

Brown ACLU proposal for disciplinary system reform

Part I: Structural and Procedural Reform

Brown ACLU
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Introduction

In 1967, the Advisory Committee on Student Conduct (better known as the Magrath Committee) created the University Council on Students Affairs (UCSA), Brown's first student-faculty-administration disciplinary committee, as both an adjudicative body and a policy-making body. The goal, in the words of the committee, was to "provide a continuous forum for the discussion of the University's social system which can authoritatively recommend adjustments and changes as experience and needs indicate." (Magrath Committee Report, p. 8) The committee justified this unprecedented level of student involvement in university policy-making in two ways: "First, social and student conduct policies and procedures impinge directly and almost exclusively upon the students; their impact, moreover, is doubly significant in a primarily residential university such as Brown. Second, we believe that students are more likely to act maturely and responsibly within a social system which they help to create and to enforce." (Magrath Committee Report, p. 8)

Unfortunately, a series of changes over the past fifteen years have made the University stray far away from the bold mandate of the Magrath Committee. In 1986, minor disciplinary infractions – which had previously been handled by the UCSA or by small student-faculty committees – were moved to the jurisdiction of the deanery. And students were denied representation in the newly-created Disciplinary Review Board, which decided case disposition and whether the hearing should be open or closed.

By 1991, students had regained a position on the disposition body (now named the Monday Morning Meeting group) but lost their voting rights. Additionally, closed hearings became mandatory, removing much of the disciplinary council's accountability to the university community.

In 1992, the students were removed entirely from the Monday Morning Meetings. And in 1997, student representation on the disciplinary council itself came under attack, when the student government's appointment powers were reduced to a mere advisory power.

The Brown ACLU believes that this disturbing trend must be reversed. Students should be integrally involved in all aspects of the disciplinary process, including disposition, adjudication, oversight, and policy-making. In this package of reforms, we propose two new committees that help to restore the student voice in matters of student discipline:

- (1) Disposition Committee - a student-administration committee that decides whether cases should be routed to dean's hearings or the UDC, and whether Structured Negotiations is an option.
- (2) Committee on Disciplinary Oversight (CDO) - a student-faculty-administration committee that oversees all aspects of the disciplinary process, produces an annual evaluation of the process, and is empowered to make recommendations for changes.

In addition, the Brown ACLU believes that the UDC's procedures are in dire need of a comprehensive re-evaluation. The Council is plagued by conflicts of interest and a lack of procedural safeguards. Mandatory closed hearings and uninformative community notifications shield the Council from public accountability. The lack of sentencing guidelines makes

punishments wildly inconsistent. Hearings *in absentia* are the default if the respondent is unable to make it to the hearing. Students are denied access to legal counsel in most hearings, even if they are facing criminal prosecution outside the university. An inability to directly question one's accuser threatens to undermine the purpose of cross-examination. And appeals of decisions are discouraged by a catch-22 system in which the appeal can actually lead to a harsher penalty.

The attached set of amendments proposes what we feel to be the most reasonable, fair manner to deal with these problems. We are not attempting to duplicate the civil courts within the University; to do so would be both expensive and impractical. Rather, we are attempting to take the best elements of the legal system and incorporate these into a shared institution created, administered, and continuously re-evaluated by the University community as a whole.

Some will criticize our amendments for reinforcing the legalistic, adversarial character of the judicial process. This criticism, though well meaning, is misguided. A therapeutic, informal approach to discipline may appear less painful than a legalistic approach, but it is grossly inappropriate to let therapeutic ideas influence decisions on guilt and innocence. A case only comes to the UDC when the punishment can have tangible and incredibly destructive effects on the respondent's academic career, and when Structured Negotiation has either broken down or been refused. Any lies told during the initial stages of the process – either by the respondent or the complaining witness – become hardened positions that the liar has an incentive to maintain. In the guilt phase, the task of the UDC is to sort out the lies from the truth, not to act as a therapist or a channel for community feelings. The intensely adversarial atmosphere of the American judicial system, with its hostile questions and harsh cross-examinations, exists as it does because it is the best method for determining the truth in the face of self-serving lies and distortions. We would do well to adopt these time-tested and proven structures.

Adopting structures and conventions from the legal system is also an important way of increasing the legitimacy of the disciplinary system. In an informal hearing environment that does not incorporate these procedural safeguards, the phrase "due process" is reduced to a meaningless buzzword. Contrary to the assertions of the 1997 Blumstein Committee on Sexual Misconduct, "good people" alone cannot make good process. Rather, good people and good process are two independent and equally necessary elements of the disciplinary system. No matter who the members of the UDC are, bad process undermines the real and perceived fairness of the disciplinary system.

By adopting common-sense procedural reforms, removing conflicts of interest, and reinvigorating the disciplinary system's status as a shared community institution, we hope to both institute good process and attract more good people to participate in the administration of student discipline.

NON-ACADEMIC DISCIPLINARY PROCEDURES

Brown ACLU Proposed Amendments

PREAMBLE

In order to protect personal and academic freedom, Brown University seeks ~~through appropriate policies and regulations to encourage~~ *to fully engage students, faculty and administrators in promoting* mature and responsible behavior on the part of all students within the University.

All students (undergraduate, graduate, or medical) are expected to conduct themselves in a manner compatible with the University's function as an educational institution and with the right of all members of the University community to attend, make use of, and enjoy the facilities and functions of the University without interference or disruption. Failure to do so may result in withdrawal of the student's privilege of attending the University, the suspension of specific privileges, or the imposition of other penalties.

I. ASSIGNMENT OF OFFENSES FOR DISPOSITION

1. All offenses of the University disciplinary code violate the Tenets of Community Behavior and are of serious concern to the University community. The university disciplinary process provides several mechanisms for resolution of conflicts between students and for addressing violations of university rules. They may be addressed through: (1) Structured Negotiation; (2) Dean's Hearing; (3) University Disciplinary Council Hearing; and (4) Deans' Council.

Upon receipt of a complaint the matter will be assigned for disposition by the ~~Dean of Student Life or her designee~~ *Disposition Committee* as follows:

a. ~~Structured Negotiation~~. Structured Negotiation is a non-disciplinary dispute resolution procedure, the goal of which is to determine if, through discussions and review with a University official, students can reach a fair and equitable outcome/resolution to a dispute. Any resolution must be acceptable to the University before it can be final. Prior to a disciplinary complaint being reviewed/investigated for possible formal hearing, the complaining student(s) and the student(s) against whom the allegations are made may be required to meet with a designated staff member to discuss the situation and Structured Negotiation. Structured Negotiation may not be appropriate for all matters, thus the ~~Dean of Student Life~~ *Disposition Committee* shall determine whether or not the parties to a dispute are to be referred to Structured Negotiation.¹ At any time after a meeting with a designated staff member or during the course of ongoing negotiations, either of the parties may terminate Structured Negotiation by notifying the Case Administrator,² in writing, that the matter should be returned/processed for formal consideration. Although

¹ In certain instances, Structured Negotiation may not be available. For instance, Structured Negotiation will not be available for a sexual assault involving force, coercion, or intimidation.

² A Case Administrator is a designated administrator of the University appointed by the ~~Dean of Student Life~~ *Vice President for Campus Affairs and Student Services* to provide assistance to the Office of Student

Formatting Key

~~Strikeout~~ = deletion

Italic = insertion

This amendment to the preamble reflects the spirit of partnership that should drive the disciplinary process. Rules should not be imposed and implemented from above by career administrators, but agreed upon and administered together by the university community as a whole.

Because of the Dean of Student Life's role in handling the initial complaint and the disposition of the case, it is a conflict of interest for her to also appoint the Case Administrator. Here, we eliminate this conflict of interest by transferring this responsibility to the Vice President who supervises her and who is unlikely to be involved in the particulars of any given case.

a complaint will not be reviewed/investigated for disposition through the formal disciplinary process during the period of Structured Negotiation, Structured Negotiation is not intended to cause significant delay in the disposition of allegations of violations of University standards of conduct. More information about Structured Negotiation is available from the Office of Student Life.

b. Dean's Hearing. Those offenses which do not warrant separation from the University and/or permanent record notation shall be heard by the appropriate Dean(s) in accordance with the procedures outlined below. However, repeated offenses, of any kind, may result in a determination that the matter should be referred for a University Disciplinary Council hearing.

c. University Disciplinary Council Hearing. Those offenses which may warrant separation from the University and/or permanent record notation shall be heard by the University Disciplinary Council in accordance with the procedures outlined below.

d. Deans' Council. The Deans' Council has responsibility for considering all appeals of decisions of the UDC and/or the Dean of Student Life which are allowed by the Provost. The Deans' Council also has responsibility for hearing cases which have been declined by the UDC.

