations for Hearing

a. The University Hearing Board shall hold a hearing within 21 calendar days of receipt of charges by the Hearing Board Chair, unless the same be adjourned by the Hearing Board Chair for good cause shown.

b. In any case referred to the University Hearing Board for a hearing:

(1) The Judicial Administrator shall make a good faith effort to give notice of the hearing no later than seven business days in advance of the hearing, unless the accused agrees to a shorter time:

(a) to the accused in the manner for notification of charges;

(b) to the complainant by regular United States mail or by e-mail; and

(c) to the Judicial Codes Counselor by campus mail, e-mail, or telephone, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

(2) This notice shall contain:

(a) the time and place of the hearing;

(b) specification of the charges against the accused; and

(c) statement of the accused's rights to be accompanied by counsel or an advisor of the accused's choice, to hear the evidence against the accused, to question witnesses, and to give evidence in the accused's own behalf.

c. Names and written statements of any witnesses to be called at the hearing by the Judicial Administrator or by the accused, if known at the time, shall be exchanged no later than three business days prior to the hearing, except for a witness who requests anonymity for reasons of personal protection. In the latter case, the University Hearing Board will grant anonymity if the anticipation of harm is reasonable, though the witness must still supply a written statement to the

opposing party. The University Hearing Board, in its discretion, may exclude a witness's testimony if it determines that the Judicial Administrator or the accused has failed to comply with this provision as to that witness.

3. University Hearing Board

a. Composition

(1) In cases involving complaints against students or University-registered organizations, a Hearing Panel shall be composed of three students, one faculty member, and one nonfaculty employee, all drawn from the University Hearing Board and University Review Board pool.

(2) In cases involving complaints against faculty members, a Hearing Panel shall be composed of three faculty members, one student, and one nonfaculty employee, all from that pool.

(3) In cases involving complaints against nonfaculty employees, a Hearing Panel shall be composed of three nonfaculty employees, one student, and one faculty member, all from that pool.

(4) Selection of a Hearing Panel, whenever one is needed, shall be made randomly by the Administrative Chair of that pool.

(5) A member of the Hearing Panel may voluntarily withdraw from participation in any case by reason of a conflict of interest or any other good cause. Knowledge of the events at issue shall not disqualify a member, unless he or she has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the member shall be excused by vote of the Hearing Panel. Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Board Chair. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Administrative Chair.

b. Panel Procedures

(1) The Hearing Board Chair shall have the right to convene the Hearing Panel. The Hearing Board Chair shall conduct the proceedings and maintain order in the hearing room.

(a) He or she shall make procedural rulings, applying these procedures and the procedures developed by the University Hearing Board, so as to assure fairness and to avoid undue delay.

(b) All procedural rulings of the Hearing Board Chair, however, shall be subject to the approval and concurrence of the Hearing Panel as a whole. The Hearing Panel may overrule the procedural rulings of the Hearing Board Chair.

(2) At least four members of a five-person Hearing Panel must sit for a given case, in addition to the nonvoting Hearing Board Chair, and at least three votes shall be required for decision.

(3) Cases that present common questions of law or fact and that would come before a panel of like composition may be joined for hearing.

(a) For joint hearing, the Judicial Administrator must affirm in writing that each accused performed acts sufficiently similar that the facts presented in evidence would not differ materially from one accused to another. In such case, the Hearing Panel may order joinder of such cases for hearing.

(b) Any accused, whose case is joined, may request in writing to be excluded from the joint hearing on the ground that (i) the accused is not charged with the same offense, at the same time and place, or (ii) that the facts relevant to the accused would differ materially from the facts relevant to the others. Such case, with the consent of the Judicial Administrator or at the direction of the Hearing Panel, may be severed from the joint hearing.

(c) The Hearing Panel may permit any accused tried jointly and found to have violated this Code to submit either a written or oral statement regarding mitigating circumstances, and must permit such a statement before imposing a penalty of dismissal or of suspension for the balance of a term or longer. The Hearing Panel shall consider differences among the conduct and circumstances of each accused before imposing any penalty.

(4) At the hearing, the case shall be presented by the Judicial Administrator in the name of the complainant. But failure of an individual complainant to appear at the hearing, unless excused by the Hearing Panel for good cause shown, shall result in a loss of his or her right to the assessment of a remedy in his or her favor by the Hearing Panel.

