

Freedom of Expression Special Committee
Davis Division of the Academic Senate
FINAL REPORT
Submitted 1/31/13

The charge to our committee was threefold: (1) to “address the need for the development and implementation of new policies and procedures that clearly define the appropriate time, place and manner of freedom of expression on the campus”; (2) “to develop guidelines that will enable appropriate parties to recognize civil disobedience and student protest as specific categories of action”; and (3) to “provide guidance to assist members of the campus administration and faculty in educating UC Davis students concerning policy related to these activities and to specify the disciplinary consequences when they are violated.” Below we report the results of our deliberations on these issues in turn.

I. Policies and Procedures

Before we could consider the need for new policies, it was necessary to determine what policies already existed for the campus and, more generally, for the University. This was more difficult than we anticipated because the policies are contained in both University-wide documents (viz., Policies Applying to Campus Activities, Organizations, and Students, or PACAOS) and Campus statements (UC Davis Policy and Procedure Manual, 270). Moreover, in both locations, the policies are often vague and sometimes contradictory, and find their way into numerous other documents widely-dispersed online on different web sites. It is worth noting that a statement from the Office of the Campus Counsel (dated February 9, 2012) describing “Student Rights and Responsibilities Concerning Peaceful Protest at UC Davis” cites 10 different campus web sites. Drawing all the information together in one place, as has been done at other universities (see below), is an important first step toward developing and implementing new policies and procedures that are consistent.

It is important to recognize at the outset that the controlling policies are those contained in PACAOS, which means that the campus cannot have policies in place that are more restrictive than or inconsistent with PACAOS.

University Regulations

The following are taken from PACAOS (Policies Applying to Campus Activities, Organizations, and Students).

1. PACAOS 10.00 Preamble and General Provisions

<http://policy.ucop.edu/doc/2710517/PACAOS-10>

In carrying out its teaching, research, and public service activities, the University has an obligation to maintain conditions under which the work of its members--the faculty, students and staff--can go forward freely, in accordance with the highest standards of excellence, institutional integrity, and freedom of expression, and with full recognition by all concerned of the rights, privileges, and responsibilities of those who comprise the University community.

2. PACAOS 30.00 Policy on Speech and Advocacy

<http://policy.ucop.edu/doc/2710523/PACAOS-30>

30.10 The University is committed to assuring that all persons may exercise the constitutionally protected rights of free expression, speech, assembly, and worship.

30.20 It is the responsibility of the Chancellor to assure an ongoing opportunity for the expression of a variety of viewpoints.

30.30 The time, place, and manner of exercising the constitutionally protected rights of free expression, speech, assembly, and worship are subject to campus regulations that shall provide for non-interference with University functions and reasonable protection to persons against practices that would make them involuntary audiences or place them in reasonable fear, as determined by the University, for their personal safety.

30.40 The University recognizes, supports, and shall not abridge the constitutional rights of faculty, students, or staff to participate, either as individuals or as members of a group, in the political process of supporting candidates for public office or any other political activity.

3. PACAOS 40.00 Policy on Use of University Properties

<http://policy.ucop.edu/doc/2710524/PACAOS-40>

40.10 University properties shall be used only in accordance with federal, State, and local laws and shall not be used for the purpose of organizing or carrying out unlawful activity.

40.20 All persons on University property are required to abide by University policies and campus regulations and shall identify themselves upon request to University officials acting in the performance of their duties. Violation of University policies or campus regulations may subject a person to possible legal penalties; if the person is a student, faculty member, or staff member of the University, that person may also be subject to disciplinary action in accordance with University policies and campus implementing regulations.

40.30 All use of University properties and services must conform to applicable campus time, place, and manner regulations.

40.40 On University grounds open to the public generally, as may be described in campus implementing regulations, all persons may exercise the constitutionally protected rights of free expression, speech, assembly, and worship (including the distribution or sale of noncommercial literature incidental to the exercise of these freedoms). Such activities shall not interfere with the

orderly operation of the campus and must be conducted in accordance with campus time, place, and manner regulations.