2. Disposition Committee. The Disposition Committee is responsible for disposition of all disciplinary cases where charges have been filed.

a. *Membership. The membership of the Disposition Committee shall consist of one (1) undergraduate student selected annually by the duly elected undergraduate student government; one (1) graduate student selected annually by the duly elected graduate student government; one (1) medical student selected annually by the duly elected medical student government; three (3) deans appointed by the Provost; and the Dean of Student Life, who shall chair the committee. The respective student governments shall submit nominees to the appropriate Dean no later than May 1 for the upcoming academic year. In the event that a student government fails to provide a student member, the appropriate Dean shall select a student from the general student body to fill the open position. This candidate shall be subject to approval by the student government.*

b. *Procedure. After hearing a description of the charges by the Case Administrator, the Disposition Committee shall decide whether the offense may warrant separation from the university and/or permanent record notation. In making this decision, the Committee should use the sentencing guidelines in section IV.8 as an informal guide. For each disposition decision, the Committee shall provide the CDO with a brief summary of its reasons.*

The Disposition Committee would be similar to the original Disciplinary Review Board (DRB). By including students in disposition decisions, it would decentralize power and restore the student voice in an important part of the process.

II. INVESTIGATION OF COMPLAINT/INFORMATION

1. Filing of Complaint. A written complaint or report of information supporting a potential violation of university non-academic rules, regulations, and/or standards of conduct, by a student, shall be filed promptly with the Office of Student Life. When a complaint or report of information is filed more than sixty (60) days after the alleged incident, the Dean of Student Life shall determine whether circumstances support a late filing of charges.

Life, UDC, respondents, and complaining witnesses in the administration of pre-hearing and hearing procedures

It is the responsibility of the person filing the complaint to provide, in writing, the Case Administrator with the name(s) of all person(s) who may be witnesses or who may have information concerning the alleged offense(s).

2. Assignment of cases to Dean's Hearing. Matters which do not warrant separation from the University may be assigned by the ~~Case Administrator, in consultation with the Dean of Student Life,~~ *Disposition Committee* to Dean's Hearings. With respect to those matters an investigation will be conducted by the individual dean conducting the Dean's Hearing. All other matters will be investigated by the Case Administrator.

3. Investigation into Complaint. Upon receipt of a complaint or information alleging conduct which, if supported, violates the University's non-academic rules, regulations, and/or standards of conduct and could warrant separation from the University and/or permanent record notation, the Case Administrator shall complete an investigation into the allegation(s) using such assistance and university resources as may be necessary and available. This investigation may be suspended if the matter is being resolved through Structured Negotiation.

4. Notice of Investigation to Student(s) Against Whom the Allegations are Made. Within ten (10) days of the receipt of a complaint/information, the student(s) against whom the allegations are made shall be notified by the Case Administrator that an investigation is being conducted. The student shall be notified of the allegations and given the opportunity to meet with the Case Administrator to discuss the facts of the situation as he or she knows them. The student shall also be notified of his or her right to an advisor. Throughout the investigation, the student shall be entitled to be assisted by an advisor chosen from within the University community. The advisor may not be an attorney or staff member of the Office of Student Life. It is the responsibility of the student to provide, in writing, the Case Administrator with the name(s) of all person(s) who may be witnesses or who may have information concerning the allegation(s). The student has the right to decline to meet with the Case Administrator. At the conclusion of the investigation the Case Administrator will prepare a written report that will be provided to the Dean of Student Life.

5. Filing of Charges. If, following review of the Case Administrator's investigation report, the Dean of Student Life determines there is a reasonable basis for the filing of charges, the ~~Dean~~ *Disposition Committee* shall determine, in accordance with these procedures, whether the matter should be heard in a UDC hearing or a Dean's hearing.

a. UDC Hearing. If the ~~Dean~~ *Disposition Committee* determines that the alleged offense is one which may warrant separation from the University and/or permanent record notation the student will be notified that the matter is being referred to the UDC for hearing. The student will be provided with a copy of the Case Administrator's report.

b. Dean's Hearing. If the ~~Dean~~ *Disposition Committee* determines that the alleged offense is one which would not warrant separation from the University nor permanent record notation, an appropriate dean or the dean's designee will hear the matter in accordance with the appropriate University provisions for such a hearing.

6. Referral for Counseling. If the Dean of Student Life or the Case Administrator determines that disciplinary action is not necessary, the student may be referred to an appropriate University office or professional staff member for counseling.

7. Withdrawing Charges. The Dean of Student Life shall have the authority to withdraw charges once they have been made. If a complaining student desires to withdraw his or her complaint or other members of the University community presenting information have new or additional information that leads them to believe that the charge should be withdrawn, the student(s)/person(s) shall notify the Case Administrator of the desire to withdraw the complaint and the reasons therefore.

8. ~~Case Administrator~~ Dean of Student Life as Complaining Witness. With respect to matters where the complainant is the University, the ~~Case Administrator~~ Dean of Student Life will cause the case to proceed as the complaining witness on behalf of the University and shall perform all functions and responsibilities of that role as described in the pre-hearing and hearing procedures.

III. ACTIONS IN CONCERT/GROUP ACTION

1. Definition. Students shall be deemed to have acted in concert when they have planned, arranged, and/or acted through some common design or scheme that results in a violation of University rules of conduct.

2. Charge(s). When students from the College, the Graduate School, or the Medical School (or any combination thereof) are involved in a disciplinary matter, the Dean of Student Life shall make a determination as to whether and to what extent the students may be deemed to have acted in concert. If it is decided that they did act in concert, the Dean of Student Life shall make a determination as to what charges, if any, are to be made against the participants.

3. Single Hearing. When a determination is made that any combination of students have acted in concert, a group hearing shall be conducted unless, in the opinion of the Dean of Student Life, there are special circumstances which necessitate that there be more than one hearing.

IV. UNIVERSITY DISCIPLINARY COUNCIL HEARINGS

1. Hearing Body - UDC. The University Disciplinary Council shall have authority to sit as a hearing body for all disciplinary matters of a more serious nature which may warrant separation from the University and/or permanent record notation. The Council shall review the evidence, hear testimony, and receive information and determine whether the respondent(s) has violated the Standards of Student Conduct, and, as necessary, determine a penalty that shall be subject to approval by an appropriate dean. Determinations regarding penalties for undergraduate students shall be subject to the approval of the Dean of Student Life. Determinations regarding penalties for graduate students shall be subject to the approval of the Dean of the Graduate School. Determinations regarding penalties for medical students shall be subject to the approval of the Dean of Medicine & Biological Sciences. For the sake of convenience, hereafter only the Dean of Student Life shall be referred to when in fact approval of a penalty may appropriately reside with the Dean of the Graduate School or the Dean of Medicine & Biological Sciences.

2. UDC Membership and Hearing Panel.

a. Members. The membership of the Council shall consist of four (4) faculty members selected by the President in consultation with the Faculty Nominations Committee; four (4) undergraduate deans *who are not part of the Office of Student Life* selected by the Provost; six (6) undergraduate students selected annually by ~~the Dean of Student Life from a list of nominees from~~ the duly elected undergraduate student government; four (4) graduate students selected annually by ~~the Dean of the Graduate School from a list of nominees from~~ the duly elected graduate student government; four (4) medical students selected annually by ~~the Dean of Medicine & Biological Sciences from a list of nominees from~~ the duly elected medical

It is a clear conflict of interest for the Case Administrator, who must conduct an impartial investigation, to also proceed as the complaining witness. For this reason, we place the responsibility on the Dean of Student Life.