(5) The failure of the accused to appear at the time and place designated for the accused's appearance before the Hearing Panel empowers the Hearing Panel to:

(a) impose a temporary suspension, pending the accused's appearance;

(b) find the accused to have violated this Code and impose appropriate penalties and/or remedies, but the Hearing Panel may do so only if the

Judicial Administrator shows that the accused received notice of the hearing, or that the procedures for notifying the accused were followed, and submits information sufficient to establish the allegations in the charges; or

(c) excuse the failure to appear for good cause shown, in which case the accused shall have the option of having the case heard in absentia, with the privilege of submitting written evidence, or of having a new date set for a hearing.

(6) Strict rules of evidence shall not apply, and the Hearing Panel shall have the power to establish its own rules of evidence. It shall endeavor to evaluate all relevant facts of a given case at the hearing. It shall receive relevant information that is reasonably reliable, but need not accept as evidence reports of the accused's statements by the Judicial Administrator.

(a) Confidential relationships currently protected under state or federal law shall be protected.

(b) Evidence of a victim's sexual conduct shall not be admissible unless fairness to the accused requires consideration of such evidence, consistent with practice under section 60.42 of the New York Penal Law.

(c) Members of the Hearing Panel may question witnesses and adduce evidence, but this shall not preclude parties to the hearing from questioning witnesses. No accused person shall be denied the opportunity to question witnesses or to confront his or her accusers. However, in cases where the Hearing Panel determines that a complainant or victim is unable to testify because of compelling reasons, the accused's inability to confront an accuser shall not, in and of itself, constitute grounds for dismissing the complaint; the case shall proceed, and the Hearing Panel shall base its decision on whether the remaining evidence establishes a clear and convincing violation of this Code.

(d) No accused person shall be denied the right to present evidence and witnesses in his or her own behalf.

(e) No accused person shall be compelled to testify against himself or herself.

(7) All hearings shall be private unless (a) the accused notifies the Judicial Administrator, no later than two business days before the hearing, that he or she wishes a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in undue intimidation of the complainant, the victim, or the witnesses. In cases of sexual harassment, abuse, assault, or rape, all hearings shall be private, with the accused having no option of requesting a

public hearing; and in such cases, if either the accused, the complainant, the victim, or the Judicial Administrator requests that the proceedings be conducted in a fashion such that the accused and the complainant or victim be separated or such that the intimidation of the complainant or victim be otherwise reduced, the Hearing Board Chair, after determining appropriateness, shall make suitable arrangements to accomplish this. In the event of a public hearing, the Hearing Board Chair shall convene it in quarters that accommodate a reasonable number of the public, but may limit the number in the interest of preserving the decorum and dignity of the proceedings. Witnesses shall be excluded from all hearings, except for the period of their questioning. All deliberations by the Hearing Panel shall be private.

(8) A verbatim record shall be kept of all hearings, but not of deliberations, and made available to the complainant within the allotted time for filing an appeal, and to the accused at any time.

(9) The Hearing Panel shall proceed to a decision as expeditiously as possible, and then shall notify the Judicial Administrator of its decision without delay. All decisions by the Hearing Panel shall be in writing, including a rationale and dissenting opinions. The burden of proof on violation shall rest on the complainant, and the standard of proof on violation shall be clear and convincing evidence, which is a higher standard than the civil law's more-likely-than-not standard but a lower standard than the criminal law's beyond-a-reasonable-doubt standard. After hearing, the Hearing Panel can:

(a) find the accused did not violate this Code and dismiss the case; or

(b) find the accused violated this Code and impose a penalty and/or remedy.

(10) The Judicial Administrator shall serve written notice of the decision of the Hearing Panel on the accused and the complainant within five business days of the Judicial Administrator's receipt of the written decision. The accused shall be provided with a full copy of the decision. The complainant shall be provided a copy of the decision with names of individuals and other identifying information redacted.

F. Appeal Procedures

1. University Review Board

a. Composition

(1) A Review Panel shall consist of three voting members: one student, one faculty member, and one nonfaculty employee.

(2) The members of the Review Panel, for any one appeal, shall be selected in the same manner as the members of a Hearing Panel from the University Hearing Board and University Review Board pool. But no person who served on the Hearing Panel shall sit on the Review Panel in the same case.

b. Panel Procedures

(1) Right to Appeal

(a) An accused against whom a penalty has been imposed or a remedy assessed shall have the right to appeal the decision to the Review Panel.

