

**REPORT ON A  
REVIEW AND PROPOSED REVISION  
OF THE  
CORNELL UNIVERSITY  
CAMPUS CODE OF CONDUCT**

Prepared For  
Interim President Hunter R. Rawlings III

Barbara L. Krause  
Senior Advisor to the President  
April 3, 2006

## TABLE OF CONTENTS

Executive Summary	1
Introduction	5
Process	6
Historical Context	8
Fundamental Concerns	10
Basic Philosophy and Terminology	11
Major Issues	12
Structure/Location of Disciplinary Function	12
Faculty/Staff	15
Off Campus Jurisdiction	16
Combining Title Two (RMPO) and Three (RMEE)	17
Role of Attorneys/Advisers	17
Formality of Hearings, Appeals; Multiple Appeal Levels	18
Interim Suspension	20
Proceeding While Criminal Charges are Pending	21
"Right to Remain Silent"; Obligation to Cooperate	21
Sufficiency of Evidence	22
Authority to Suspend or Dismiss if Student Agrees	23
Convening Hearing and Review Boards	24
Title Five (Responsible Speech and Expression)	26
Miscellaneous	26
Amendment Authority	27
Conclusion	29

## EXECUTIVE SUMMARY

By memorandum dated November 29, 2005, Interim President Hunter R. Rawlings III requested that I undertake a thorough review of Cornell University's Campus Code of Conduct and prepare a proposed revision to be shared with the campus community for comment. This report and two accompanying documents – the proposed Cornell University Conduct Code and Cornell University Student Disciplinary System – constitute my response to the President's "charge."

My fundamental premise is that Cornell University's campus disciplinary system exists in order to promote an educational environment in which students can pursue academic excellence and personal growth in a safe and vibrant community. To best promote that goal today, it is my opinion that the current Campus Code of Conduct should be recast in several fundamental ways:

- Cornell's campus conduct code should be based upon an aspirational statement that defines the type of educational community we wish to be.
- The code should emphasize the University's educational mission and eliminate language and concepts borrowed from criminal law.
- The campus disciplinary function should be integrated into the other student affairs work of the University.

The proposed revision represents a significantly different approach to campus discipline than is embodied in Cornell's current Campus Code of Conduct. I believe the revision is reasonable and appropriate for today's campus environment – but in the interest of fostering campus conversation, I occasionally erred on the side of "pushing the envelope" toward the new direction. On a number of points, my full report suggests alternative approaches for the campus community's consideration.

The table on the following pages outlines in abbreviated fashion the most significant changes I have proposed. I hope that readers will take the time to review the entire report, which provides important context and explanation for my recommendations.

I appreciate the opportunity to contribute to the thinking about this important document and am grateful to the many people (identified more particularly in the Introduction) who took time to confer with me. Most importantly, I thank the community in advance for its consideration of this work.

Respectfully submitted,

*Barbara L. Krause*

Barbara L. Krause  
Senior Advisor to the President  
April 3, 2006

*Executive Summary (continued)*

**MAJOR ISSUES – CURRENT AND PROPOSED  
CAMPUS CODE OF CONDUCT**

<b>ISSUE</b>	<b>CURRENT</b>	<b>PROPOSED</b>
Structure/location of JA's Office	Independent. JA is appointed by President, with concurrence of University Assembly, for renewable 2-year terms; can be removed during term of office only by Board of Trustees.	"Office of Student Conduct" is incorporated into Dean of Students Office; disciplinary system has a more educational focus and is integrated with student affairs. "Director of Student Conduct" reports to Dean of Students. Vice President for Student and Academic Services (or designee) assumes significant responsibilities, including review of interim suspensions.
Off campus jurisdiction	General rule: no off campus jurisdiction. "Exceptionally grave misconduct" provision may be invoked by President.	Office of Student Conduct has discretion to consider off campus allegations if misconduct poses a direct and substantial threat to University's educational mission or to the health, safety, or property of the University or its members.
Deferring based on pending criminal charges	Certain types of misconduct, including felonies, continue to be "prosecuted" under the Code while being adjudicated in the courts. Otherwise, when the administration determines that the misconduct "does not constitute a serious breach of the law and that the interests of justice would be served," University will generally withhold exercise of campus jurisdiction, "when prompt public prosecution is anticipated or is under way," until public proceedings are completed.	University ordinarily will conduct campus disciplinary proceedings regardless of possible or pending criminal charges or civil claims related to the same incident or behavior. (Allows discretion to defer.)

<i>Issue</i>	<i>Current</i>	<i>Proposed</i>
Faculty/Staff	Code applies to <i>non-work</i> related misconduct of faculty and staff. Complaints about faculty or staff involving <i>work</i> related misconduct must be made to the appropriate department head, dean, or administrator.	Code sets forth standards of behavior that apply to all members of the Cornell community. Student matters handled in the "Student Disciplinary System". Faculty referred to department head or dean; employees referred to supervisor or HR representative.
Sanctions	List of sanctions provided. Some general guidance that subsequent offenses will generally result in progressively more serious sanctions.	List of sanctions provided. Retain guidance on progressive discipline. Adds provision that certain types of serious offenses (violence, bias motivated offenses, and any other offense that threatens educational mission, health, or safety) ordinarily will result in dismissal or significant suspension.
Procedural formality	Very formal with many features of criminal justice system.	Recast entire process to be more educational in approach, while still ensuring fundamental fairness to the accused and insisting upon accountability for those responsible for violations.
Attorneys/advisers	Attorney or any other adviser may be present at any stage and may participate actively (e.g., question witnesses or advocate).	Accused may have an adviser from the University community at any stage. Adviser may speak with accused but may not participate actively. If accused was also arrested, accused may be accompanied by an attorney from inside or outside the University, but attorney's participation is limited to same extent as any other adviser.
Sufficiency of evidence	Clear and convincing.	Preponderance (more likely than not). Most campus judicial systems use this standard. (See full report for citation.)

<i>Issue</i>	<i>Current</i>	<i>Proposed</i>
"Right to remain silent"	Stated as such.	Phrase is a criminal law concept that is not appropriate to campus disciplinary proceedings. All campus members are obligated to cooperate with Office of Student Discipline. Cases may be decided on existing evidence if accused does not appear or answer.
Appeals of hearing board decisions	Complainant or accused can appeal based on certain stated grounds. All appeals heard by board(s). JA has no right to appeal.	Complainant (because of different role in the recast model) has no right of appeal. Accused or Office of Student Conduct may appeal based on certain stated grounds. If sanction involves suspension or dismissal, Review Board will hear appeal. All other appeals will be heard by a single "Conduct Review Officer" to be appointed by VP for Student and Academic Services.
Agreed upon suspension and expulsion	JA and accused may not agree to suspend or dismiss; only Hearing and Review Boards may take such action.	Suspension and dismissal may be part of a voluntary agreement to sanctions. Office of Student Conduct must notify VP Student and Academic Services of any such agreement.
Amendment	"Public order" provisions require Board of Trustee approval. Otherwise, because JA's office is independent and to ensure community input, Code may be amended by the University Assembly with approval of the President.	"Public order" provisions require Board of Trustee approval. Otherwise, because disciplinary function is under the student affairs umbrella, Conduct Code and Student Disciplinary System are adopted as University policy according to University Policy 4.1 (Formulation and Issuance of University Policies). Community input, especially student input, should be sought through this process.