Because of the Dean of Student Life's extensive pre-hearing role – including the decisions on disposition and the bringing of charges – it is a serious conflict of interest for her subordinates to be members of the UDC. All deans on the Council should be drawn from other offices that are less involved in this process.

student government; two (2) deans from the Graduate School appointed by the Provost; two (2) deans from the School of Medicine appointed by the Provost; and a Chair of the Council appointed by the President. The respective student governments shall submit a list of nominees to the appropriate Dean no later than May 1 for the upcoming academic year. ~~The list of nominees shall not exceed twice the number of positions available for students of that school on the Council and shall not contain less than two nominees in excess of the number of positions available. The list of nominees shall be submitted with two (2) references for each nominee. The appropriate Dean shall select, from the nominees, student members for service on the Council for a one year term, and notify the appropriate student government of those determinations. The appropriate Dean may select students from the general student body to fill the positions in the event that (1) the Dean does not appoint a sufficient number of individuals from the list of nominees, or, (2) the appropriate student government fails to provide nominees pursuant to these procedures. In the event that a student government fails to provide the appropriate number of student members, the appropriate Dean shall select students from the general student body to fill the open positions. These candidates shall be subject to approval by the student government.~~

b. Hearing Panels. A hearing panel for each matter shall be selected from the membership of the UDC as follows:

When hearing matters in which both the complaining witness(es) and respondent(s) are undergraduate students, a hearing panel shall consist of two (2) members of the faculty and undergraduate deans, two (2) undergraduate students, and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

When hearing matters in which both the complaining witness(es) and respondent(s) are graduate students, a hearing panel shall consist of two (2) members of the faculty and graduate deans, two (2) graduate students, and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

When hearing matters in which both the complaining witness(es) and respondent(s) are medical students, a hearing panel shall consist of two (2) members of the faculty and medical deans, two (2) medical students, and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

In the event a single hearing involves a combination of undergraduate students and graduate students as complaining witness(es) and/or respondent(s), the hearing panel shall consist of three (3) members of the faculty and undergraduate and graduate deans [composed of at least one undergraduate dean and one graduate dean], three (3) undergraduate and graduate students [composed of at least one undergraduate student and one graduate student], and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

In the event a single hearing involves a combination of undergraduate students and medical students as complaining witness(es) and/or respondent(s), the hearing panel shall consist of three (3) members of the faculty and undergraduate and medical deans [composed of at least one undergraduate dean and one medical dean], three (3) undergraduate and medical students [composed of at least one undergraduate student and one medical student], and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

In the event a single hearing involves a combination of graduate students and medical students as complaining witness(es) and/or respondent(s), the hearing panel shall consist of three (3) members of the

Student representatives should be selected solely by their peers, without the interference of university administrators. To do otherwise would defeat the purpose of student representation on the Council.

faculty and graduate and medical deans [composed of at least one graduate dean and one medical dean], three (3) graduate and medical students [composed of at least one graduate student and one medical student], and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

In the event a single hearing involves a combination of undergraduate students, graduate students and medical students as complaining witness(es) and/or respondent(s), the hearing panel shall consist of four (4) members of the faculty and undergraduate and graduate and medical deans [composed of at least one undergraduate, one graduate dean and one medical dean], four (4) undergraduate, graduate and medical students [composed of at least one undergraduate student and one graduate student and one medical student], and the Chair of the Council. At least one member of the hearing panel shall be a member of the faculty.

c. **Qualification and Responsibilities of Members.** Student members of the Council must be currently enrolled and in good standing. All Administrative and Faculty members of the Council shall be full-time employees of the University. All members of the Council shall be required to sign confidentiality agreements prepared by the Office of Student Life. Violation of confidentiality of any matters related to student disciplinary hearings will be cause for immediate removal from the Council. With respect to all members, the individual responsible for appointment of that member has the authority to remove him/her if he/she fails to discharge their duties, including, but not limited to, violation(s) of confidentiality. In addition, the matter shall be referred for disciplinary action.

In the event of a violation of confidentiality where the responsible party(ies) cannot be identified the Dean of Student Life may recommend to the President that the UDC Panel in question be disbanded for their remainder of their term.

3. **Penalties.** If the UDC determines that a violation occurred, one of the following penalties must be imposed by the UDC, subject to approval by the Dean of Student Life: a period of full probation of not less than one semester, university sanction, suspension, dismissal, or expulsion. In addition to the above penalties, the UDC (subject to approval by the Dean of Student Life) may impose a requirement for public or University service (with the approval of the Department for which the work is to be performed) and such other remedial obligations as are deemed appropriate. Penalties are not effective until the period of appeal has expired or the decision on appeal has been rendered, unless the appropriate dean determines otherwise in accordance with Section IX below. Prior to the determination of a penalty, the Case Administrator shall inform the UDC of any prior final decision of a dean or the UDC which resulted in an adverse finding against the respondent.

Each year the UDC shall be provided with public information of all prior UDC determinations in the previous ten (10) years.

4. **Rules Governing the Hearing Process.**

a. **Quorum** Quorum requirements for all hearings shall be satisfied when a full hearing panel complement is met. In the event that the Council is unable to attain a quorum for any particular hearing within a reasonable period of time, the President or his designee shall have the authority to freely appoint temporary members (as necessary to obtain a quorum) without regard to faculty, administrator, or student status.

b. Disqualification and Exclusion. Any member of the Council who believes that he or she is prejudiced by association with the case, the participants, or by information or belief may disqualify himself or herself from hearing the case. A challenge to any member of the Council with respect to his/her ability to render an impartial decision in the case must be submitted in writing by the respondent or complaining witness setting forth the name(s) of the member challenged and the reasons for the challenge. Challenges should be made at least forty-eight (48) hours before the scheduled hearing. Notwithstanding a decision of a council member not to disqualify himself/herself or the failure of a respondent or the complaining witness to challenge a member of the UDC as set forth above, in addition to ruling on such challenges, the Chair shall have the authority to disqualify or exclude any member who is not able, in his/her judgment, to render an impartial decision in the case.

c. Open or Closed Hearing. ~~All hearings shall be closed~~ Upon notification of the charges against him/her, the respondent shall also be informed of his/her right to choose between an open hearing and a closed hearing. The respondent must inform the UDC of his/her decision by 5:00 p.m. at least three days prior to the day of the hearing. If the respondent does not specify a choice, then the hearing shall be open to any members of the University Community who wish to attend and who agree to the limitations on the behavior of observers described below. In those cases involving more than one charged student, if these students do not agree upon whether the hearing should be open or closed, the Chair shall decide whether the hearing will be open or closed.

d. Hearing Participants Other than Council Members and Witnesses.

(1). Case Administrator. It shall be the responsibility of the Case Administrator to present his/her investigatory report to the Council at the beginning of each hearing.

(2). Respondent. The Respondent shall be entitled to remain in the hearing room during the course of the hearing.

(3). Advisor for Respondent(s). In a hearing conducted by the Council a respondent shall be entitled to be assisted by an advisor chosen from within the University community, but shall not be entitled to be represented at the hearing by legal counsel except in accordance with the provisions and restrictions pertaining to UDC hearings involving allegations that could constitute a capital/life offense under Rhode Island criminal law specified in clause (6) below. Students deemed to have acted in concert are entitled to a single advisor in a group hearing. In the event the students are unable to agree upon a single advisor, their advisor shall be designated by the Chair from among the potential advisors submitted by the respondents. The advisor shall be the only individual (other than the student) entitled to make statements or otherwise act on behalf of the respondent during the hearing (exclusive of witnesses for the respondent). This restriction applies to all aspects of the hearing, including but not limited to opening and closing statements, suggestion(s) of questions to the Chair, and communications of any kind to other individuals in attendance at the hearing. Upon timely request by a respondent, the Office of Student Life shall assist the respondent in finding an advisor.

(4). Complaining Witness. The complaining witness(es) is the student(s) who has signed and filed a Campus Incident Complaint Form except for matters where the complaining witness is the Case Administrator acting on behalf of the University as described in section II. (8). In a hearing conducted by the Council a complaining witness shall be entitled to be assisted by an advisor chosen from within the

Brown's student body tends to be highly critical and very suspicious of secrecy. If open hearings were made the norm, students would have much less reason to distrust the disciplinary system, and if they see many successfully adjudicated open hearings, it is likely that their confidence in the system would increase.

Of course, some students will always disagree with some of the UDC's decisions. But under an open system, everyone will at least have accurate information, and the student body will be better equipped to evaluate the merits of any claims of injustice.