(b) Any complainant, other than the University community as defined in Article III.A.2 of Title Two, shall have the right to appeal a Hearing Panel decision to the Review Panel if remedies were sought or if other laws or regulations require allowing such appeal.

(2) Appeals may be grounded only upon the complainant's belief that the remedy awarded the complainant is not commensurate with the injury, or upon the accused's belief that:

(a) the Hearing Panel violated the fair application of the procedures established by the Board of Trustees, the University Assembly, or the University Hearing Board, and such violation may have had a prejudicial effect upon the outcome of the hearing;

(b) the Hearing Panel committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence;

(c) new evidence was discovered after the hearing, and such evidence might have had an effect upon the outcome of the hearing; or

(d) the penalty and/or remedy imposed upon the accused is unjust.

(3) Notification of Appeal

(a) The appellant shall file written notice of appeal with the Judicial Administrator within ten business days of the appellant's receipt of the notice of the decision. The Judicial Administrator shall refer the notice of appeal to the Review Board Chair without delay.

(b) The appellant and the respondent (if there is one other than the Judicial Administrator) shall be notified by the Judicial Administrator of the time of the appeal's hearing no later than seven business days after the notice of

appeal is filed, and no fewer than seven business days in advance of the appeal's hearing.

(4) The Review Board Chair shall have the right to convene the Review Panel and shall conduct the appeal in a manner similar to a Hearing Panel proceeding. The Review Panel shall meet to hear an appeal within 21 calendar days after the notice of appeal is filed, unless a postponement is granted by the Review Board Chair for good cause shown.

(5) Decision of the Review Panel shall be rendered by a majority vote of the members present, and the majority of the members, in addition to the nonvoting Review Board Chair, shall constitute a quorum for any hearing of the appeal.

(6) The Review Panel shall determine whether its hearings shall be conducted in public or in private. However, all deliberations of the Review Panel shall be private.

(7) Disposition of Appeal

(a) Any decision of the Review Panel shall be based solely on the record and, in appropriate cases, upon a showing of new evidence relevant to the grounds for appeal. All decisions shall be in writing, including a rationale and dissenting opinions. Findings of fact shall not be set aside unless clearly erroneous, and harmless errors shall be ignored.

(b) The decision shall be affirmance unless the Review Panel sustains one of the above-specified grounds for appeal, in which case the Review Panel can:

(i) reverse a finding of violation;

(ii) reduce a penalty or modify a remedy, if necessary and appropriate in the interests of justice;

(iii) remand a case to the Hearing Panel from which it originated for a new hearing; or

(iv) remand a case to a newly composed Hearing Panel if there were procedural violations.

(c) The Review Panel shall not increase a penalty. If the Review Panel finds that new evidence relevant to the merits and discovered after the hearing might have had an effect upon the outcome of the hearing, it shall remand the case to the Hearing Panel from which it originated for a new hearing.

2. No final decision of this judicial system shall be reviewed by any other authority within the University.

G. General Procedures

1. Deadlines

a. In computing any time period specified in this Code, the day of the event, act, or default that initiates the period shall be excluded.

b. The Judicial Administrator and other parties to the hearings must make good faith efforts to meet the deadlines for conducting hearings outlined by this Code. If the deadlines cannot be met, however, the hearings must be held as soon as practicable.

2. Legal Advisor

The Hearing Panel or the Review Panel may appoint an independent legal advisor who shall advise that board on all legal matters relating to the performance of its responsibilities, and who may be present during any hearings and, upon the invitation of that board, during deliberations.

3. Witness Immunity

The Judicial Administrator, the Hearing Panel, or the Review Panel may grant to witnesses transactional immunity from proceedings within the judicial system.

4. Confidentiality

a. All who are involved in the complaint, investigation, hearing, appeal, and reporting processes are obliged to maintain confidentiality of the proceedings, except as otherwise specifically provided in this Code. They shall protect the confidentiality of all judicial records, except those records specifically referred to in Article II.B. Copies of judicial records shall not be released to outside sources without written consent of the subject of such record, except as may be required by law.

b. The University will take reasonable measures to ensure the confidentiality of the proceedings and records; however, the University cannot and does not guarantee that confidentiality can or will always be maintained. The University may disclose otherwise confidential information when required by law, when necessary to protect the safety or well-being of the University community, or to preserve the integrity of proceedings under this Code.

c. Notification of the offender's violations, penalties, and remedies shall be sent as directed by the Hearing Panel or Review Panel to the University officials necessary to make the penalties and remedies effective, and to other persons who might provide counseling assistance to the offender.