4. PACAOS 100.00 Policy on Student Conduct and Discipline

<http://policy.ucop.edu/doc/2710530/PACAOS-100>

Chancellors may impose discipline for:

102.06 Unauthorized entry to, possession of, receipt of, or use of any University services; equipment; resources; or properties, including the University's name, insignia, or seal.

102.07 Violation of policies, regulations, or rules governing University-owned, -operated, or -leased housing facilities or other housing facilities located on University property.

102.13 Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other University activities.

102.14 Disorderly or lewd conduct.

102.15 Participation in a disturbance of the peace or unlawful assembly.

102.16 Failure to identify oneself to, or comply with the directions of, a University official or other public official acting in the performance of his or her duties while on University property or at official University functions; or resisting or obstructing such University or other public officials in the performance of or the attempt to perform their duties.

Additional regulations appear in the California Code of Regulations, Title V, Division 10, Chapter 1, sections 100000-100015. These sections fall under the heading "Regulations Governing Conduct of Non-Affiliates in the Buildings and on the Grounds of the University of California." See <http://policy.ucop.edu/doc/3000127/NonAffiliateRegs>

100004 (no demonstrations without permission for non-affiliates)

100005 (no camping *without permission* for non-affiliates)

UC Davis Campus Regulations

The following are taken from UC Davis PPM Ch. 270

A. University properties shall be used only in accordance with the provisions described in UC Policies Applying to Campus Events, Organizations, and Students; Section 40.00, Policy on Use of University Properties.

B. Public expression in the form of freedom of speech and advocacy may be exercised on University properties at such times and places and in such a manner as is compatible with the use of the property and as follows:

1. Assures orderly conduct
2. Avoids disruption or interference with University operations
3. Allows for the free flow of persons and traffic
4. Avoids disruption or interference with the ability of the University to carry out its responsibilities as an educational institution
5. Protects the rights of all individuals who use University properties
6. Protects persons against practices that would make them involuntary audiences
7. Assures the safety of all members of the University community
8. Does not interfere with property entrances or exits

C. Use of University properties for overnight camping is prohibited.

Symbolic Structure Regulations

http://csi.ucdavis.edu/assets/symbolic_structure_information.pdf

Reserving Space

<http://ces.ucdavis.edu/Public/content.cfm?CONTENT=74>

Amplified Sound Permits

<http://ces.ucdavis.edu/forms/sound/>

II. Problems with Existing Policies

There are a number of problems with existing policies, outlined here.

1. There are conflicting and inconsistent regulations. For example, “demonstration or gathering” for non-affiliates requires permission (UCOP Non-Affiliate Regulations 100004(A)), yet “all persons” are allowed to demonstrate with no apparent requirement of permission (PACAOS 40.40). Another example: PACAOS places restrictions on commercial leafleting (PACAOS 40.40) but other provisions say that the University imposes only “time place and manner” restrictions, which are under the law content-neutral. (UC Davis Principles of Community; <http://occr.ucdavis.edu/poc/>). Consider, too, that campus regulations prohibit camping entirely whereas PACOS permits camping for non-affiliates if they have permission (see above).
2. Some of the regulations are vague and unclear, which opens up the possibility of inconsistent and unconstitutional enforcement. For example, in UC Davis PPM 270.20 (B) what is the difference between (3) and (8), among (1), (3) and (4), and between (5) and (6)?
3. There is a lack of connection between broad general principles favoring speech, and picayune and vague regulations with some intermediate explanation of how they are to be enforced. We believe the campus would best be served by a shorter list of what is not acceptable. In order to emphasize that listed actions are not arbitrary, each could be accompanied by a governing

principle that explains the reason for the prohibition.

4. There is the matter of how policies are communicated to the students. At present, the office of the Vice Chancellor for Student Affairs distributes a four-page flyer outlining the existing policies (“Freedom of Expression, Peaceful Protest and Civil Disobedience on Campus: Right and Responsibilities”). An analysis of this document by the Northern California ACLU leads us to believe that it is inadequate. (A copy of a letter to Lora-Jo Bossio detailing the observations of the ACLU is included in the appendices.) Their analysis cites four specific shortcomings of the flyer.