University community, but shall not be entitled to be represented at the hearing by legal counsel except in accordance with the provisions and restrictions pertaining to UDC hearings involving allegations that could constitute a capital/life offense under Rhode Island criminal law specified in clause (6) below. The advisor shall be the only individual (other than the student) entitled to make statements or otherwise act on behalf of the complaining witness during the hearing (exclusive of witnesses for the complaining witness). This restriction applies to all aspects of the hearing, including but not limited to opening and closing statements, suggestion(s) of questions to the Chair, and communications of any kind to other individuals in attendance at the hearing. Upon timely request by a complaining witness, the Office of Student Life shall assist the complaining witness in finding an advisor. The complaining witness shall be entitled to remain in the hearing room during the course of the hearing unless the Chair determines otherwise.

(5). ~~Advocate Counselor for Complaining Witness~~. During a UDC hearing involving a charge of sexual misconduct, the complaining witness may be accompanied by a ~~University Advocate Supporting Counselor~~ to provide emotional and moral support to the complaining witness. The ~~Advocate Supporting Counselor~~ shall be present only for the purpose of providing support to the complaining witness and shall not be permitted to participate in the hearing. In providing support to the complaining witness, the ~~Advocate Supporting Counselor~~ shall conduct him/herself in a manner that is not disruptive to the conduct of the hearing and the ~~Advocate Supporting Counselor~~ shall honor and abide by the rulings of the Chair of the Council pertaining to the hearing and the ~~Advocate's Supporting Counselor's~~ conduct therein. *If the complaining witness opts to be accompanied by a Supporting Counselor, the respondent may opt to obtain a Supporting Counselor of his/her own, subject to the restrictions specified above.*

(6). Attorneys. During a UDC hearing involving allegations that could constitute a capital/life offense felony or misdemeanor under Rhode Island criminal law, the respondent may, in addition to an advisor, be accompanied by an attorney of his/her choice. The attorney shall be present only for the purpose of safeguarding the respondent's rights at any subsequent criminal proceeding and shall not use his/her presence to affect the outcome of the disciplinary hearing. The attorney may advise the respondent only with respect to his/her testimony. The attorney may not speak with anyone except the respondent and may not use his/her role as an attorney for the student to otherwise participate in or influence the conduct of the hearing. When consulting with and advising the respondent, the attorney shall conduct him/herself in a manner that is not disruptive to the conduct of the hearing and the attorney shall honor and abide by the directives/rulings of the Chair of the Council pertaining to the hearing and the attorney's conduct therein. If the respondent desires to be accompanied by an attorney for the purposes set forth herein, the respondent must give the Chair notice of this fact and the name, address, and phone number of the attorney at least four (4) days prior to the date of the hearing.

If an attorney is to accompany the respondent, the complaining witness may request to have an attorney present as an observer. If the complaining witness desires to have an attorney present, the complaining witness must give notice of the name, address, and phone number of the attorney to the Chair at least two (2) days prior to the date of the hearing.

An individual retaining an attorney shall be solely responsible for the cost of the attorney's services. The General Counsel of Brown University shall determine in accordance with the above provisions whether requests for the attendance of attorney(s) shall be granted, and if granted, provide the attorney(s)

Although we agree in principle with the idea of providing a counselor to provide moral and emotional support to the complaining witness, the provision of additional resources to the complaining witness creates both a real and perceived imbalance of power, which decreases student confidence in the hearing process. To prevent this negative perception, we believe that the respondent should have the option of retaining his/her own counselor. In addition, we object to the inaccurate and loaded use of the word "Advocate" to describe this position. We join the recommendations of the 1997 Blumstein Sexual Misconduct Committee in recommending that the title be changed to "Supporting Counselor."

If a student is facing possible prosecution outside the university, the evidence and decisions produced by the UDC could be used against the student in the civil courts. To subject the student to this danger while denying him/her access to legal counsel is unfair, and it undermines the distinction between university sanctions and civil sanctions. In these situations, the respondent should have the option of retaining access to legal advice during the hearing. However, we agree that the attorney should not be able to actively participate in the hearing; to permit this would potentially create a power imbalance by allowing the lawyer to act as an additional "Advisor" for his/her client.

with written guidelines as necessary regarding the attorney's role at the hearing. The attorney for the respondent and/or the complaining witness must agree in advance of attendance at the hearing to comply with the rules, guidelines for the role of the attorney, and all directives/rulings of the Chair of the UDC.

(7). Advisor for Council. At the hearing, the Council may be provided with counsel for the sole purpose of advising it at its request. The appointment of the Advisor shall be made by the General Counsel of Brown University. Other than providing such advice to the UDC, counsel shall not participate in the hearing or make rulings. Only the Chair of the UDC shall be authorized to rule on procedural issues. The Chair may, as necessary, consult other members of the UDC and/or counsel prior to ruling on any procedural issue.

(8). Observers.

General Prohibition and Limitations. *If a hearing is closed, then observers* ~~Observers~~ shall generally not be permitted to attend a hearing. However, in special circumstances where the presence of observers is considered beneficial to the University community and where the respondent does not object, *or if the hearing is open*, observers may be permitted. *In closed hearings, care* ~~Care~~ should be taken to limit the observers to a number which would be representative of the interests before the Council. Under no circumstances shall the admission of observers be used to subvert the closed hearing provision above.

(i). Respondent(s). The respondent(s) may, in advance of the hearing and pursuant to notice provisions specified below, petition the Chair to permit a reasonable number of observers to be present at the hearing. The petition shall include the number of observers desired, their names, and the reason(s) for having them present at the hearing. The Chair shall be charged with the responsibility of determining on a case by case basis those observers that will be admitted to the hearing. Observers shall generally be limited to members of the University Community. *If the hearing is open, then these observers shall be given priority over observers who have not made a previous request.*

(ii). President's Designee(s). The President may designate University officials to attend a hearing as observers pursuant to their duties and responsibilities to the University.

(iii). Other Interested Parties. An interested party of the University Community may petition the Chair to allow a representative of such party to be present as an observer at the hearing. The petition shall state the name of the observer and the reason for the request. Said request shall be provided by 5:00 p.m. at least two days prior to the day of the hearing. Such observers shall be limited to members of the University Community. After the Chair makes a preliminary determination as to which observers will be permitted to attend the hearing, the Chair shall contact the respondent(s) to ascertain whether there is an objection to the presence of such observers. Prior to the hearing, the Chair shall give the interested parties making such a request notice of those observers, if any, that will be permitted to attend the hearing on behalf of such interested parties. *If the hearing is open, then representatives of these interested parties shall be given priority over observers who have not made a previous request.*

(iv). Observer Conduct. *Unless otherwise directed by the Chair, observers* ~~Observers~~ shall not take any notes or make recordings of the proceedings in any way, and shall be bound by the same rules of non-disclosure as the Council members and other hearing participants. In no event shall observers be permitted to participate in the hearing. No broadcast or audio/video recording equipment or cameras shall be permitted in the hearing room (except as may be necessary for the use of the Council). *Any observer who violates these rules or any rulings of the Chair may be immediately ejected from the hearing.*

<p>From 1967 to 1986, when the UCSA (predecessor to the UDC) was still able to conduct open hearings, audiences would sometimes disturb the proceedings with applause or booing. Such behavior is totally inappropriate, and the Chair should be able to eject anyone who engages in it.</p>
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(9). Others. Other persons, including parents and family members of any respondent(s) or complaining witness(es), shall not be permitted to attend a *closed* hearing in any capacity except as they may participate as witnesses with direct knowledge or information regarding the actions of the involved parties relating to the incident in question.

e. Evidence and Procedure.

(1). Evidence. ~~Formal rules of evidence do not apply at Council hearings, and the~~ *The rules of evidence used in civil and criminal proceedings do not necessarily apply at Council hearings. In general, the Council may admit information it considers to be trustworthy and to have potential value. However, the Council may shall* exclude any information it considers to be unduly repetitious, ~~untrustworthy~~ *hearsay*, irrelevant, or immaterial to the issue before it, or to have been improperly obtained.

(2). Procedure. In those instances where the procedure to be followed is not specified herein, the hearing process shall be conducted in a manner which in the judgment of the Chair is most likely to ascertain the facts and render a just decision. Procedures adopted by the Council shall be made applicable to both parties, to the extent it is possible.