## INTRODUCTION

By memorandum dated November 29, 2005, Interim President Hunter R. Rawlings III requested that I undertake a thorough review of Cornell University's Campus Code of Conduct and prepare a proposed revision to be shared with the campus community for comment. A copy of that memo is attached to this report. I also attach two documents that constitute my proposed revision: the Cornell University Conduct Code and the Cornell University Student Disciplinary System.

The task laid out for me was daunting. Cornell's current Campus Code of Conduct has been in place for over 30 years and found its origin at a time of tumultuous unrest on the campus. The issues identified in President Rawlings' memo represent major policy considerations that undoubtedly will generate significant debate within, and in some cases beyond, the Cornell community. And the specified due date required that I balance my time appropriately between listening, deliberating, and drafting.

Reports such as this one are often prepared in the third person. Because I wish to emphasize that this document represents the impressions and thinking of just one person – albeit a person informed by the wisdom of many who have substantial knowledge of our campus disciplinary system – I have elected to report in the first person.

My fundamental premise is that the campus disciplinary system exists in order to promote an educational environment in which students can pursue academic excellence and personal growth in a safe and vibrant community. To best promote that goal today, it is my opinion that the current Campus Code of Conduct should be recast in several fundamental ways:

- Cornell's campus conduct code should be based upon an aspirational statement that defines the type of educational community we wish to be.
- The code should emphasize the University's educational mission and eliminate language and concepts borrowed from criminal law.
- The campus disciplinary function should be integrated into the other student affairs work of the University.

It is my hope that this report and the accompanying documents will provide a meaningful starting point for a campus-wide conversation. I have emphasized during my consultations that my work product will be just that – a starting point. The impressions and thinking reflected here are based on input from a very small subset of community members. And it is clear to me that the broader campus community cares deeply about the Campus Code, among other reasons for the potential such a document offers to help define the type of community Cornell aspires to be.

## PROCESS

I began my work on this project by collecting various Cornell materials. Among other documents, I reviewed the following:

- Report on the Commission of the Interdependence of University Regulations and Local, State, and Federal Law (the "Sindler Report," named for Committee Chairman and Professor of Government Allan P. Sindler) (September 27, 1967)
- Report of the Ad Hoc Judiciary Committee (F.A. Long, Chairman) (August 28, 1969)
- The Report of the Special Trustee Committee on Campus Unrest at Cornell (W. Robertson, Chairman) (September 5, 1969)
- Report of the Free Speech Commission at Cornell (J. Barcelo, Chairman) (March 31, 1967)
- External Review Report of the Office of the Judicial Administrator, Cornell University (S. Fleishman & M. Goldfarb) (Fall 2002)
- Recommendation to Examine Cornell's Judicial Process (M.B. Grant, Judicial Administrator) (August 10, 2004)

I also studied a number of model codes and codes from other colleges and universities.<sup>1</sup> In this effort, I looked at institutions similar to Cornell in size and scope, other colleges and universities in New York State (especially with respect to their handling of a New York law requiring "Rules for the Maintenance of Public Order," discussed more fully below), and at neighboring colleges and universities including Ithaca College, Syracuse University, Colgate University, and the University of Rochester. The University of Pennsylvania's student conduct documents were particularly helpful to my thinking and, with permission from Penn's Director of Student Conduct, I have borrowed quite heavily in certain places from Penn's system. A Model Student Conduct Code prepared by two recognized leaders in the field of student judicial affairs<sup>2</sup> was also very helpful as I thought through various issues.

As suggested in the November 29, 2005 memo, I conferred during this process with numerous offices and individuals who are most familiar with the Campus Code of Conduct. The following were generous with their time and thoughtful in their consideration of the substantive issues outlined in my "charge":

- University Assembly: meetings with Chairpersons Pamela Dusseau (employee), Opal Hammer (undergraduate student), Ellis Loew (faculty), and Janet Vertesi (graduate student). Also held an "office hours" meeting to which all UA members were invited.

---

<sup>1</sup> Other institutions' conduct codes and policies are readily available on line.

<sup>2</sup> Edward N. Stoner II & John W. Lowery, *Navigating Past the "Spirit of Insubordination": A Twenty-First Century Model Student Conduct Code With a Mode Hearing Script*, 31 *Journal of College & University Law* 1 (2004).



- University Assembly's Codes and Judicial Committee: meeting and various email exchanges with Chairperson Kathleen Rourke and the full committee.
- Judicial Administrator's Office: Judicial Administrator Mary Beth Grant and Associate Judicial Administrator Linda Falkson.
- Judicial Codes Counselor April Bullard.
- Dean of the Faculty Charles Walcott.
- Dean of Students Kent Hubbell.
- Vice President for Student and Academic Services Susan Murphy.
- Vice President for Human Resources Mary Opperman.
- University Counsel's Office: Counsel James Mingle, Deputy Counsel Michael Kimberly, and Deputy Counsel Nelson Roth.
- Gannett Health Center: Executive Director Janet Corson-Rikert, Health Educator Nina Cummings, Director of Psychological Services Craig Eells, and Director of Alcohol Policy Initiatives Timothy Marchell.
- Cornell Police: Director Curt Ostrander, Assistant Director Kathy Zoner, Lieutenant Robert MacHenry, and Lieutenant David Nazer.
- Ombudsman's Office: Ombudsman Walter Lynn, Associate Ombudsperson Ronald Bricker, Assistant Ombudsperson Danilee Poppensiek.
- Vice Provost for Diversity and Faculty Development Robert Harris.

In addition to these meetings, I made presentations to the University Assembly, Student Assembly, Graduate and Professional Student Assembly, and Employee Assembly to describe my process. In all cases, these groups were supportive of this effort but also concerned and eager to learn how community input would be sought at the next stage.

Finally, I have been mindful throughout that the basic structure of Cornell's current Campus Code of Conduct was created in response to the Willard Straight Hall Takeover in 1969. Because that was such a difficult time for our campus, I wanted to give myself the benefit of any wisdom I might take from those who played critical roles during and just after the events of 1969. I am indebted to President Emeritus Dale Corson, Professor Emeritus Walter LaFeber, and Professor James Turner for speaking with me.

There were countless additional offices and individuals with whom I could have met, of course. Given the time constraints and the objective of my task, however, I am confident that those with whom I did speak provided input that was appropriate for this stage. I would simply echo the concern expressed often during the process: in order for any significant Code revisions to gain broad acceptance in the campus community, it will be critical for the campus community to have ample opportunity to review and comment on this work product.

## **HISTORICAL CONTEXT**

It was not my task here to prepare a comprehensive history of Cornell's campus disciplinary system. Two time periods, however, are important to note briefly at the outset.