- The flyer is not sufficiently protective of free speech and protest. The ACLU argues that the flyer is inconsistent with the recommendation of the Reynoso and Robinson-Edley Reports and “focuses too much attention on the restrictions and dangers and penalties of engaging in protest activity.” While it is true that the flyer was written before the Reports, it is also true the Reports were submitted months ago and nothing changed in the flyer.
- The ACLU notes that the court decisions cited in the flyer pertain to cases brought in the context of primary and secondary education, whereas courts have clearly recognized that institutions of higher education should have a special tolerance for and encouragement of unruly speech.
- The ACLU points out that while the pamphlet contains the words “Civil Disobedience” in its title, it contains no further mention of the topic.
- The ACLU asserts that the standards of discretion are unclear and that regulations are overly broad. For example, the list of categories of speech that are not protected ends with “etc.”, which is broad and undefined.

5. The Principles of Community is a fundamental document of campus policy. If this is seen as a statement of aspiration, it is admirable. However, the document at present “requires that every member of the university community acknowledge and practice the following basic principles” and then lists several principles that are matters of personal ideology or belief. Such a *requirement* is, in our view, inconsistent with the First Amendment.

III. Civil Disobedience and Student Protest as Specific Categories of Action

Existing UC Davis policies do not explicitly recognize the distinct issues raised by civil disobedience. Civil disobedience, by definition, involves the breaking of laws as part of a political protest. Such disobedience is not protected by the First Amendment, and those who engage in it are subject to sanctions for the unlawful conduct in the same manner as any other lawbreaker. Indeed, it is precisely the willingness of protestors to risk such sanctions that gives civil disobedience much of its distinctive expressive quality.

From the perspective of a public university, however, it is not always well-advised to treat civil disobedience as a routine law enforcement matter. Certain activities, such as those that threaten the life or safety of others, require immediate preventative action. Other activities, for example, those which are unlawful primarily because of a technical infraction of a rule, do not. In responding to instances of civil disobedience it is important to keep in mind the role that civil disobedience has played in the history of this country, while also recognizing the infringements to the rights of others that such disobedience will often entail.

None of the UC Davis policies that we reviewed recognize that civil disobedience raises distinct issues from an enforcement perspective as compared to other issues of law enforcement. We urge the administration to formulate policies that address, in as specific a manner as possible, the various actions the administration will take in response to acts of civil disobedience.

In formulating these policies, it is critical to ensure that instances of civil disobedience are addressed in an even-handed and viewpoint-neutral manner. As a public institution bound by the First Amendment, the campus cannot treat unlawful protests differently on the basis of the message being propagated by the protestors. Although administrators need some discretion in dealing with these occurrences, ad hoc, inconsistent responses to similar events violate the First Amendment and the rights of all students to be treated equally.

Fortunately, these issues have all been extensively addressed in the report “Response to Protests on UC Campuses” by Christopher Edley and Charles Robinson. The Edley/Robinson report presents an extensive discussion of the role of and tolerance for civil disobedience in the University. The report also advances several recommendations for changes in or reaffirmation of tolerant policies. The campus administration appears to be in agreement with these recommendations, but as far as we can see has not been expeditious in implementing them. We urge the implementation of these without further delay.

IV. Guidance to Campus Administration and Faculty

Thoughtful, comprehensive models for managing freedom of expression in higher education exist. One may be found at the University of Pennsylvania, which has established a 15-member student-faculty-administration-staff Committee on Open Expression; the committee offers opinions on whether a proposed activity is in violation of established policy. Penn also requires the annual publication of the “Guidelines on Open Expression,” and it is noteworthy that the violations of the policy are succinctly covered in just 32 lines. Far more attention (three pages) is devoted to the process that follows when a violation takes place or has taken place. A copy of this document is included in the appendices. Another model is provided by Columbia University. Section 443 of the document “Essential Policies for the Columbia Community” lists 22 violations, classifying each as simple or serious and specifying the type of sanction that may

follow from the determination of that type of violation. Although it is possible to quibble with how acts are classified, there is no doubt as to what they are and how they may be sanctioned. (This document, too, is included in the appendices). UC Davis lacks such protocols. It does not recognize civil disobedience as a specific (and arguably special) category of action, nor does it have guidelines specifying the consequences of violations of policy in a clear and graduated manner.