5. Record Keeping

a. The Office of the Judicial Administrator shall retain records of all complaints, orders, charges, proceedings, and decisions in accordance with that office's internal records management practices and Cornell University Policy 4.7.

b. Violations, penalties, and remedies shall be recorded in the Office of the Judicial Administrator and/or Director of Cornell Police in all cases arising under this judicial system. However, only a penalty of written reprimand, probation, suspension, or dismissal constitutes a disciplinary record.

Article IV. Penalties and Related Provisions

A. Penalties

1. The following penalties may be imposed (in situations where an individual is both taking classes and on the University payroll, appropriate penalties may come from either or both Subsections a and b), provided that no person shall endure cruel and unusual punishment:

a. Students

(1) Oral warning.

(2) Appropriate educational steps (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(3) Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Judicial Administrator.

(4) Fine of not less than \$20 nor more than \$500 payable to the University Treasurer.

(5) Restriction or loss of specified privileges for a stated period not to exceed one year, including for example:

(a) in cases of misconduct in connection with University services or facilities, the student being prohibited from further use of those services or facilities other than in the course of his or her work or study; or

(b) in cases of misconduct in connection with University-owned or University-operated housing, the student being ordered to vacate such housing.

(6) Written reprimand.

(7) Probation for a stated period. For any violation of this Code or of the terms of probation during the probationary period, the student may be subject to additional penalties for violation of probation, including suspension.

(8) Suspension from the University for a stated period not to exceed one year, or indefinitely with the right to petition the University Hearing Board in writing at any time for readmission. While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward completion of a Cornell degree.

(9) Dismissal, i.e., expulsion from the University.

b. Faculty and Other Employees

(1) Oral warning, educational steps, community work, and fine, as provided for student offenders.

(2) Written reprimand.

(3) Suspension from University duties for a stated period not to exceed one month, with loss of salary but without loss of other rights or privileges.

(4) Dismissal from University employ, with termination of any contract or tenure.

c. University-Registered Organizations

(1) Appropriate educational steps for members of the organization (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(2) Community work performed by members in a manner acceptable to the Judicial Administrator.

(3) Fine of not less than \$25 nor more than \$500 payable to the University Treasurer.

(4) Restriction or loss of specified privileges for a stated period not to exceed one year.

(5) Written reprimand.

(6) Suspension of all privileges for a stated period not to exceed one year.

(7) Dismissal, i.e., rescission of permission to operate on University property.

2. An offender's prior record of violations under this Code shall be considered in the imposition of a penalty.

a. Ordinarily, the penalty for any repeated violation, whenever such violation occurs, should be more severe than for a first violation.

b. Ordinarily, the penalty for a third violation by a student within a twelve-month period should be suspension from the University for a stated or indefinite period and denial of academic credit for the term in which the suspension occurs. The penalty may be reduced if a lesser penalty would more appropriately serve the interests of justice and if, in addition, the offender agrees not to engage in misconduct of the same kind again in the next twelve months. In such a case of indefinite suspension, the offender may petition the University Hearing Board in writing for readmission, but no application for readmission for the academic term following the academic term in which the suspension occurred will be permitted.

3. Without intending to limit the assessor's ultimate discretion, certain types of violations are so fundamentally inconsistent with the University's educational mission that, absent unusual mitigating factors, a sanction of substantial suspension or dismissal ordinarily should be imposed. Such violations include acts of violence, including sexual violence; violations that are motivated by bias based on disability, ethnicity, gender, national origin, race, religion, sexual orientation or affectional preference, or any other suspect or invidious category; or any other violation that substantially threatens the University's educational mission or property or the health or safety of University community members.

B. Remedies

The following remedies may be imposed:

1. Restitution to the University or to the victim of the violation.

2. Order to the offender to perform, or to cease and desist from, stated actions.

C. Compliance

1. An official transcript issued during the pendency of charges shall indicate that charges are pending, accompanied by a complete recitation of the pending charges.

The University, upon request of the person seeking the transcript, shall notify that person of the final judgment in the case. The University may withhold awarding a degree otherwise earned until the completion of proceedings, including compliance with a prescribed penalty or remedy.

2. If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator shall notify the Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended. The suspension shall have immediate effect and continue until the offender has complied. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance.