The essential features of our current campus judicial system were established in the early 1970's, following the takeover of Willard Straight Hall in 1969. One issue that contributed to minority student dissatisfaction at the time, and thus to the takeover, was disciplinary action imposed against a number of African American students. Many people believed that those results were unfair and representatives of the minority community, in particular, refused to accept the legitimacy of the campus judicial system. As part of the resolution of the Willard Straight Hall takeover, minority students agreed to participate in the creation of a new "campus judicial system" that would be acceptable to the entire community. Among other things, that new system provided for an independent Judicial Administrator and the very legalistic system that continues today.

The Code, of course, has been amended numerous times over the years. The last comprehensive revision occurred in 1987, when many members of the community were again engaged in protest activity – this time, related to apartheid policies in South Africa. Following the recommendations of the Free Speech Commission, Title Five of the current Code was added to provide additional guidance on freedom of speech in general, and expressive freedom in particular. It appears that part of the impetus for the 1987 revision was also to incorporate various pieces related to campus discipline into a single document.

Even this very cursory review of Cornell's Campus Code suggests a number of contextual points that are important to bear in mind.

First, it has been a very long time – nearly 20 years – since the last comprehensive revision to Cornell's Campus Code of Conduct in 1987. And it has been over 30 years since the fundamental elements of the current campus disciplinary were established. In the intervening years, a whole new profession has emerged related to "student judicial affairs," and student development has become a much more deliberate focus of professionals who work in student affairs and residence life. Given a student affairs landscape that is very different today than even 20 years ago, I approached this task open to the possibility that a very different conduct code model might be

appropriate. I hope that readers will consider this report and the attached documents with a similar sense of openness.

Second, and in some ways as a counter to the first point, Cornell's Campus Code of Conduct has served the community quite well for some 30 years. Certainly concerns have been raised over time, and numerous efforts have been made in the past 10 years by those most familiar with the Code to work on a revision. But I do not have the sense that the average person on our campus believes the campus judicial system is "broken." At the very least, it is worth noting that there have not often been editorials, protests, or other public outcry against the system itself. This may suggest to some that there is no need for a "new model." It certainly suggests, once again, the importance of vetting any proposed changes broadly within the campus community before recommending their adoption.

Third, I believe it is important to recognize that the last two major revisions to the Campus Code of conduct have come of times of significant political unrest on campus. It is my sense that some level of mistrust for administration, which often surfaces in times of protest and clearly was an issue in 1969, has contributed to the creation of a campus judicial system that is viewed today, at least by many, as overly legalistic and cumbersome. I heard great support in my conversations for moving to a model that – while maintaining essential elements of fairness – emphasizes educational conversation and consequences over legal protections derived from criminal court procedures. Such a new model, however, will require those who find comfort in the current "legalities" to find comfort instead in the overall new cast of a disciplinary system whose ultimate goal is to support the educational mission of Cornell University.

Finally, I offer a brief comment on several recent incidents that seem to be very much on peoples' minds. These incidents include the stabbing that took place on February 19, 2006; a video-taping incident that took place in the Fall of 2005; the Redbud Woods protests during the Spring of 2005; and two off campus bar fights during the Spring of 2005, each involving Cornell students and each resulting in very serious personal injuries.

While these events certainly help inform the present discussion, it would be wrong to conclude that this project was initiated as a result of those events. In fact, external reviewers recommended to the Judicial Administrator back in September 2002 that a major study of the Code of Conduct be undertaken, and many throughout the community have expressed concern about the Code's format and various substantive issues for at least 10 years.

Readers should not conclude, therefore, that any of the recommendations incorporated in my work are intended to address any specific incident. Rather, I have attempted to distill all of what I heard, including concerns about the recent incidents, into a document that I offer as an alternative way of conceiving of Cornell's campus disciplinary system.

## FUNDAMENTAL CONCERNS

It is fair to say that each of the substantive issues outlined in the "charging memo" generated a range of responses from those with whom I consulted – and can be expected to generate significant debate within the broader campus community. I will address those issues in more detail in the following sections of this report.

It was also the case, however, that at least from the people I spoke with, several fundamental concerns emerged and were expressed with near or complete unanimity. I set forth these concerns at the outset, because they remained foremost in my mind as I began drafting a proposed revision.

### **Community members would like a Code that sets aspirational standards.**

The current Code reads very much like a penal code, with behavioral expectations most often stated in terms of what one may *not* do. People would like to see a Code that talks about the type of community Cornell wishes to be.

**The Code is too difficult to read.** As an absolute minimum, people would like the Code to be simpler, less redundant, and less laden with procedural complexity. They would like a document that can be used effectively for educational purposes when newcomers – especially students – arrive on campus.

### **Delays in resolving cases, especially serious cases, are a major concern.**

People feel that the best interests of the community, as well as of the individuals involved in particular cases, are best served when cases can be resolved as quickly as is reasonably and fairly possible. Sometimes the current Code's procedural structure causes delay – e.g., a hearing board cannot be impaneled because members are unavailable, campus proceedings are deferred pending the outcome of related criminal charges, or key witnesses or other participants are not available. There is also some concern that the JA's Office, as now staffed and with the mandate to operate "independently," sometimes has difficulty handling the caseload at current levels.

**The University should have a much lower tolerance for violence.** By this comment, those with whom I spoke meant that the most serious sanctions, including suspension and dismissal, should be imposed when members of the Cornell community engage in violent acts. I note that, in response to the stabbing incident this spring, the Student Assembly passed Resolution Number 11. Resolution 11 "calls for the incorporation of zero-tolerance policies towards violent crimes and sexual assault into the Campus Code of Conduct" and urges that "violation of these policies result in expulsion from the University."<sup>3</sup>

---

<sup>3</sup> In response to the Student Assembly's adoption of Resolution 11 and its proposed "zero tolerance" policy, the *Cornell Daily Sun* responded in an op-ed: "We think that the current Code of Conduct is adequate; what the protesters should really want is for the University to employ the maximum penalty more consistently." *Cornell Daily Sun*, "Sour Gripes" (March 1, 2006). The same op-ed piece also commented on a proposed 8-hour time limit for the University to email announcement of bias incidents: "Instead, we

**The outcomes of the campus disciplinary system should be more transparent to the community.** Many with whom I spoke expressed frustration that the campus community hears about cases that are referred for disciplinary action, but the community never learns of the outcomes. Both for accountability and for educational purposes, people would like better information about outcomes. People recognize that federal law, particularly the Family Educational Rights and Privacy Act ("FERPA"), constrains what the University can communicate, but they would like the University to explore ways to inform the community about disciplinary decisions while still complying with FERPA.

## **BASIC PHILOSOPHY AND TERMINOLOGY**

As stated in the Introduction, it is my opinion that the Cornell's current campus disciplinary system should be recast in several fundamental ways. This opinion is based upon my nearly eleven years as a member of the Cornell community, including three and one-half years as Judicial Administrator; conversations with many on this campus and with individuals at other campuses who work in student judicial affairs; and on my review of Cornell documents, documents from other colleges and universities, and various articles commenting on student judicial affairs.

First, the Conduct Code should include aspirational language that describes the type of educational community Cornell wants to be. The campus disciplinary system should be grounded in each individual's responsibility to help maintain that sense of campus community.