(3). Authority of the Chair. The Chair of the UDC is responsible for the conduct of the hearing and is empowered to make rulings during the hearing with respect to witnesses, evidence, and procedures, as well as the general conduct of the hearing. The Chair may exclude from a hearing any person in attendance at the hearing, including the respondent(s), complaining witness(es), the advisor(s), the advocate, the attorney(s), or an observer, who disrupts a hearing or fails to adhere to a ruling of the Chair (in addition, any such individuals may be subject to disciplinary action). The Chair may consult with the University Disciplinary Council, or its counsel, as necessary.

f. Witnesses. Members of the University community will generally be permitted to testify at a hearing only if they have knowledge or information regarding the actions of the involved parties relating to the incident in question. Individuals who are not members of the University community will generally be permitted to testify at a hearing only if they have direct knowledge or information regarding the actions of the involved parties relating to the incident in question.

g. Sequestering of Witnesses. Prior to the hearing, either party may make a request to the Chair of the Council to sequester the witnesses (excepting the complaining witness(es)). If the Chair of the Council grants the request, the witnesses for both parties shall be sequestered.

h. Community Notification. ~~The Dean of Student Life shall determine the manner in which the University community is to be informed of the outcome of disciplinary matters, subject to applicable federal and state regulations.~~ *At a designated time each semester, the Dean of Student Life shall compile a list of completed disciplinary proceedings, as described below.*

(1) University Disciplinary Council hearings. *To the extent permitted by federal and state law, these notifications shall identify the sections of the Code of Conduct violated; describe the actions and evidence in question; describe the penalties imposed; summarize the reasoning that led the Council to its decisions on guilt and penalties; and, in the case of a non-unanimous vote, summarize any dissenting opinions. If a change of penalty occurred during a presidential review, then a clear and well-reasoned justification for such change must be provided in the notification. In no case shall the names of the parties be released.*

While it would be impractical to impose rules of evidence with the same rigidity as a real court of law, the Council ought to approximate these standards in its handling of evidence. The courtroom's restrictions on certain kinds of evidence – most notably hearsay – have developed in order to aid the court's search for truth. To discard such standards in favor of vague, subjective concepts like "untrustworthy information" would be very unwise.

Ever since the Office of Student Life ended its policy of commenting on specific disciplinary hearings, community notifications have been the only officially sanctioned method of providing information about completed hearings to the university community. If sufficiently detailed, such notifications can both serve an educational purpose – illustrating the impact of violating the Code of Conduct – and meet the needs of the community by making the disciplinary system more accountable to the students it serves. To achieve this goal, notifications need to give adequate background on the case and explanation of the reasoning of those adjudicating the case for students to see why the decision resulted in the manner it did. Also, these notifications should be released in compilations at a designated time each semester, which both helps to protect the privacy of those involved and sends a greater message of accountability than the current, irregular, semi-annual notifications do.

- (2) Structured Negotiations settlements. *To the extent permitted by federal and state law, these notifications shall identify the sections of the Code of Conduct violated; describe the actions in question; and describe the terms of the settlement. If the Structured Negotiations failed to reach an agreement or were aborted in favor of a UDC hearing, then this shall also be noted in the notification. In no case shall the names of the parties be released.*
- (3) Dean's Council hearings. *To the extent permitted by federal and state law, these notifications shall identify the sections of the Code of Conduct violated; describe the actions and evidence in question; describe the penalties imposed; summarize the reasoning that led the Council to its decisions on guilt and penalties; and, in the case of a non-unanimous vote, summarize any dissenting opinions. In no case shall the names of the parties be released.*
- (4) Dean's hearings. *Due to the minor nature of these offenses, notifications from Dean's Hearings shall only identify the sections of the Code of Conduct violated and describe any penalty imposed. In no case shall the names of the parties be released.*

i. Error. Non-observance of, or deviation from, prescribed procedures shall not invalidate a decision rendered from a proceeding unless such non-observance or deviation constituted a substantial error, as determined upon appeal.

j. Computation of Time. In computing any period of time prescribed or allowed by this code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or University holiday.

Compliance shall be made by 5:00 p.m. of the date of performance. Nothing herein shall be construed as prohibiting the Council from conducting a hearing or deliberating on a Saturday, a Sunday, or a University holiday.

5. Notice.

a. Notice by the Case Administrator. The Case Administrator shall give to the respondent(s) written notification of the charges against him or her. The notice shall advise the student(s) of the charge(s), the time and place of the hearing, *the names of all members of the hearing panel*, and shall also include the Case Administrator's written report. This notice shall be provided at least ten (10) days prior to the day of the hearing. A copy of the notice and the related materials shall be provided to the Chair of the Council and the complaining witness(es).

b. Expedited Hearing(s). A UDC hearing may be held less than ten (10) days after to the giving of such notice when the Dean of Student Life requests an expedited hearing and presents to the Chair of the UDC the facts necessitating the expedited hearing and the Chair of the UDC consents in writing to the convening of an expedited hearing.

c. Notice by the Respondent(s).

(1). Witnesses, Evidence, Advisor. The respondent(s) shall, in writing, provide the Chair of the Council, the complaining witness(es) and the Case Administrator with a list of potential witnesses he or she may ask the Chair to call during the hearing, a statement written and signed by each potential witness summarizing that witness' testimony, and a summary of evidence to be used in the presentation of his or her case. The respondent(s) shall also specify whether an advisor will be assisting him or her, and if so, the name of the

The respondent and complaining witness should be advised of the names of the hearing panel, so that they can be in a better position to identify whether or not a biased person will be adjudicating their case. Currently, both parties enter into the hearing without knowing who will be on their specific hearing panel.

person chosen. Once an advisor is designated, such designation may not be changed without the Council's consent. The notice shall be provided by 5:00 p.m. at least four (4) days prior to the day of the hearing.

(2). Request for Observers. The respondent(s) shall provide, in writing, to the Chair of the Council a list of potential observers, if any, and the reason each person's presence is requested. The notice shall be provided by 5:00 p.m. at least four (4) days prior to the day of the hearing.

d. Notice by the Complaining Witness(es).

(1). Witnesses, Evidence, Advisor. The complaining witness(es) shall, in writing, provide the Chair of the Council, the respondent(s), and the Case Administrator with a list of potential witnesses he or she may ask the Chair to call during the hearing, a statement written and signed by each potential witness summarizing that witness' testimony, and a summary of evidence to be used in the presentation of his or her case. The complaining witness(es) shall also specify whether an advisor will be assisting him or her, and if so, the name of the person chosen. Once an advisor is designated, such designation may not be changed without the Council's consent. The notice shall be provided by 5:00 p.m. at least four (4) days prior to the day of the hearing.

(2). Request for Observers. The complaining witness(es) shall provide, in writing, to the Chair of the Council a list of potential observers, if any, and the reason each person's presence is requested. The notice shall be provided by 5:00 p.m. at least four (4) days prior to the day of the hearing.

e. Notice of Decisions Regarding Student Requests. The Chair of the Council shall give the respondent(s) and the complaining witness(es) notice of the observers that will be permitted to attend the hearing. Failure to provide such notice shall act as a denial of the request. The notice shall be provided by 5:00 p.m. at least three (3) days prior to the day of the hearing.

f. Student's Failure to Comply with Notice Requirements. A failure to provide notice as required herein may constitute a waiver with respect to the privilege, right, or relief that would have been available should timely notice have been given.

g. Amendment of Pre-Hearing Statement. When either party, prior to the hearing and subsequent to having fulfilled his or her notice requirements, believes that he or she has additional information which substantially alters the testimony to be presented or necessitates a change in witnesses, he or she must immediately: (1) request the Chair of the Council for permission to use such additional information at the hearing; and (2) provide notice to the other party of his or her request of the Chair of the Council. Such request and notice shall include a summary of the new or additional information, the names of any additional witnesses and the reason for calling the same, and shall state why such witnesses and/or information were not available earlier. The Chair of the Council will determine whether any or all of the requested changes will be permitted and/or whether it is necessary to postpone the hearing.

h. Additional Witnesses. The Case Administrator may, no later than three (3) days prior to the day of the hearing, suggest to the Chair of the Council witnesses who are not on the lists submitted by either the respondent or the complainant. The Chair may request these witnesses to appear before the Council.