3. No official transcript or degree will be granted to any person who has been found in violation of this Code and who has not fulfilled any condition or requirement fixed as a penalty or remedy, but such official transcript or degree shall be granted upon fulfillment of all such outstanding obligations.

D. Other Proceedings

1. Any Title of this Code and the penalties and remedies imposed thereunder shall not be deemed exclusive of and shall not preclude resort to any applicable state, federal, or local law or ordinance or other University regulations and procedures. They shall not be deemed to limit the right of the University or of any person to take such additional action as may seem appropriate or necessary to maintain public order and safety and to protect legal rights.

2. Imposition of any penalty or remedy under any Title shall not preclude the imposition of any other penalty or remedy under this Code.

TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER

Article I. Applicability

This Title shall apply to all persons and organizations, including visitors and other licensees and invitees, on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area, except that students, members of the University faculty, other employees of the University, and University-registered organizations of the Medical College and the Graduate School of Medical Sciences shall be governed by separate regulations with respect to property and facilities of the Medical College and the Graduate School of Medical Sciences.

Article II. Violations

A. Listing

It shall be a violation of this Title:

1. To disrupt or obstruct or attempt to disrupt or obstruct any instructional, research, service, judicial, or other University operation or function or to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual, by any action including but not limited to the following:

a. by intentionally using or threatening physical force or violence to harass, endanger, injure, abuse, intimidate, or coerce another person, or to cause damage to or loss of property;

b. by intentionally obstructing or causing to be obstructed the lawful use of, access to, or egress from University premises or portions thereof, or by making unauthorized entry upon or use of a University property or facility or by unlawfully remaining in or on the same;

c. by intentionally obstructing or restraining the lawful movement of another person or obstructing or restraining his or her lawful participation in an authorized activity or event, such as regular and special curricular activities, extracurricular activities, and employment interviews; or

d. by intentionally urging or inciting another person to violate this Subsection 1.

2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been

duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format.

3. To possess, carry, or use firearms (including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instruments, or substances in or upon University premises, except by law enforcement officers or except as specifically authorized by the University.

4. To engage in any action or situation that intentionally or recklessly endangers mental or physical health or involves the forced consumption of alcohol or drugs, for the purpose of initiation into or affiliation with any group or organization.

5. To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a criterion for admission or seating at public speaking events advertised as open to the University community.

6. To disrupt or obstruct or attempt to disrupt or obstruct any speaker invited to appear on the campus by the University or a University-recognized organization.

7. To build a structure on the campus without a permit or in violation of the conditions of a permit, and to refuse to dismantle it or discontinue the nonconforming feature upon the lawful direction of an authorized University official.

8. To disrupt or attempt to disrupt intentionally any recruitment activity of a recruiter who is on campus in accordance with ordinary University processes.

9. To fail to comply with any time, place, and manner regulation authorized by Article III of Title One.

B. Interpretation

Consistent with these regulations making it an offense “to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual,” this Title shall not be interpreted to permit the unlawful interference with such rights, as protected by the constitutions and laws of the United States and the State of New York. Nothing in this Title or any other University regulation, however, shall be interpreted to limit or prevent the University from seeking, without unlawfully interfering with any of the rights described, (1) to enforce the laws respecting trespass or (2) to regulate lawfully the use of University property. Nothing shall be deemed to impair the right of the University to take such action as may be necessary or appropriate for the purposes of construction and repair of facilities, of regulating vehicular and pedestrian traffic, and of maintaining public order and safety. And nothing shall be deemed to impair the right of the University to take such nondisciplinary administrative action as may be necessary or appropriate to maintain public order and safety.

Article III. Procedures

A. Immediate Enforcement

The President or a designated representative shall be responsible for initiating and ensuring the prompt enforcement of this Title. For conduct that violates this Title, individuals and organizations may be ejected from the University campus, property, or facility, or any part thereof by the President or his or designee acting in the following manner:

1. When the continued presence of an individual poses a clear and present danger to the public order or to the security of any property or the safety of any person, the individual may be ejected, but only until a hearing before the University Hearing Board.
2. In the case of an organization that authorizes conduct posing such a clear and present danger, the President or his or designee may rescind permission for that organization to operate on University property and rescind the registration of the organization, but only until a hearing before the University Hearing Board.
3. The University Hearing Board shall meet to review such action within five business days after the day on which the alleged offense occurred.