Second, the entire disciplinary system should be recast with a more educational focus and less reliance on language and concepts that are borrowed from the criminal law. The current pervasive use of criminal law terms confuses Cornell's obligations to itself as an educational community with the obligation we all share to obey the laws and regulations of broader society. I wish to clarify that by "educational," I do not intend to minimize the importance of consequences. I believe firmly that Cornell's long honored touchstone of "freedom with responsibility" should indeed emphasize accepting responsibility and consequences when individuals violate community standards of behavior. "Educational," in the context of my work here, is simply meant to distinguish Cornell's fundamental mission from the many criminal law concepts and procedures that I believe are best left to the criminal courts.

Third, it is my opinion that the campus disciplinary function should be integrated into other student affairs work of the University. In my draft revision, as discussed below, I propose that the disciplinary function be incorporated as part of the Dean of Students Office. The Vice President for Student and Academic Services, to whom the

---

suggest a daily "police blotter"-type report on the front page of the University website, where the whole world can see it. Let the shame of such an announcement, each and every day, prod the Administration and the student body to do what mere rules cannot: stop the violence." Id.

Dean of Students reports, would assume significant new responsibilities, as would a new body called the University Conduct Council and a new position called the Conduct Review Officer. Authority currently resting with the University Assembly and its Codes and Judicial Committee would be shifted under the umbrella of student affairs. Obviously, these are major philosophical changes that cannot be adopted without serious deliberation.

Finally, because I have approached this from a very different perspective than is embodied in the current Code, I have used different terminology in the proposed documents. For example, instead of the "judicial system" and "Judicial Administrator," I have used the terms "disciplinary system" and "Director of Student Conduct." I believe the new words better reflect the approach I have suggested and – if community members concur – that the new words should serve an educational function in helping community members to understand the new focus. In the end, of course, the terminology and any new titles will have to reflect whatever philosophy and structure is chosen as the basis for campus discipline.

## **MAJOR ISSUES**

It would be impossible for me to spell out in detail (and even more difficult for readers of this document to wade through!) my thinking on the various issues that surfaced during my review. This section, however, will attempt to share the most significant concerns I heard and my own thinking about the major issues. I devote the longest discussion to the most fundamental change recommended – that related to the structure and location of the campus disciplinary function.

### **Structure/Location of Disciplinary Function**

The existence of an "independent" Judicial Administrator's Office has been a feature of Cornell's campus judicial system since the major revision that was enacted in the early 1970's. Many with whom I spoke believe that this independence has contributed significantly to the integrity of the campus judicial system, and some urged very strongly that the independence be retained.

Many others, however, suggested that the independence of the JA's Office can be problematic. First and perhaps most importantly, the independence makes it more difficult to address student behavior concerns in an integrated way with other student affairs professionals on campus. Second, incorporating the student conduct function into a larger unit could result in more efficient staffing by providing additional office support at times when the conduct office is particularly busy. Third, while supportive of the work of the JA's Office, people believe it is unreasonable to expect that the President and Board of Trustees can supervise the JA or evaluate the JA's performance in any meaningful way. Finally, there is a sense (even among those in the JA's Office) that the professionals in the JA's Office would benefit from a closer working relationship with other student affairs professionals on campus.

In most other campus conduct systems I reviewed, the student disciplinary function is part of the Dean of Students Office. Some with whom I spoke at Cornell, however, expressed concerns about moving the disciplinary function to the Dean of Students Office or otherwise under the broad umbrella of student affairs. The concern as I understand it is to preserve the Dean of Students as an advocate for student concerns and not to involve that office in a disciplinary role.

While I understand this concern at some level, I believe that it overlooks one of the basic components of an integrated approach to students' intellectual and social development on campus. Part of being an advocate for students is to allow them to learn from their mistakes and to accept responsibility when they violate community standards of behavior. A fair disciplinary system that allows students to learn from their behavioral choices, in my opinion, should be an integral part of the student affairs function on a University campus.

The most fundamental recommendation of my proposed revision, then, is to locate the Office of Student Conduct within the Dean of Students Office.<sup>4</sup> Accordingly, responsibility for the student discipline function would fall within the administrative responsibility of the Vice President for Student and Academic Services.

Consistent with this recommendation, my proposed revision incorporates a number of changes that I expect will generate significant discussion. Given the Vice President's responsibility for campus discipline, I recommend that the Vice President or her designee have authority that includes the following:

- Constitution of a new "University Conduct Council" from which hearing and review board panels would be drawn. The University Conduct Council also would become generally familiar with the Student Disciplinary System and could serve as an advisory board to the Vice President with respect to periodic review and/or amendment of the Conduct Code and Student Disciplinary System (see further discussion below).
- Appointment of chairpersons for the University Hearing Board and University Review Board.
- Appointment of a new position identified as the "Conduct Review Officer." The Conduct Review Officer would review decisions of the Office of Student Conduct and/or the University Hearing Board when sanctions of suspension or dismissal are *not* at issue. The Hearing and Review Boards would hear cases in which suspension or dismissal is recommended (except for interim suspensions, discussed below).

---

<sup>4</sup> As discussed below, I also recommend that procedures for faculty and staff misconduct be separated out. The Student Disciplinary System, as the name suggests, would apply only to students.

- Review of decisions by the Office of Student Conduct to impose interim suspension before considering a case on the merits. (Interim suspension may only be imposed when there is a threat to order, health, safety, or the University's educational mission.)
- Authority to appoint an individual or a body to hear a case in exceptional circumstances – for example, when hearing or review board panels cannot be convened due to exam schedules or other conflicts.

Those familiar with the current Code of Conduct will note that many of these (or similar) functions currently reside with the University Assembly and/or with its Codes and Judicial Committee. I wish to emphasize that my recommendation should not be viewed as criticism of the UA or the CJC. On the contrary, those with whom I spoke were complimentary of the UA and CJC, and they recognize the important historical role these bodies have played in Cornell's campus judicial system. So I do not recommend lightly the changes described above.

I recommend the changes first and foremost because I believe it would be important that the authority of the Vice President for Student and Academic Affairs be coextensive with her responsibility for overseeing student discipline.

In addition, I believe the recommended changes will result in a more efficient process that, among other things, will reduce delay that is currently problematic at many stages. Having a single Conduct Review Officer consider cases not involving suspension or dismissal should allow more prompt resolution of lower level cases, while ensuring that representative hearing and review boards consider more serious cases. With respect to constituting the pool of hearing and review board members, the CJC has expressed concern about the time-consuming selection process that takes place over a difficult few weeks toward the end of the spring semester. And there is a significant concern that even when the pool is fully constituted, the difficulty of impaneling a hearing or review board often results in troubling delays.

Clearly, the proposed revision would represent a significant change in campus culture and organizational responsibilities. And clearly, such a change would require further input and study, not only from the community in general but from the Vice President for Student and Academic Services and the Dean of Students in particular. It may be determined, in the end, that the "costs" of such a change outweigh the benefits of my recommendation. If that determination should be made, I would simply note that roles for the University Assembly and the Codes and Judicial Committee could be built back into the proposed revision while still moving the disciplinary function to the Dean of Students Office.