6. Hearing Room. The Office of Student Life shall designate a single location that shall serve as a hearing room for the entire academic year. All hearings shall be held at the designated location, regardless of the nature of, or the interest in, the event. Under no circumstances shall the number of people attending the hearing exceed the fire code capacity for the room. *To aid in oversight of the disciplinary system and to*

provide a record for use in the appeals process, the Council shall make an audio or audio-video recording of each hearing and provide copies to the respondent, the President, the Committee on Disciplinary Oversight, and in the case of an appeal, the Provost. Except as specified above, ~~no~~ broadcast or audio/video recording equipment or cameras shall be permitted in the hearing room ~~(except as may be necessary for the use of the Council)~~. An alternate location may be used if the designated hearing room is unavailable.

7. Hearing Procedures. The agenda for hearing disciplinary cases shall be as follows:

a. Quorum. The Chair shall ascertain whether the members present constitute a quorum.

b. Presence of Parties. The Chair shall ascertain that the parties are present.

c. Compliance With Notification. The Chair shall ascertain that the respondent has been notified in writing of the specific charge(s) and that all notice requirements have been complied with. In the event that the respondent fails to appear or be represented at the hearing and the Council has ascertained that the student was duly notified of the time and place of the hearing, the matter shall be *postponed until the next meeting of the Council unless the members present vote to sanction the respondent for deliberately avoiding the hearing. If such a vote is successful, then the Council shall impose a University sanction noting the respondent's avoidance of the hearing. The respondent shall have seven (7) days after being notified of the sanction to arrange a rehearing with the Council. If the respondent attends such a hearing, then the sanction shall be removed from his/her transcript. In no case shall a hearing of the charges occur without the presence of the respondent.* ~~heard and decided in his or her absence unless a majority of the members present vote to postpone the hearing to the next meeting of the Council.~~

d. Appeal. The Chair shall advise the respondent(s) that based upon the hearing the Council shall determine whether a violation has occurred and, if necessary, make a determination regarding penalties that shall be subject to approval by the Dean of Student Life. The respondent(s) shall further be informed of the right to appeal the decision to the Provost in accordance with the provisions relating to appeals.

e. Reading of Charge(s). The charge shall be read by the Chair and the Chair shall advise the respondent(s) of the right to remain silent.

f. Presentation of the Case.

(1). Presentation of the Case Administrator's report. The Case Administrator shall present his/her report and answer questions about the report from members of the UDC. The respondent and the complaining witness shall have an opportunity to ~~suggest, in writing or verbally, questions to the Chair and the Chair will, at his/her discretion, ask those~~ ask questions of the Case Administrator.

(2). Opening Statement by the respondent or the respondent's advisor.

(3). Opening Statement by the complaining witness or the complaining witness' advisor.

(4). Presentation of the complaining witness' case. The UDC shall be afforded the opportunity to examine evidence as it is introduced and to examine the complaining witness' witnesses as they are called. Witnesses will be called by the Chair based on the list previously submitted by the complaining witness. The Chair will generally call the witness(es) submitted in the order requested by the complaining witness, but may use discretion to avoid repetition and/or irrelevant testimony. The complaining witness shall have an opportunity to ~~suggest, either in writing or verbally, questions to the Chair and the Chair will, at his/her discretion, ask those~~ questions of the witnesses. Additionally, the respondent shall have an opportunity to

An accurate record of the proceedings is necessary if anyone wishes to evaluate the workings of the process. Failing to make such a record increases the risk of injustices occurring, because it shields the proceedings from accountability and impedes the appeals process.

The current rules default to a hearing *in absentia* if the defendant fails to show up for the hearing. This is extremely dangerous. We firmly oppose any hearing *in absentia*, because the absence of the respondent undermines the fairness of the proceeding by preventing him/her from defending him/herself. At the same time, we agree with the administration that some kind of punishment should be imposed for students who attempt to evade a hearing. Thus, we propose allowing the UDC to impose a transcript notation for such avoidance.

There is a good reason why direct questioning of witnesses is a mainstay of the court system – a good cross-examination is one of the best methods available for divining the truth. This valuable practice was removed from the UDC in 1997, because it was considered too “adversarial.” This was a serious mistake, because the change ended up impairing the truth-seeking ability of the UDC. Direct questioning should be reinstated.

~~suggest, either in writing or verbally, questions to the Chair and the Chair will, at his/her discretion, ask those questions of the witnesses. If the Chair believes that a particular question is leading, badgering the witness, immaterial to the case, or excessively repetitive, then the Chair shall inform the witness that s/he is not obligated to answer the question and explain to the questioner why the question is inappropriate.~~

(5). Presentation of the respondent's case. The UDC shall be afforded the opportunity to examine evidence as it is introduced and to examine the respondent's witnesses as they are called. Witnesses will be called by the Chair based on the list previously submitted by the respondent. The Chair will generally call the witness(es) submitted in the order requested by the respondent, but may use discretion to avoid repetition and/or irrelevant testimony. The respondent shall have an opportunity to ~~suggest, either in writing or verbally, questions to the Chair and the Chair will, at his/her discretion, ask those questions of the witnesses. Additionally, the complaining witness shall have an opportunity to suggest, either in writing or verbally, questions to the Chair and the Chair will, at his/her discretion, ask those questions of the witnesses. If the Chair believes that a particular question is leading, badgering the witness, immaterial to the case, or excessively repetitive, then the Chair shall inform the witness that s/he is not obligated to answer the question and explain to the questioner why the question is inappropriate.~~

(6). At the discretion of the Council, the complaining witness and the respondent may then present evidence or call witnesses in rebuttal to the evidence or testimony already introduced, subject to the rights of examination by the UDC.

(7). The Chair may call additional witness(es) previously suggested by the Case Administrator as described in section II. (5.) (h.).

(8). Closing statement by the complaining witness or the complaining witness' advisor.

(9). Closing statement by the respondent or the respondent's advisor.

g. Deliberation and Determination of the Council. Following presentation of the case, the Council shall go into closed session for the purpose of (1) determining whether the respondent(s) has violated the Standards of Student Conduct, (2) determining, subject to the approval of the Dean of Student Life, penalties that should be imposed and the basis for its determination. The Council may recess at any point. The Council will inform the student of the recess which shall be for not more than three (3) days. *Except for a decision to impose the penalty of expulsion, which may only occur by a unanimous vote of the Council, the* ~~The~~ determination(s) of the Council shall be made by majority vote. ~~and the~~ The Council's determination(s) regarding penalties shall be provided to the Dean of Student Life as soon as possible, but not later than forty-eight (48) hours after the conclusion of its closed session.

~~h. Approval by the Dean of Student Life. No later than three (3) days after receipt of the determination(s) of the Council, the Dean of Student Life shall issue a decision regarding the penalties. The Dean of Student Life shall have the authority to approve the penalty imposed by the UDC or to increase or decrease the penalty imposed. To arrive at this decision, the Dean of Student Life shall consider the determinations of the Council, and may in his/her discretion review information/evidence placed before the Council, and/or meet with hearing participants. The Dean of Student Life shall notify the respondent(s), the complaining witness(es), the Case Administrator, the Chair of the Council, the Provost, and the President of the University, of the decision in the case.~~

Expulsion is the most severe punishment available. An expelled student can never return to Brown, and his/her ability to attend similar institutions will be severely impaired by the record of the expulsion. This penalty should be reserved only for cases in which nobody disputes the appropriateness of it being used. This is why any expulsion needs to be supported by a unanimous vote of the Council.

We see no reason why the Dean of Student Life should be able to arbitrarily change the penalty after the UDC has made its decision. Any changes in penalty should be the result of an appeal or a Presidential review.