Based on our examination of the issues discussed in this report, we submit the following recommendations for the development of UC Davis Freedom of Expression Policies.

1. All policy regarding freedom of expression should be consolidated, revised and placed in a single section of the UC Davis PPM. The policy should: reflect a preferred position for freedom of expression on campus; make clear under what conditions permits are required and how to obtain them; and provide that in case of conflict with other rules or policies, the freedom of expression policy controls. The policy should be widely disseminated, on the UC Davis website and elsewhere, and should be accurately extracted and summarized as a leaflet made available to students, staff and faculty. All such documents should be reviewed by campus counsel.
2. The policy should educate readers by explaining that some activities are protected by the First Amendment and not subject to penalties, others may be tolerated by the University in the interest of robust debate on campus (even though not within First Amendment protection), and other acts are civil disobedience subject to administrative action or criminal prosecution. The policy should draw these distinctions with concrete examples.
3. The policy should provide for waiver or modification of otherwise applicable restrictions on freedom of expression for reasonable cause. The waiver should be memorialized, either in the form of a change to the policy, or a public, written decision. Future actors should have the benefit of the waiver in similar circumstances.
4. The policy should require reasonable warning of applicable rules and potential penalties before administrative or other action is taken against people engaged in freedom of expression activities, and identify situations in which a warning would be impracticable.
5. The policy should require specific, graduated, responses to violations of the policy, and that police will be involved in freedom of expression activities only in specific circumstances and ways identified in the policy.
6. The policy should specify with particularity the penalties for various violations of its provisions.

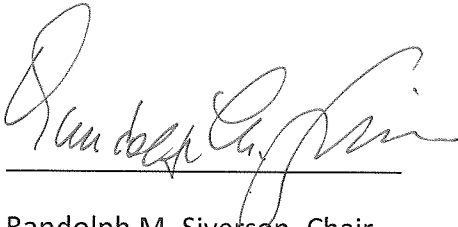
7. The campus should revise the language of the Principles of Community to remove the requirement to follow a given set of beliefs. The revised document should also make it explicit that it is a statement of campus aspirations.

8. In addition, the committee recommends examination of the question of how much campus security and police service should be provided by armed, sworn peace officers and how much based on other models.

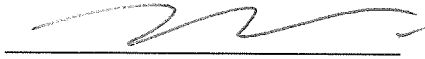
APPENDICES

1. November 27, 2012 ACLU Letter to Associate Vice Chancellor Lora Jo Bossio
2. University of Pennsylvania, “Guidelines on Open Expression”
http://www.upenn.edu/provost/PennBook/guidelines_on_open_expression
3. Colombia University, “Essential Policies for the Columbia Community”
<http://www.essential-policies.columbia.edu/university-regulations>

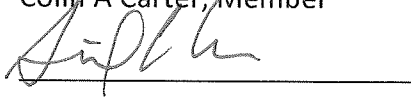
Freedom of Expression Special Committee Report
January 17, 2013