Finally, without attempting here to outline all of the potential issues associated with this aspect of my proposal, I note one additional concern in particular: whether the interests of graduate and professional students would be adequately served by locating the disciplinary function in the Dean of Students Office. I see no inherent reason for concern in this regard: the current Dean of Students Office, while perhaps perceived



primarily as serving undergraduates, does in fact serve graduate students as well (e.g., with crisis management support, student activities, etc.) Nevertheless, the situation of graduate and professional students should be considered before adopting my recommended change.<sup>5</sup>

### **Faculty/Staff**

The current Campus Code of Conduct covers student misconduct (except for academic integrity matters); it also applies to faculty and staff with respect to *non-work* related misconduct. Work related misconduct is currently referred to a department head or dean, in the case of a faculty member; or to a supervisor or human resources representative, in the case of a non-academic staff person.

During my consultations, I heard considerable support for a single document that identifies behavioral expectations for all members of the community: students as well as faculty and staff. People also recognize, though, that faculty and staff are in a fundamentally different relationship to the University than are students. Moreover, people recognize that there could be many reasons why a department head or dean should be informed of misconduct on campus (even if a particular incident is not directly work-related), and the same holds true for notifying supervisors of employee misconduct. For example, many people felt that if a faculty or staff member behaved in a way that was very disruptive or endangered others on campus, the appropriate department head, dean, or supervisor should be notified regardless of whether the incident was work-related.

One question I considered was: does the number of faculty and staff cases each year justify the additional complexity that is required for the Code to include separate procedures for faculty and staff misconduct. Based on figures provided by the Judicial Administrator's Office, the faculty cases over the past 10 years have averaged about 4 per year, representing less than 1% of the total caseload. Staff cases over the past 10 years have averaged about 13 per year, representing less than 2% of the total caseload.

In my opinion, the low number of faculty and staff cases do not justify the additional complexity that results in the Code. I am also persuaded that in most if not all cases, the appropriate department head, dean, or supervisor should be informed if a faculty or staff member is engaging in conduct that violates community standards of behavior.

I recommend, therefore, that the Conduct Code set forth standards of behavior that apply to all community members – but that all cases of faculty or staff misconduct

---

<sup>5</sup> In response to concerns raised by graduate and professional students, my proposed draft specifies that about one-third of the University Conduct Council's total student membership should be filled by graduate and professional students. This number approximates figures provided by the JA describing the office's caseload over the past 10 years. My proposal also indicates that when possible, a graduate or professional student should sit on a hearing or review panel when the accused individual is a graduate or professional student.

(whether work related or not) be referred to the department head, dean, supervisor, or other human resources representative as appropriate.

If this recommendation is adopted, it might be advisable to develop additional training for individuals who could receive complaints of non-work related misconduct by faculty or staff.

### **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 (see footnote 2) 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.<sup>6</sup>

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.

### **Combining Title Two (RMPO) and Title Three (RMEE)**

Perhaps the most frequently expressed plea was to combine what are currently two separate titles in the Campus Code of Conduct: Title Two (Regulations for the Maintenance of Public Order) and Title Three (Regulations for the Maintenance of the Educational Environment). I agree with the many people who believe that the separation of these titles is confusing and adds procedural complexity to the current code.

A New York state law known as the Henderson Act requires that colleges and universities adopt "regulations for the maintenance of public order." New York Education Law Section 6430. That law sets forth certain minimum requirements that Cornell's Conduct Code must satisfy. Nothing in the law, however, precludes Cornell from incorporating the public order provisions with other regulations governing campus conduct.

I have conferred with University Counsel's Office and believe that my proposed revision satisfies the requirements of the Henderson Act.<sup>7</sup> Counsel's Office, of course, should opine on the legal sufficiency of this and any other proposed revision before final adoption.

### **Role of Attorneys/Advisors**

The current Campus Code of Conduct allows the accused to have an attorney or any other adviser present at any stage of campus disciplinary proceedings. The attorney or other adviser may participate actively – e.g., an attorney may question witnesses, advocate on behalf of the accused, etc.

I heard great concern from those I consulted about allowing attorneys to play such a prominent role. Perhaps most disturbing, there seems to be a growing perception that

---

<sup>6</sup> Although I did not consider outreach to local constituents to be within the scope of my project, it is my understanding that University officials have advised the Cornell Community Coordinating Committee that this project was underway.

<sup>7</sup> A review of policies at Colgate University (Policy on Public Order), Ithaca College (Rules for the Maintenance of Public Order), Syracuse University (Campus Disruption Policy), and the SUNY system (Maintenance of Public Order) suggest a number of different approaches to satisfying the Henderson Act requirements.

affluent students have an advantage in the disciplinary process over students who do not have the resources to hire an attorney. People also seem concerned that permitting attorneys to play a significant role contributes to the adversarial nature that campus proceedings sometimes take on, where attention to procedural arguments can outweigh the educational conversation that is critical to the fundamental purpose of a campus disciplinary system. Finally, it appears that Cornell is an exception among our peers in allowing attorneys to have such an extensive level of involvement.

In order to reinforce the educational purpose of the campus system and to strengthen the concept of community involvement and accountability, my proposal continues to allow an adviser at any stage of campus disciplinary proceedings – but requires that the adviser be a member of the campus community, and limits the role of the adviser so that it is primarily the responding student who must answer for her or his behavior. If a student were arrested for the same incident that is the subject of campus proceedings, the student could have any attorney as an adviser, but the attorney's role would be limited in the same way that other advisers' roles are limited.<sup>8</sup>

### **Formality of Hearings, Appeals; Multiple Appeal Levels**

An attorney who was in attendance at a campus disciplinary proceeding when I served as Judicial Administrator once remarked to me: "This hearing was more like court than court." Because I believe that such legal formality does not best serve the University's educational mission, my proposed revision incorporates the following features, among others:

- University Hearing Board and University Review Board panels would hear only those cases in which suspension or dismissal is recommended. (Other cases would be decided by voluntary agreement, or by decision of the Office of Student Conduct with review available before the Conduct Review Officer.)
- In cases that go to hearing, the responding student is responsible for speaking on his or her own behalf. The respondent may confer with an adviser as described above.
- The tone of hearings should be more conversational than adversarial. Board members should have an opportunity to question freely, and the presentation of evidence should be more informal than the current court model of examination, cross-examination, etc.
- Except when a hearing board imposes a sanction of suspension or dismissal, the Conduct Review Officer would review the hearing board's decision. If a hearing

---

<sup>8</sup> This change means that only lawyers who are members of the Cornell community may serve as advisers, except in cases when a student has been arrested in connection with the same incident. This change, if adopted, could be considered newsworthy at the local level. For example, in a recent *Ithaca Journal* article (February 1, 2006) describing a student disciplinary matter at Ithaca College, the reporter noted that IC, unlike Cornell, did not allow students to have attorneys represent them in campus proceedings.

board imposes a sanction of suspension or dismissal, a panel sitting as the University Review Board would review the decision.

- Appeals could be brought based on specific grounds by either the accused/responding student or the Office of Student Conduct.
- Complainants would not have a right of appeal. This is consistent with the language I have proposed making clear that once a complaint has been filed, it becomes the purview of the Office of Student Conduct to decide how to handle the complaint. Complainants and/or victims, however, would be able to make a statement before the Hearing Board or Review Board if they wish.