B. Disciplinary Process

For procedures, this Title adopts the provisions of Titles Two and Three prevailing at the time of the violation, except in the following particulars:

1. The President or his or designee shall perform the functions of the Judicial Administrator. In the case of service upon the President of any notice, including a notice of appeal, delivery to the office of the President or his or her designee shall constitute sufficient service.
2. In the event that a violation of this Title should also constitute a violation of other University regulations, including Title Three, the President or his or designee may, in his or her discretion, determine to handle the hearing and appeal of all such violations in one proceeding pursuant to the procedures of this Title.
3. Additionally, the President or his or her designee shall have the right to appeal a Hearing Panel final decision to the Review Panel on the grounds that the Hearing Panel committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence, by filing written notice of appeal with the Review Board Chair within five business days of receipt of the notice of decision.

Article IV. Penalties and Related Provisions

For penalties and related provisions, this Title adopts the provisions of Article IV of Title Three prevailing at the time of the violation.

ISSUES

1. Off-Campus Jurisdiction. The biggest open issue is the geographical applicability of the Code. It raises some difficult considerations. As a drafting matter, on the other hand, it can be easily handled. A sentence, such as the one added at the end of Article I of Title Three, could handle it. Article II.A of Title One provides a flexible manner of meshing overlapping campus and local jurisdictions.

Note also that this extension of the Code's scope would be a streamlined, but more protective, alternative to the Presidential override of Article II.C of Title One.

Barbara Krause had this to say on "Off-Campus Jurisdiction":

Under the current Campus Code of Conduct, the University generally does not consider cases involving off campus allegations of misconduct. The Code does grant discretion to the President, in cases of "exceptionally grave misconduct" and if certain other conditions are met, to take appropriate and lawful action. But as a general rule, off campus misconduct must be pursued, if at all, as a criminal matter or as a private matter between the individuals involved.

There appears to be considerable concern that certain off campus misconduct, especially misconduct in areas close to campus such as Collegetown, has a serious impact on the Cornell community yet remains beyond reach of campus discipline. The types of behavior that seem most troubling include physical violence, sexual assault, and stalking-type behavior.

On the other hand, various people expressed concern that extending jurisdiction off campus raises serious line-drawing issues. What about misconduct in downtown Ithaca? In Florida over Spring Break? Or while a student is at home? People also expressed concern that extending jurisdiction would create significant resource issues for the Judicial Administrator's Office at its current staffing levels. Finally, the issue raises a significant policy question as to the proper respective roles of Cornell and local police authority.

Many of the student conduct codes I reviewed allow a college or university to consider at least the more egregious cases of off campus misconduct. And Stoner and Lowery's model code confers off campus jurisdiction under the standard of "adversely affects the University's pursuits of its objectives."

In light of the significant competing concerns, I was reluctant to recommend a significant departure from current practice. My proposed revision, however, would allow the University to consider off campus allegations if the misconduct poses a direct and substantial threat to the University's educational mission or to the health, safety, or property of the University or its members.

This recommendation has implications not only for the Cornell Police, but for other local law enforcement agencies as well. Again, it was not within the scope of this project for me to consider those implications. It would be important, of course, to discuss the

implications of this particular recommendation not only on campus, but with local law enforcement agencies as well.

Finally, I note that graduate student representatives with whom I spoke expressed concern that an extension of jurisdiction to off campus conduct could impact graduate and professional students differently than undergraduate students. I believe that the extension I have proposed should apply to all students equally.

President Skorton had this to say on “Off-Campus Jurisdiction”:

Whether the Code should reach misconduct that occurs off-campus, and how to do so, admittedly pose nettlesome policy issues. But should violent or threatening behavior a member of the university community commits off campus be treated differently from disciplinary action on campus simply because it transpired beyond the physical boundaries of the campus?

Marty Hatch has written on “Off-Campus Jurisdiction”:

We need to consider the strong statements by faculty and staff about the need to restrict off-campus jurisdiction of the JA for faculty and staff. And if we insert a phrase into the suggested wording that restricts JA action to students, we begin to create a two-class judicial system.

I also think that we need to be more specific on the types of offenses that would warrant the JA's attention and action. At one point in the past discussion, someone suggested that the JA's action should be limited to felony charges. The events at Duke may make us even more concerned that we not so easily extend the JA's potential to act on off-campus events, because once that action is taken, it means that the University has taken a position. (That is, for example, the firing of the coach of the Duke Lacrosse team may have been justifiable and perfectly within the rights of the university as his employer, but the suspension – if they were suspended -- of the Duke players might not have been.) I'm not sure how to extend this reach, beyond a freeing up of the "presidential prerogative."