Randolph M. Siverson, Chair



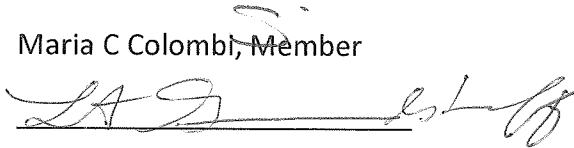
Colin A. Carter, Member



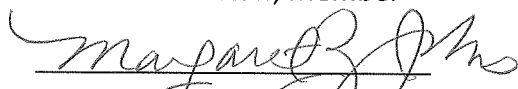
Gabriel J. Chin, Member



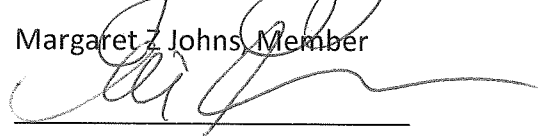
Maria C. Colombi, Member



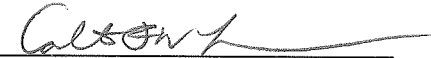
Laura A. Grindstaff, Member



Margaret Z. Johns, Member



Ari Kelman, Member

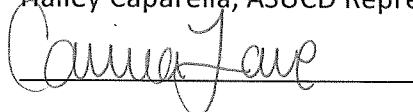


Carlton F.W. Larson, Member



Lalia Kiburi, Academic Federation Representative

Hailey Caparella, ASUCD Representative



Carissa Lowe, ASUCD Representative



Shaun Geer, GSA Representative



November 27, 2012

VIA U.S. MAIL

Lora Jo Bossio
Associate Vice Chancellor
Student Affairs Chancellor's Office
476 Mrak Hall
Davis, CA 95616

Dear Ms. Bossio:

The American Civil Liberties Union Foundation of Northern California represents students that were pepper-sprayed and/or arrested on the UC Davis campus on November 18, 2011. Under the terms of a Settlement Agreement with the Regents, the ACLU is to have a "fair and adequate opportunity to review, comment and provide input, prior to their adoption, on any new or revised" UC Davis or Regents' policies "pertaining to the use of force by police, the handling of student demonstrations, and crowd control" on the Davis campus. We are writing to you to provide such comment and input on a University document that pertains to these matters: "Freedom of Expression, Peaceful Protest, and Civil Disobedience on Campus: Rights and Responsibilities." (see attached) This document ("Handout") apparently comes from the Office of Student Affairs, and is intended for the guidance of students who are planning or participating in a protest or a demonstration. The Handout is currently posted on University websites, including the Center for Student Involvement website at: <http://csi.ucdavis.edu/forms> and <http://csi.ucdavis.edu/activism>. The Handout is also directly quoted on the Office of Campus Community Relations website at: <http://occr.ucdavis.edu/poc/free-expression.html>, and mentioned at: http://stuaffdev.ucdavis.edu/freedom_expression.cfm.

We believe that this document presents a distorted and crabbed view of free speech rights on campus and in some instances is legally misleading and inaccurate. Our concern is not just with the document itself, but the fact that it is publicly available a year after the November 18th incident 7 months after the release of the UC Davis November 18, 2011 "Pepper Spray Incident" Task Force Report ("Reynoso Report"), and during a period when various University committees and officials are considering and drafting new free speech and protest policies. Therefore, we felt it important (and hopefully useful to the University community) for us to spell out in some detail the ACLU's concerns. **However, our bottom line is that this document should be immediately withdrawn and removed from all websites and university offices.**

MICHELLE A. WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH SUGARMAN, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR
LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
PHYLLIDA BURLINGAME, ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

Among our concerns are the following:

1. *The Handout is Not Sufficiently Protective and Encouraging of Speech and Protest*

Perhaps most disturbing about this document is that it does not reflect, and in fact is inconsistent with, some of the most important underlying principles of two extensive reports that have been issued since the November 18th protest: the Reynoso Report and the Response to Protests on UC Campuses: A Report to University of California President Mark G. Yudof (“Robinson-Edley Report”). Both of these Reports recognize and stress that protests and demonstrations on campus are an essential part of the University’s role as a place dedicated to the free and robust exchange of ideas, and that University policies should therefore encourage and foster these activities, and not treat them as a threat.¹ This Handout does not enhance or encourage free speech rights on the Davis campus. While certainly free speech rights are not absolute, the Handout focuses far too much attention on the restrictions and dangers and penalties of engaging in protest activity, while significantly underplaying the inherent value of free speech for a university campus – a quintessential forum for vigorous speech and protest activities. In fact, we believe that the exaggerated view of the limits and potential harms of “oppositional” protest activities reflects the same mindset that led University officials and campus police into the errors and unlawful actions of November 18th. If the University is to regain the trust of the campus community, it must be sure that its policies and official documents demonstrate that lessons have been learned from those events.