I recommend that a student responding to allegations of misconduct be required to present her own explanation of the events in question. I make this recommendation because I believe that having to answer personally when one's conduct is called into question is a significant part of learning to be a responsible community member. Given the proposed recasting of the entire system – which would emphasize a process more in the nature of a discussion with board members rather than a courtroom like examination of witnesses – I believe this feature would help to promote the educational objectives of campus proceedings.

I gave considerable thought to the question of whether to require that the complainant present his or her own allegations. Some universities use this approach and some commentators recommend it, as a way of encouraging direct communication between student members of the educational community. In the end, I concluded that such a requirement was not consistent with other provisions I have recommended that limit the role of the complainant in disciplinary proceedings. As with all of my recommendations, the community may want to discuss this point further.

It was suggested to me that all appeals could be heard by the Vice President for Student and Academic Services or her designee, rather than by a University Review Board comprised of student, faculty, and staff members. A number of other colleges and universities utilize the highest ranking student affairs administrator in this role. Such a system is also analogous to Cornell's Academic Integrity proceedings, where the college deans hear appeals. Especially because the initial hearing panel would be heard by a representative group of community members, one of whom would be a student, it was suggested that having the Vice President or designee hear appeals would simplify the process and allow more prompt decisions.

My proposed revision reflects a compromise along these lines. I have retained the University Review Board model for cases involving suspension or dismissal. For all other cases, I recommend that a single administrator, whom I have designated the "Conduct Review Officer," hear appeals. I believe that this model would allow for more expeditious resolution of appeals, reduce the burden on those serving as members of the University Conduct Council, while still providing a further level of review.

Finally, my proposal would allow the Office of Student Conduct to appeal a decision of the University Hearing Board. Under the current Campus Code of Conduct, the JA does not have a right of appeal. It is my sense, both under the current and proposed campus disciplinary system, that the JA/Office of Student Conduct is best situated to have a comprehensive overview of disciplinary matters. The Office of Student Conduct, for example, would be in the best position to know if the gravity of sanctions is in keeping with prior cases. Accordingly, I believe it is appropriate that the Office of Student Conduct be able to request further review of a Hearing Board decision if any of the specified bases for appeal exists.

### **Interim Suspension**

Currently, the Judicial Administrator has authority to impose a temporary suspension (i.e., a suspension pending resolution of charges) under exceptional circumstances. The University Hearing Board, conducting what is called a "show cause" hearing, must review the JA's decision within five calendar days. One of the more difficult questions I considered during this review was whether to retain a hearing board type review of interim suspensions, or whether to have a single University official conduct such reviews.

Suspending a student before disciplinary charges are resolved, of course, is a very serious step – some might argue it is the most serious action the University can take, since it affects student status before a decision on the merits. For this reason, some might argue that a representative hearing board should review any temporary suspension the JA (or, in my proposed revision, the Director of Student Conduct) imposes. This result would also be consistent, at least in some ways, with the approach I have suggested of involving hearing and review board panels in cases where *sanctions* of suspension or dismissal have been recommended.

On the other hand, interim suspensions are to be imposed only in "extraordinary situations" when a student or student organization's presence is deemed to be "a threat to order, health, safety, or the conduct of the University's educational mission." Arguably, this is precisely the type of situation when a single senior level University officer should have authority to review the initial decision and to act promptly and decisively, without being subject to review by the Hearing Board. First, it is the University, not the Hearing Board, who is responsible for maintaining order and safety on campus. Moreover, decisions on interim suspensions generally should be informed by a broad based awareness of campus concerns as well as a sense of institutional history. I believe that most often, an officer of the University is likely to have access to better information in this regard than a randomly selected panel of the Hearing Board. Finally, because interim suspensions by definition are likely to involve criminal acts, such decisions are likely to be based at least in part upon sensitive information from an ongoing police investigation that should not be released any more broadly than is necessary.

Clearly there should be a mechanism to review interim suspensions. Having considered carefully the various arguments, I believe it is in the University community's

best interests to have a single senior University officer responsible for that review. Under the structure I propose, I believe this authority should rest with the Vice President for Student and Academic Affairs, who has general administrative responsibility for student discipline.

### **Proceeding While Criminal Charges Pending**

As described above, individuals with whom I spoke described delay in resolving disputes as a significant problem. Delay sometimes arises when the same incident results in both criminal charges and a complaint through the campus JA's Office.<sup>9</sup> Delays in these cases are of particular concern because criminal cases very often involve more serious misconduct where the impact on campus members is particularly serious, if not threatening.

In what appears to be an exception among our peers, Cornell's current general rule is to defer campus proceedings until criminal charges are resolved. As a related but confusing concept, the current Code sets forth the guiding principle of "avoiding dual punishment for the same act" – language that echoes the principle of "double jeopardy" in the criminal law. The combined practice of deferring to criminal adjudication and adoption of language and concepts found in the criminal law, in my opinion, creates confusion about the purpose and scope of Cornell's campus disciplinary system. I believe that the University should resolve complaints of misconduct as quickly as possible – following its own procedures – because it is the University's right to determine whether its own standards of behavior have been violated.

I recommend, therefore, that the University's general rule be the reverse of its current approach – i.e., that the University ordinarily *will* move forward with campus disciplinary proceedings regardless of whether related criminal or other charges are pending. Recognizing the special vulnerability of students who have been charged criminally for the same misconduct, the University should allow the responding student to have an attorney serve as an adviser in such cases if the student wishes.

Allowing the University to proceed with campus proceedings will require clear communication among the Office of Student Conduct, campus law enforcement officers, and local law enforcement agencies, including the District Attorney's Office. If this recommendation is viewed favorably on campus, therefore, it should be reviewed with local law enforcement agencies before adoption.

### **"Right to Remain Silent"; Obligation to Cooperate**

In another concept derived from criminal law, Cornell's current Code speaks of an accused person's "right to remain silent." There has been a perception over the years, at

---

<sup>9</sup> Although the situation does not arise as often, an incident of misconduct could also result in civil claims as well as criminal charges.

least in some cases, that choosing not to speak is an option and that no inference may be drawn from such a choice.

Some campus codes of conduct allow a negative inference to be drawn if an accused individual refuses to speak – i.e., the decision-maker would be allowed to infer, by a person's silence, that the person has in fact committed the alleged misconduct. I do not recommend that Cornell go this far. I do believe, and my proposed revision so indicates, that the University should have the clear right to go forward with a case even if the accused individual refuses to speak. The decision-maker, under such circumstances, should decide the case based on the evidence available.

The current Code's reference to the "right to remain silent," along with the absence of any subpoena power in the hands of the JA or the hearing board, has also led to situations in which accused students or potential witnesses sometimes simply refuse to respond to a request from the JA's Office to meet. This seems troubling in the context of a campus disciplinary system, where all members of the community should have an interest in promoting an educational environment.

My proposed revision, therefore, imposes an obligation on all community members to cooperate with the Office of Student Conduct. This does not mean that individuals somehow can be compelled to speak against their will. But at the very least, I believe, it is reasonable to require that community members respond to a request from the Office of Student Conduct to meet.