8. Sentencing guidelines. Although UDC members will be given a great deal of latitude in determining an appropriate sentence for students found guilty of violating the Standards of Student Conduct, the Council should attempt to use the following guidelines in determining a penalty for a respondent found to have violated the code of conduct. Any deviation from these sentencing guidelines shall be noted and explained in the community notification.

a. Level One. These offenses carry a suggested maximum penalty of expulsion, and a suggested minimum penalty of two-year dismissal. Level One offenses include:

- (1) Arson which causes significant damage to personal or University property.
- (2) First degree sexual assault (non-consensual penetration).
- (3) Physical assault which results in serious bodily injury.

b. Level Two. These offenses carry a suggested maximum penalty of four-year dismissal, and a suggested minimum penalty of one-semester suspension. They include:

- (1) Physical assault which results in lesser bodily harm or can be reasonably expected to cause bodily harm.
- (2) Second degree sexual assaults (non-consensual fondling, groping, etc.).
- (3) Non-arson related behavior which results in substantial damage to personal or University property.

c. Level Three. These offenses carry a suggested maximum penalty of two-year dismissal, and a suggested minimum penalty of University sanction. They include:

- (1) Verbal harassment. (see Aggravating Factors)
- (2) The illegal provision, sale, or possession with intent to sell, of alcohol or drugs.
- (3) Lying or material misrepresentation of facts during a UDC hearing.
- (4) Possession of deadly and/or illegal firearms, ammunitions, explosives, etc. (see Offense VIII)
- (5) Grand theft (over \$1,000).

d. Level Four. These offenses carry a suggested maximum penalty of University sanction, and a suggested minimum penalty of reprimand. They include:

- (1) Petty theft or behavior which results in minor damage to property.
- (2) Illegal alcohol or drug use.
- (3) Fraudulent use of University ID cards. (see Offense VII)
- (4) Failure to identify oneself to a Brown Police and Security Officer.

e. Aggravating factors. Certain factors should result in a greater penalty than might normally be imposed. If aggravating factors play a role in the decision on penalties, this shall be noted in the community notification of the decision. The aggravating factors are:

- (1) Committing a hate-motivated offense: any offense in which the violation or the nature of the violation was substantially motivated by the race, religion, gender, handicap, ethnicity, nationality, or sexual orientation of the victim.
- (2) Abusing alcohol or other drugs at the time of the offense.
- (3) Having a prior record of similar or related offenses.

f. Mitigating factor. If the respondent admits his/her guilt to the UDC, the Case Administrator, the Dean of Student Life, or other participants in the disciplinary process, then this should result in a lesser penalty

Both the UDC and its predecessor, the UCSA, have been criticized for being wildly inconsistent in their application of penalties. The best way to address this problem would be to create sentencing guidelines. In most situations, the UDC would abide by the guidelines; in unusual circumstances, they could decide to make an exception, which would be noted and explained in the community notification of their decision. Also, sentencing guidelines are the perfect vehicle for addressing hate crimes, a significant class of offense that the current system is poorly equipped to deal with. Under a system of sentencing guidelines, hate crimes could be incorporated into the code as an aggravating factor that results in greater penalties.

When a guilty student voluntarily confesses, s/he both reduces the load on the disciplinary system and avoids the dangers of an incorrect verdict. But if the disciplinary system refuses to treat confession as a mitigating factor, charged students have nothing to gain by confessing. Thus, they will not confess.

For this reason, the disciplinary system ought to provide students guilty of violations with an incentive to confess to their crimes: leniency in sentencing. Admission of guilt should be clearly marked as a mitigating factor in the UDC.

than might normally be imposed. If this mitigating factor plays a role in the decision on penalties, this shall be noted in the community notification of the decision.

8.9. Deans' Council Hearing. In certain instances, such as capital offenses, felonious assault, rape, arson, and other felonies, the council may decline to hear a case. In making a determination whether or not to hear a case, the council may only consider written material which has been submitted by the Case Administrator, the respondent(s) and the complaining witness(es).

When the council declines to hear a case it will be referred to the Deans' Council for review. The Deans' Council will hear the case following the same procedures as are applicable to the University Disciplinary Council. In such instances, the respondent may appeal the determination of the Deans' Council and/or the Dean of Student Life to the Provost who will determine whether the appeal shall be heard and, if so, render a judgment him or herself. The parties shall also remain free to pursue their claims using existing law enforcement procedures.

9.10. Appeals. The respondent(s) may appeal the decisions of the Council and/or the Dean of Student Life in a disciplinary matter to the Provost of the University. Appeals must be submitted in writing setting out the reason(s) for the appeal. The appeal must be submitted within seven (7) days of the decision of the Dean of Student Life.

Appeals will normally be considered only when new evidence which was not reasonably available at the time of the hearing decision becomes available or when an allegation of substantial procedural error on the part of the University or the Council is made. The Provost shall determine whether or not an appeal shall be considered. If the appeal is allowed by the Provost, it shall be referred to the Dean's Council. The Deans' Council shall consist of three (3) deans chosen by the Provost at the beginning of each academic year, one each from the offices of the Dean of the College, the Dean of the Graduate School and Research and the Dean of Medicine and Biological Sciences. No dean who serves as a member of the UDC shall serve simultaneously on the Deans' Council. The Provost will have the authority to make temporary appointments to the Deans' Council during the academic year in the event that a regular member is unable to serve in a case due to unavailability or lack of impartiality, as shall be determined by the Provost. The Deans' Council shall have the power to affirm, reverse, or modify the decision and/or the penalty imposed, or to remand the matter to the UDC or the Dean of Student Life for further consideration. *In no case shall the appeal result in a penalty harsher than the penalty previously imposed.*³

10.11. Power of Review in the President.

a. **Authority.** Notwithstanding the right of the respondent(s) to appeal, the President of the University shall have the power to review, at his own initiative, the decision of the UDC and the Dean of Student Life as to both the guilt or innocence of the respondent(s) and the penalty imposed. Upon review, the President shall have the authority to affirm, reverse, or modify the decision and/or increase or decrease the penalty

If a student appeals a decision and receives a harsher penalty than s/he would otherwise have received, this has the functional effect of punishing the respondent for the act of appealing. An appeal should never carry such a price; to allow harsher penalties on appeal is unjust and should be strictly prohibited.

³ *As used in this document, "harsher penalty" generally means a penalty that has a greater punitive character than the penalty to which it is being compared. For example, a one-semester suspension would be harsher than a one-semester probation. A two-semester suspension would be harsher than a one-semester suspension. Except when the two penalties differ by more than two semesters, length is irrelevant to harshness. For example, a two-semester probation would be less harsh than a one-semester suspension.*

imposed. *In no case shall the review result in a penalty harsher than the penalty previously imposed.* There shall be no appeal from a decision rendered by the President in accordance with his review power. *If the President chooses to change the decision and/or penalty, then s/he shall include a justification for this in the regular community notification.*

b. Notice of Intent to Review. The President of the University shall have ten (10) days from the rendering of a UDC determination that a violation did not occur or an approval of a penalty by the Dean of Student Life to provide notice of his intention to review the decision. Notice of intent to review shall be provided to the respondent(s), the complaining witness(es), the Dean of Student Life, the Case Administrator, and the Chair of the Council. Such notice shall additionally inform the parties of the review process to be followed. Should the President fail to provide notice within the specified time period the decision of the UDC or the Dean of Student Life shall be final, subject to the appeal provision specified above.

c. Notice of Decision. The respondent(s), the complaining witness(es), the Chair of the Council, the Dean of Student Life, and the Case Administrator shall be notified in writing of the decision of the President and of any penalty imposed as soon as possible.

V. DEAN'S HEARING

1. Authority. Offenses which do not warrant separation from the University nor permanent record notation shall not be heard by the Council or any subcommittee thereof. Such matters shall be heard by the appropriate Deans of the University, as provided below.

2. Hearings.

a. Undergraduate Students. The disposition of non-academic disciplinary matters involving only an undergraduate student(s) in a Dean's Hearing shall be the responsibility of the Dean of Student Life or the Dean's designated representative. The appropriate Dean will provide the student(s) with notice of the charge(s), the time and place of the meeting, and a summary of the evidence that forms the basis of the charge(s). At the meeting, the Dean shall afford the student(s) an opportunity to be heard. The Dean is charged with the responsibility of rendering a decision regarding whether the respondent has violated the Standards of Student Conduct, and, as necessary, the penalty to be imposed, within seven (7) days of the meeting with the respondent(s).

b. Graduate Students. The disposition of non-academic disciplinary matters involving only a graduate student(s) in a Dean's Hearing shall be the responsibility of the Dean of the Graduate School or the Dean's designated representative. The Dean will provide the student(s) with notice of the charge(s), the time and place of the meeting, and a summary of the evidence that forms the basis of the charge. At the meeting, the Dean shall afford the student(s) an opportunity to be heard. The Dean is charged with the responsibility of rendering a decision regarding whether the respondent has violated the Standards of Student Conduct, and, as necessary, the penalty to be imposed, within seven (7) days of the meeting with the respondent(s).

c. Medical Students. The disposition of non-academic disciplinary matters involving only a medical student(s) in a Dean's Hearing shall be the responsibility of the Dean of Medicine & Biological Sciences or the Dean's designated representative. The Dean will provide the student(s) with notice of the charge(s), the time and place of the meeting, and a summary of the evidence that forms the basis of the charge(s). At the meeting, the Dean shall afford the student(s) an opportunity to be heard. The Dean is charged with the responsibility of rendering a decision regarding whether the respondent has violated the Standards of

Student Conduct, and, as necessary, the penalty to be imposed, within seven (7) days of the meeting with the respondent(s).