For example, it is telling and symptomatic that the most prominent quotation from a legal precedent in the Handout is for the proposition that “unruly assertion[s]” of speech can “destroy” the free speech rights of others, and that “[f]ree expression can expire as tragically in the tumult of license as in the silence of censorship.” *McMahon v. Albany School Dist.*, 104 Cal. App 4th 1275, 1284 (2002). By singling out this admonition, the Handout implies that disruptive or “unruly” speech has no place on campus. In fact, the leading precedents present a very different view of the protective sweep of the First Amendment.

Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at

¹ “This Report is premised on the belief that free expression, robust discourse, and vigorous debate over ideas and principles are essential to the mission of our University. The goal of this Report is to identify practices that will facilitate such expression and encourage lawful protest activity...” (Robinson-Edley Report, Executive Summary, p.1); “Recognize the unique circumstances of a university community and the importance of open and vigorous debate to our institutional function and identity” (Reynoso Report, Recommendation 1, p.26).

times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength. We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated. *Cohen v. California*, 403 U.S. 15, 24-25 (1971).

The passage quoted from *McMahon* does not reflect the vitality of free speech, and inaccurately implies that controversial and “unruly” protest activities have no place on campus. While we understand that this Handout was not intended to be a legal brief, it should not give such a distorted and truncated view of the law.

2. *University Campus as a Forum for Vigorous Protest Activities.*

By only citing cases involving speech in public elementary and high schools (*McMahon* and *Tinker v. Des Moines School District*), the Handout ignores the well-established legal principle that free speech is entitled to greater protections in the university setting than the more controlled environment of a secondary school. See, *Widmar v. Vincent*, 454 U.S. 263, 268-69 (1981); *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 247 (3d Cir. 2010) (“Public universities have significantly less leeway in regulating student speech than public elementary or high schools.”).

In fact, the courts (as well as the authors of the Reynoso and the Robinson-Edley Reports) have recognized that university campuses are an important and unique forum for robust and controversial free speech activities, and that they should be afforded at least as much protection and scope as speech in other public forums:

[T]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The college classroom and its surrounding environs is peculiarly the ‘marketplace of ideas.’ *Healy v. James*, 408 U.S. 169, 180-81 (1972).

And while the Handout cites Penal Code section 415 as a criminal prohibition for “maliciously disturbing by loud and unreasonable noise ...on University grounds, the Handout does not reflect the case law that establishes that even when a mass protest on a university campus is “loud” and “disrupted class and campus functions”, that does not mean that it is not constitutionally protected speech:

We are satisfied that loud shouting and cheering constitute the loud “noise” prohibited by section 415 only in two situations: 1) where there is a clear and present danger of imminent violence and 2) where the purported communication is used as a guise to disrupt lawful endeavors. *In re Brown*, 9 Cal. 3d 612, 621 (1973).

3. *No Discussion of Civil Disobedience As a Means of Protest*

Despite having “Civil Disobedience” prominently in its title, the Handout fails to discuss or even define this form of protest, which was such a central concern in both the Reynoso and Robinson-Edley Reports. While the Handout is rife with warnings about the consequences of violating the laws, it fails to discuss or even acknowledge the important role of civil disobedience as a protest tactic. This ignores the call in the Robinson-Edley Report for:

[r]ecognition that civil disobedience has been used as a form of expression in respected and important political movements. Although civil disobedience involves violating laws or regulations by its very definition, many protesters engage in civil disobedience in an attempt to bring about social or legal change. Under the best of circumstances, protesters come to civil disobedience as a last resort, only after other efforts to effect change have failed. In doing so, they are participating in an important and valuable tradition in American democracy, and one that has been particularly prominent on university campuses.

Robinson-Edley Report, p.10. Furthermore, both Reports emphasized that there needs to be a nuanced law enforcement approach that would distinguish between passive resistance and active resistance. None of this is reflected in the Handout, leaving students who might seek to engage in this kind of protest with no indication that they will be treated any differently than the protestors on November 18th.