### **Sufficiency of Evidence**

The issue of what quantum of evidence is appropriate for Cornell's campus disciplinary system generated diverse opinions.

The standard set forth in the current Campus Code of Conduct is "clear and convincing" evidence. This standard is often described as "in between" the more exacting criminal standard of "beyond a reasonable doubt" and the less onerous "preponderance of the evidence". "Clear and convincing" is often described as a quantum of evidence that leaves the decision-maker with a "firm conviction" that the person accused has committed a violation. The "preponderance" standard, by comparison, generally requires the fact finder to conclude that the essential facts are "more likely than not" to be true.

Some with whom I conferred favor the "clear and convincing" standard currently in place. Among other reasons, those who favor this standard believe that the ultimate sanctions available in the Code – suspension and dismissal from the University – are serious, potentially life-altering events and that the higher threshold is appropriate. Some mentioned that this standard is often used in matters where professional licensing, for example, is at stake.



There was also considerable support, however, for adopting the less onerous "preponderance" standard. Advocates of this standard point out that it also is used in many situations where serious repercussions are at stake, including civil litigation matters where findings of liability may result in large monetary awards, fines, or onerous court orders – all of which can have a significant impact on a person's reputation and standing. The preponderance standard also appears to be most commonly used in campus judicial systems.<sup>10</sup>

In the end, I was persuaded by the notion that the basic goal of promoting the community's educational mission would be best advanced by the preponderance standard, because it represents a more equal balancing of the rights of the accused, the rights of the complainant or victim, and most importantly, the rights of the educational community as a whole. As noted by one leading authority:

[The "preponderance" standard] reflects the difference between college and university student discipline and judicial processes. The "clear and convincing" and "beyond a reasonable doubt" standard inaccurately treat the Accused Student as more important than the student who believes s/he was a victim of misconduct and/or as having more important interests than all other members of the academic community have in the maintenance of a calm, peaceful and productive living/learning environment. The "preponderance" standard correctly treats each one of these constituencies as equally important when a fact finder tries to decide what happened when the facts are disputed.

E. Stoner & J. Lowery, *supra*, 31 Journal of College and University Law at 48-49.

My decision to recommend the preponderance standard is not meant to minimize the consequences to a student who is suspended or expelled – certainly, such action will have serious consequences for the student. Rather, I believe that the preponderance standard reinforces the notion that membership in the campus community is not a right, but a privilege. The campus community, then, should not be put to the more onerous "clear and convincing" standard in order to enforce the community's standards of behavior.

### **Authority to Suspend or Dismiss if Student Agrees**

Under the current Code of Conduct, the JA does not have the authority to suspend or dismiss a student – even if a student were willing to agree to those sanctions. Rather, only the University Hearing Board and the University Review Board may impose a suspension or dismissal.

This restriction has proven troubling in some very serious cases where a student himself or herself realizes that time away from the University – or even a permanent separation – might be appropriate. In these cases, significant University resources are

---

<sup>10</sup> E. Stoner & J. Lowery, *supra*, 31 Journal of College & University Law at 48 n. 146.

required to conduct a hearing even though the student, upon the advice of advisers, would agree to a suspension or dismissal. The restriction also has resulted in numerous cases over the years where serious misconduct has no clear resolution for University purposes because the student makes the choice to leave Cornell before a hearing can take place. This situation can be unsettling to victims of serious misconduct and to the community's own sense of integrity.

The current limitation on the JA's authority is presumably in place to guard against the potential that a student in a serious situation might feel pressured into agreeing to the most onerous sanctions of suspension or dismissal. For several reasons, I believe the likelihood of undue pressure is not likely.

First, the overall tenor of the proposed revision is to promote a serious but less adversarial interaction when students are accused of misconduct. Second, advisers are permitted at all stages of the proceedings. Third, voluntary agreements to sanctions do not become final until two business days after signing, thus providing the student with an opportunity to repudiate the agreement if she changes her mind. Finally, the language proposed would require the Office of Student Conduct to promptly communicate any agreed upon suspension or dismissal to the Vice President for Student and Academic Services. This check would allow the Vice President to monitor the OSC's judgment in such cases and to determine whether adjustments should be made.

For all of these reasons, my proposed revision would allow a voluntary agreement between the Office of Student Conduct and the accused student to include sanctions of suspension or dismissal.

### **Convening Hearing and Review Boards**

My consultations revealed that especially in recent years, difficulty in convening hearing and review panels has led to delay in resolving cases, sometimes for considerable periods of time. The current system calls for one pool of hearing board members and a separate pool of review board members, and requires a rather elaborate process for random selection of panelists for any given case. The fact that certain individuals may never be chosen at random to sit on a panel may also lessen the sense of commitment members feel to participate when called.

If the campus disciplinary system is to utilize community members as hearing and review decision-makers, the system's integrity depends on hearing and review board members who are committed to serving even when such service comes at an onerous time. One approach to this concern, suggested by some with whom I spoke, would be to create a standing board that would hear all cases and/or appeals. For some schools that use this approach, it appears that the designation of "campus justices" (or a similar title) and a specific term may invest members sufficiently in the process that attendance problems become minimal.

I would encourage further conversation about the standing board approach. For current purposes, however, I was not persuaded that the standing board approach would eliminate problems of availability when cases are called. Exam times, for example, will always make it difficult for members to participate. My proposed revision, therefore, retains the current "pool of candidates" structure with a number of modifications:

- Rather than creating two separate pools for hearings and appeals, I recommend one pool, the "University Conduct Council," from which hearing and review board members would be chosen at random.<sup>11</sup> This Council should also become educated in general about the purpose and functioning of the disciplinary system and could serve as an advisory body for issues related to campus behavioral standards.
- Because the proposed disciplinary system covers students only, fewer faculty and staff members would need to be included in the pool of board members.<sup>12</sup> Decreasing the number of faculty and staff lessens the burden of soliciting members and increases the likelihood that those who are selected will be chosen to hear cases and thus to feel that their experience is meaningful.
- I recommend that whether sitting as a hearing board or as a review board, panels include one student, one faculty member, and one staff person. This change is intended to address the significant scheduling problems described during my consultations, which in turn delay resolution of disciplinary matters. It is my sense that providing for student representation, even with a single student, ensures that responding (accused) students will have the benefit of appropriate student influence in the decision-making process.
- The Vice President for Student and Academic Services would assume responsibility for ensuring that the University Conduct Council is properly constituted at all times. This change is described more fully in the discussion above under the heading "Structure/Location of Disciplinary Function."
- The Vice President for Student and Academic Services would be empowered to appoint an ad hoc hearing or review board in the event that such a board cannot be convened in a reasonable time and when prompt attention is required. This ensures that unexpected delays will not undermine the integrity of the student disciplinary process and that the interests of the entire community can be considered.

---

<sup>11</sup> The Codes and Judicial Committee recently recommended a revision to the current Code reflecting this same concept.

<sup>12</sup> Under the current code, three of the five hearing board members must represent the status of the accused. This means that the hearing board pool must anticipate that as many as three faculty will be required to hear a case involving a faculty member, and as many as three employees to hear an employee case. Under the proposed revision, the disciplinary system describes procedures for student misconduct only. This means that fewer faculty and staff need to be included in the pool of individuals who would sit on hearing board panels.