3. Procedure. The procedures for the disposition of the charge(s) shall be informal but they shall be consistent with the principles that a respondent(s) is to be provided with notice of the charge(s) and is to be afforded an opportunity to be heard. The Dean conducting the Hearing shall have the authority to determine the structure of the Hearing.

4. Penalties. Upon finding a violation, the Dean must impose one of the following penalties: a reprimand, a fine, limited probation, or a period of full probation not to exceed one semester. In addition to the above penalties, the Dean may impose a requirement for public or University service (with the approval of the Department for which the work is to be performed) and such other remedial obligations as are deemed appropriate.

5. Appeal. The respondent(s) may appeal any decision of a Dean in a Dean's Hearing to the Provost of the University or his designated representative within four (4) days of the Dean's decision. The Provost or his designated representative shall have the power to affirm, reverse, or modify the decision and/or the penalty imposed, or to remand the matter to the Dean for further consideration. Appeals must be submitted in writing setting out the reason(s) for the appeal. Appeals will normally be considered only when new evidence becomes available or when an allegation of substantial procedural error on the part of the University Administration or the Dean is made.

VI. TEMPORARY APPOINTMENTS

1. Vacancy. In the event that there is a vacancy among the members of the UDC, the President shall appoint a temporary member who shall serve until such time as the appointment of a permanent member is made.

2. Failure to Attain a Quorum. In the event that the Council is unable to attain a quorum for any particular hearing within a reasonable period of time, the President may appoint a sufficient number of temporary members to enable the Council to proceed with the hearing, without regard to faculty, staff, or student status.

VII. EXCEPTIONS

In certain instances, such as capital offenses, felonious assault, rape, arson, or other felonies, the University may decline to hear a case. Regardless of whether or not such a case is heard by the University, the parties shall remain free to pursue their claims using existing law enforcement procedures.

VIII. RECOMMENDATIONS AND NEW RULES

The Council, *the Committee on Disciplinary Oversight*, the Vice Presidents, and the Senior Deans of the University shall have the authority to recommend for the approval of the President of the University new rules and changes in existing rules governing student conduct. Recommendations which, in the judgment of the President, concern matters of general policy shall be submitted to the Corporation or an appropriate committee thereof.

IX. OVERSIGHT

1. Committee on Disciplinary Oversight - CDO.

The CDO shall oversee all aspects of the disciplinary system, in order to improve student and faculty confidence in the system and identify any recurring problems with the system.

2. Membership.

The membership of the CDO shall consist of three (3) faculty members selected by the President in consultation with the Faculty Nominations Committee; one (1) undergraduate, graduate, or medical student selected annually by the Brown ACLU; one (1) undergraduate, graduate, or medical student selected annually by the Director of the Third World Center in consultation with the student members of the Third World Center Governance Board; one (1) undergraduate, graduate, or medical student selected annually by the Director of the Sarah Doyle Women's Center in consultation with the student members of the Sarah Doyle Planning Coalition; one (1) undergraduate student selected annually by the Greek Council; one (1) undergraduate student selected annually by the Student Athlete Advisory Board; one (1) undergraduate student selected annually by the undergraduate student government; one (1) graduate student selected annually by the graduate student government; one (1) medical student selected annually by the medical student government; and the Chaplain of the University, or his/her designee, who shall chair the committee. These representatives shall be submitted to the appropriate Dean no later than May 1 for the upcoming academic year. In the event that a candidate is not submitted for any position, that slot shall remain open until the appropriate organization provides a candidate. A member of the CDO cannot simultaneously be a member of the UDC or the Disposition Committee.

3. Duties and authority

a. Oversight of Disposition Committee

The CDO shall review all decisions of the Disposition Committee, and shall be empowered to question the Disposition Committee on the reasons for any decisions.

b. Oversight of UDC

All members of the CDO shall automatically be granted permission to sit in as observers on any UDC hearings. While the presence of a CDO member will not be required for a UDC hearing to proceed, every hearing should generally be observed by at least one CDO member. To aid them in this oversight of the UDC, the CDO shall be informed of the dates and times of any upcoming UDC hearings; shall be provided with any evidence or written materials provided to the UDC, the respondent, or the complaining witness; and shall be given access to audio or audio-video recordings of the proceedings. At the close of each UDC hearing, a questionnaire from the CDO shall be distributed to the complaining witness and the respondent. The responses shall remain strictly confidential, to be read only by the members of the CDO and such administrators as the CDO deems appropriate.

c. Oversight of Structured Negotiations

The CDO shall be provided with any evidence or written materials provided to the supervising dean, the respondent, and the complaining witness. At the close of each Structured Negotiations session, a questionnaire from the CDO shall be distributed to the supervising dean, the respondent, and the complaining witness. The completed questionnaires shall be returned to the CDO. The responses shall remain strictly confidential, to be read only by the members of the CDO and such administrators as the CDO deems appropriate.

d. Annual evaluation of disciplinary system

Each year, the CDO shall evaluate the performance of the disciplinary system and, if necessary, make recommendations for changes in any aspect of the disciplinary system. This report shall be submitted to the

Students have very little trust in the current UDC, and it is often extremely difficult for students to induce change in its policies.

In this respect, the old UCSA was much better than the UDC, because its dual role as adjudication body and the primary source of policy changes made students play a major role in the formation of disciplinary policy. However, there were complaints that its dual role of legislation and adjudication was too cumbersome.

Here, we propose a separate body, chaired by an administrator but composed primarily of students and faculty, that engages in regular oversight and evaluation of the disciplinary process. This would both restore the student voice in disciplinary policy formation, and – by providing a source of independent oversight by the major student constituencies concerned with disciplinary policy – foster greater trust in the efficacy and fairness of the system.

the President for his/her consideration, and shall also be made available to the University Community as a whole.

e. Comment on proposed changes

If the President is considering changes in any aspect of the disciplinary system, s/he shall submit a draft of such changes to the CDO for comment. This comment shall be advisory in nature and non-binding on the President.

f. Community education and discussion

The CDO shall be empowered to organize any workshops, seminars, convocations, forums, or other events it deems appropriate to educate students about the disciplinary system, discuss issues facing the disciplinary system, and/or deal with discontent over any high-profile disciplinary cases that may arise. It is expected that events planned by the CDO shall receive administrative and, if necessary, financial support from the Office of the President.

~~IX~~. X. RESERVATIONS

Nothing herein shall be construed as preventing the appropriate University officers from taking measures to deal with individuals who they believe may pose a danger to themselves or the immediate well-being of *other members* of the University community. The President, the Dean of the College, the Dean of the Graduate School & Research, the Dean of Medicine & Biological Sciences, and the Dean of Student Life, shall have the authority to remove students from dormitories or to separate them from the University when they believe there is an *immediate* threat to the safety, health, or well-being of *the students involved or other members of the University community* ~~or a member thereof~~. All other existing rules and procedures governing student conduct at Brown University shall remain in full force and effect unless and until amended or rescinded in accordance with the foregoing. The Corporation expressly reserves the right at any time and from time to time to alter, amend, modify or revoke the provisions herein, in whole or in part, without prior notice.

~~X~~. XI. ENABLING REGULATIONS

The President is hereby authorized to prepare such declarations of policy, rules, regulations, by-laws, and other matters as he shall in his discretion deem necessary or desirable to implement the foregoing. Such declarations, rules, regulations, by-laws, and other matters as may, in the judgment of the President, concern general University policy shall be submitted by the President to the Corporation or an appropriate committee thereof for approval.

What exactly constitutes a danger to the “University community?” As used here, the “University community” is an abstract, ill-defined concept which can be made to apply to any number of objects, individuals, or even other concepts. In order to clarify the breadth of the powers granted to these officials, we recommend that these references to the “University community” be amended to relate to individuals, not hazy concepts.