4. *Standardless Discretion and Overly Broad Regulations*

Of course the University is entitled to create time, place, and manner regulations and the police have discretion to issue orders to protect public safety. However, those restrictions on protest activity must be lawful and narrowly tailored. Yet the Handout conveys the view that orders and regulations are left to the unbridled discretion of police or administrators. For example, in the “A Quick Overview” section, the Handout directs individuals to “comply with directions of campus officials” and explains that “they may be arrested/subject to discipline” if they “refuse to comply with directions to leave an area for safety or other reason, or because a building is closed.” It does not clarify that the orders to disperse or the reasons for dispersal must be “lawful” in order to warrant arrest or discipline. This is particularly important, given that the Reynoso Report concluded “it was not clear what legal authority existed for campus police to remove the tents and arrest those who opposed them.” (p. 5)

Another example where the Handout presents an overly broad view of the University’s power to restrict speech is in the Section entitled “Constitutional Protections”. While it accurately states that certain categories of speech are not constitutionally protected, and then lists them, the Handout then adds an “etc” at the end of the list. This completely ignores and distorts that these unprotected categories have been carefully limited and circumscribed by the United States Supreme Court, and in no way constitute an open-ended list. While this may seem a small

point, it shows a fundamental misunderstanding of the care and precision that is required when regulating speech that is not generally reflected in this document.

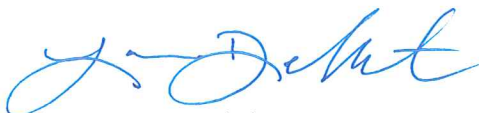
In conclusion, the Handout should not be disseminated in its present form. We request that you immediately remove the links to the Handout that are available online², remove printed copies for University offices and to cease any further dissemination. Furthermore, please let us know as soon as possible what steps you have taken (or will take) to cease circulation of the Handout.

If you have any questions or want to discuss this matter further, please feel free to contact Alan Schlosser.

Respectfully,



Alan Schlosser
Legal Director
ACLU of Northern California



Lauren DeMartini
Legal Fellow

cc: Rahim Reed
Associate Executive Vice Chancellor

Steven Drown
Campus Counsel

Matthew Carmichael
UC Davis Police Chief

Randolph M. Siverson
Professor

² At present, the Handout can be downloaded at: <http://csi.ucdavis.edu/forms> and <http://csi.ucdavis.edu/activism>. The Handout is also directly quoted at: <http://occr.ucdavis.edu/poc/free-expression.html>. The Handout is also mentioned at: http://stuaffdev.ucdavis.edu/freedom_expression.cfm.

V.A. Guidelines on Open Expression

(Source: Offices of the President and Provost, 1969; revised, Office of the President, Almanac, May 2, 1978; revised, Almanac, September 8, 1987; revised, Almanac, December 3, 1991; revised, Almanac, March 16, 1993)

I. Principles

A. The University of Pennsylvania, as a community of scholars, affirms, supports and cherishes the concepts of freedom of thought, inquiry, speech, and lawful assembly. The freedom to experiment, to present and examine alternative data and theories; the freedom to hear, express, and debate various views; and the freedom to voice criticism of existing practices and values are fundamental rights that must be upheld and practiced by the University in a free society.

B. Recognizing that the educational processes can include meetings, demonstrations, and other forms of collective expression, the University affirms the right of members of the University community to assemble and demonstrate peaceably in University locations within the limits of a set of Guidelines on Open Expression and undertakes to ensure that such rights shall not be infringed. In keeping with the rights outlined above, the University affirms that the substance or the nature of the views expressed is not an appropriate basis for any restriction upon or encouragement of an assembly or a demonstration. The University also affirms the right of others to pursue their normal activities within the University and to be protected from physical injury or property damage. The University shall attempt to ensure that, at any meeting, event or demonstration likely to be attended by non-University law enforcement authorities, the rights provided by these Guidelines are not infringed.