## **Title Five (Responsible Speech and Expression)**

Another difficult decision I faced was how to treat the provisions currently set forth in Title Five of the Campus Code of Conduct. As indicated in the historical overview, Title Five was added in 1987 (as a result of the Barcelo Commission Report) to provide further guidance on "Responsible Speech and Expression."

I struggled with this issue because Title Five is different in nature than other titles to the Code. Title Five sets forth principles and commentary that elaborate on substantive standards of behavior articulated elsewhere in the Code – but to my understanding, at least, Title Five does not purport to articulate any new standards of behavior.

The work of the Barcelo Commission contributed in a significant way to the Cornell community. I was very reluctant, then, to simply eliminate Title Five. On the other hand, Title Five's lengthy commentaries presented a challenge to the fundamental objective of producing a more concise Conduct Code.

In the end, I attempted to be sure that the major substantive concepts of Title Five are included in the proposed Conduct Code. I considered adding Title Five, in its entirety, as part of an appendix setting forth examples to guide behavior (see discussion below, under the "Miscellaneous" heading). I chose not to do so because it seemed to me that the appendix then began to overwhelm the Code itself. I encourage the community, as part of its consideration of these draft documents, to consider that option or other options for resolving this dilemma.

## **Miscellaneous**

As might be expected with a project of this magnitude, a number of ideas and issues surfaced that do not fit neatly into any of the categories outlined for consideration. I mention several of them here.

**Restorative justice.** One person referred me to a recent nationally published article proposing that campus judicial systems adopt an approach called "restorative justice." David R. Karp, *Campus Justice is Behind the Times*, Inside Higher Ed (October 28, 2005), at <http://www.insidehighered.com/views/2005/10/28/karp>. According to the article, this approach "call[s] upon offenders, victims, and community members to participate in the decision-making process following a campus violation. Through open dialogue, each participant comes to understand the full impact of the offense, educating the offender about the consequences of his or her behavior."<sup>13</sup> I believe that this is an interesting approach and would be worth the community's consideration. However, I do

---

<sup>13</sup> See also Bill Warters, *Making Things Right: Restorative Justice Comes to Campuses*, Conflict Management in Higher Education Report (Jan/Feb 2000), at [http://www.campus-adr.org/CMHER/ReportArticles/Edition1\\_1/Restorative1\\_1.html](http://www.campus-adr.org/CMHER/ReportArticles/Edition1_1/Restorative1_1.html). This article describes the restorative justice program at the University of Colorado at Boulder. David Karp, whose article is cited in the main text, is a professor at Skidmore College and describes his college's work with restorative justice.

not feel sufficiently well educated about restorative justice to recommend the approach as a response to my current assignment.

**Behavior constituting a threat to self.** At several places in the proposed Conduct Code and Student Disciplinary System (e.g., interim suspensions), situations are defined based upon threat to others or to the community. I considered extending this concept to cover situations when a person poses a threat to her or himself. Models at other universities, for example, emphasize the considerable distress that an attempted suicide causes in a residential community and provide for suspension of students who engage in such behavior. This type of approach, of course, raises a number of important issues. Is it consistent with Cornell's fundamental philosophy of treating students as adults? Would it apply to a student who fails to take medications to treat a mental health disorder? Would it apply to a person with an eating disorder? I believe this is another discussion worth the community's attention. The parameters and time constraints of my current task, however, allow me to raise but not address it.

**Academic credit while suspended.** I am not aware of any clearly articulated University policy regarding academic credit earned at another institution while under suspension from Cornell. I believe that the administration should be clear about its stance on this issue and that the policy should be articulated in the definition for the term "suspension" in the sanctions section of the Student Disciplinary System. As indicated in my proposed revision, I believe that a student under suspension from Cornell should *not* be able to earn credit elsewhere and transfer that credit to Cornell. To allow that result, in my opinion, negates the effect of the sanction.

**Conduct Code examples.** At the suggestion of students, my proposed Conduct Code includes an Appendix setting forth examples of misconduct. Students cite this feature in Cornell's Code of Academic Integrity as a helpful guide. I have some concern that too long an appendix may undermine the fundamental objective of a simpler Conduct Code. I believe that this is the type of decision that can best be made with additional community input.

### **Amendment authority**

Amendment authority for the current Campus Code of Conduct (except for Title Two and Title Four, Article III) lies with the University Assembly subject to the approval of the president. Title Two and Title Four, Article III – which relate to the Regulations for the Maintenance of Public Order – may only be amended by the Board of Trustees.

The UA currently exercises its amendment authority through the UA's Codes and Judicial Committee. The CJC reviews proposed amendments and, if appropriate, recommends adoption to the UA; if approved by the UA, amendments must then be submitted to the President for final approval. Proposed amendments requiring Board of Trustee approval are submitted through the Secretary of the Corporation.

Given the constraints of the Henderson Act, it appears that amendments to the "public order" section must be approved by the Board of Trustees. Of course, University Counsel must opine on that and all other legal issues associated with this project.

It was suggested in numerous conversations, however, that amendment authority over the Conduct Code and Student Disciplinary System (except for the public order provisions) conform to the process used for other University policies. Following University Policy 4.1 (Formulation and Issuance of University Policies), the documents would go through the University Policy Office, which in every case assembles a working group to review proposed amendments and to recommend changes to the responsible office. I see at least three reasons to incorporate this suggestion as part of my proposed revision.

First, especially if the student discipline function is moved under the umbrella of student affairs, it makes sense to me that the student affairs professionals should have oversight of the Conduct Code and Student Disciplinary System. Designating an appropriate office within that functional unit as the "responsible office" will help to ensure that student discipline reflects and is fully integrated with Cornell's current philosophy and practices related to student development.<sup>14</sup>

Second, I note that the University Policy Office has existed for a relatively short time. It is my understanding, at least, that no comparable office existed back in the early 1970's. It seems appropriate now to take advantage of the institutional benefits that the office provides. I am confident that the UPO, in exercising its responsibilities, would ensure an adequate voice for student and other community concerns as part of the process.

Finally, I note that the standard practice at other colleges and universities appears to be that student disciplinary documents are articulated at the institutional level. Adoption of this new approach, therefore, would align Cornell more clearly with what by inference, at least, would be considered "best practices."

---

<sup>14</sup> Consistent with this recommended change, the proposed revision also vests ultimate authority to interpret the Conduct Code and Student Disciplinary System in the Vice President for Student and Academic Services. This approach will ensure that documents related to student discipline are interpreted by the "responsible office" – and, therefore, by the campus community's most senior student affairs professional.

## **CONCLUSION**

The draft documents I have prepared represent significant departures, in some instances, from the current Campus Code of Conduct. I believe that the documents remain true to the fundamental principles that have been articulated since the Sindler report in 1967 and that, where new concepts are introduced, they reflect current best practices in the field of student judicial affairs.

Ultimately, of course, it is up to the campus community to judge whether the draft documents represent improvements to the current system and, most importantly, whether they suggest a campus disciplinary process that is fundamentally fair and appropriate to Cornell University's educational mission.