2. Merger of Titles. Should we combine RMEE and RMPO? Many think we should. But I have come to think that doing so, to a degree beyond what this draft does, would be a bad idea. Unfortunately, this is a complicated issue to explain.

What the draft has done in moving toward merger comprises two things: (1) It adopts Marty's idea of merging the hearing and appeal procedures and the penalties for RMEE and RMPO, because this was the area of the greatest redundancy and verbiage. This change makes the separate existence of RMPO much less troublesome and cumbersome (although it does have some substantive effects, like extending the right to silence to RMPO cases). (2) Mary Beth made the point that the JA now often stretches to prosecute RMPO violations and thereby avoid invoking its machinery, so I added violation-of-RMPO as a RMEE violation to legitimate that practice.

The reasons not to merge further are these:

- Actually merging the two Titles creates the big problem of future amendments. If we merge the two Titles, and get the Trustees to approve the new Code this time, then we make it impossible for the UA later to amend the merged provisions, because the Henderson Act requires the Trustees to keep the RMPO provisions under their control. (“The trustees or other governing board of every college chartered by the regents or incorporated by special act of the legislature and which maintains a campus, unless otherwise provided, shall adopt written rules for implementing all policies required pursuant to this article and for the maintenance of public order on college campuses and other college property used for educational purposes and provide a program for the enforcement thereof. Such rules shall prohibit, among other things, any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization. Such rules shall govern the conduct of students, faculty and other staff as well as visitors and other licensees and invitees on such campuses and property. The penalties for violations of such rules shall be clearly set forth therein and shall include provisions for the ejection of a violator from such campus and property, in the case of a student or faculty violator his or her suspension, expulsion, or other appropriate disciplinary action, and in the case of an organization which authorizes such conduct, rescission of permission for that organization to operate on campus property. Such penalties shall be in addition to any penalty pursuant to the penal law or any other law to which a violator or organization may be subject.”) Now, one could imaginatively read the Act to require the Trustees to adopt RMPO but allow them to delegate future amendment, but this is a strained reading that the University has never adopted.
- RMPO is in fact quite different from RMEE in a few unavoidable ways, so that merger would result in rather complicated drafting and in a Code more complicated than the one we have already. Nearly every provision would have to be written in two separate parts. For example: (1) RMPO has unique applicability, being applicable to *all* persons and organizations present on campus. (2) RMPO is enforceable by the President, not the JA, and we would want to limit the President’s jurisdiction to certain violations. (3) RMPO provides for “ejection” of outsiders, as well as having several other different procedures. (4) RMPO potentially has penalties and remedies different from those of RMEE.
- Retaining a separate and usually unused title tucked at the end of the Code, for the President to use in extreme circumstances, seems a smart way to go, and one consistent with the legislative intent.

3. Minor Substantive Changes. There is no doubt that reordering and clarification, as well as trying to be more consistent, have unavoidable substantive effects. Those effects are usually insignificant. But in any effort to correct, there will be more significant, but still minor, changes made. Here is a list of those:

- Article II.B.3, on p. 6, used to provide unnecessarily: “When the University acts in a law enforcement capacity, individual members of the University community who are questioned shall be informed fully and promptly of the context of the inquiry and investigation.”
- Article I.A, on p. 14, now has a specific waiver provision for jurisdictional defenses.
- Article I.B, on p. 14, has a refined definition of “student.”
- Article II.A, on p. 20, has reworded violations. But 1.c has been changed from “sexually harass,” so that it now refers to CUP 6.4. And the violations in 1.l, 3.e, and 3.f are somewhat new.
- Article III.B.2, on p. 23, used to provide: “The Temporary Protection Directive shall not require the accused to withdraw from a class or to change his or her place of residence.”
- Article III.C.2, on p. 25, expands the penalties that the Summary Decision Agreement can agree to, but subjects them to oversight.
- Article III.D.1, on p. 27, and Article III.E.2, on p. 29, liberalize the means of giving notice.
- Article III.D.3, on p. 27, gives the JA modest default powers.
- Article III.E.3.b(7), on p. 32, puts a limit on the right to a public hearing.
- Article III.G.5, on p. 37, spells out record-keeping requirements.
- Article IV.A.3, on p. 39, adopts some Krause-proposed guidelines on penalties.