C. The University shall be vigilant to ensure the continuing openness and effectiveness of channels of communication among members of the University community on questions of common interest. To further this purpose, a Committee on Open Expression has been established as a standing Committee of the University Council. The Committee on Open Expression has as its major tasks: participating in the resolution of conflicts that may arise from incidents or disturbances implicating these Guidelines; mediating among the parties to prevent conflicts and violations of these Guidelines; interpreting these Guidelines; advising administrative officers when appropriate; and recommending policies and procedures for the improvement of all levels of communication.

D. In case of conflict between the principles of the Guidelines on Open Expression and other University policies, the principles of the Guidelines shall take precedence.

II. Definitions

A. For the purposes of these guidelines, the "University Community" shall mean the following individuals:

1. Persons who are registered as students or who are on an unexpired official leave of absence.

2. All persons who are employed by the University.
3. Trustees and associate trustees of the University and members of Boards of Boards of Overseers or other bodies advisory to the University.

B. For the purposes of these Guidelines, "Meeting" and "Event" designate a gathering of persons in a University location previously reserved for that purpose. Unless designated as public, Meetings are considered to be private. Events are considered to be public. "Demonstration" designates the presence of one or more persons in a University location with the intent to express a particular point of view in a manner that attracts attention, as in protest, rallies, sit-ins, vigils, or similar forms of expression. "University Location" designates:

1. The campus of the University;
2. Any location owned, leased or used by the University, when used by members of the University community; and
3. Areas immediately adjacent thereto.

III. Standards

A. The University, through the President, the Provost, and the Vice Provost for University Life, shall act to encourage and facilitate free and open expression within these Guidelines.

1. The University shall publish these Guidelines at least once each academic year in a manner that brings them to the attention of members of the University Community. The University shall publish the rules adopted pursuant to IV. B. 1 by the Committee on Open Expression at least once each academic year in a manner that brings them to the attention of Members of the University Community.
2. The University shall establish standards for the scheduling of Meetings and Events. This shall involve:
 - a. Publishing policies and procedures whereby members of the University Community, upon suitable request, can reserve and use designated spaces within University buildings for public or private Meetings or Events;
 - b. Publishing policies and procedures whereby Members of the University community, upon suitable request, can reserve and use designated outdoor spaces on the University campus for public Meetings or Events;
 - c. Publishing policies and procedures that specifically address requests involving groups composed entirely or predominantly of persons who are not Members of the University Community (see Section VI);

d. Consulting with the Committee on Open Expression with regard to the substance of the policies and procedures and the manner of their publication; and, if practicable, consulting with the Committee on Open Expression before denying a request for use of a room, facility, or space by an organization recognized by the University for a reason other than prior assignment of the room, facility, or space. In any event, any such denial must be reported promptly to the Committee.

B. Each Member of the University Community is expected to know and follow the Guidelines on Open Expression. A person whose conduct violates the following Standards may be held accountable for that conduct, whether or not the Vice Provost or delegate has given an instruction regarding the conduct in question. Any member of the University community who is in doubt as to the propriety of planned conduct may obtain an advisory opinion from the Committee on Open Expression in advance of the event.

1. Individuals or groups violate these Guidelines if:

- a. They interfere unreasonably with the activities of other persons. The time of day, size, noise level,* and general tenor of a Meeting, Event or demonstration are factors that may be considered in determining whether conduct is reasonable; (* An "Unreasonable Noise Level" is defined as sound above 85 decibels measured by a calibrated sound-level meter at an "A" weighting on "slow" response ten feet away from and directly in front of the source, amplifier or loudspeaker when the latter is within 50 feet of a building.)
- b. They cause injury to persons or property or threaten to cause such injury;
- c. They hold meetings, events or demonstrations under circumstances where health or safety is endangered; or
- d. They knowingly interfere with unimpeded movement in a University location.

2. Individuals or groups violate these Guidelines if they hold a demonstration in the following locations:

- a. Private offices, research laboratories and associated facilities, and computer centers; or
- b. Offices, museums, libraries, and other facilities that normally contain valuable or sensitive materials, collections, equipment, records protected by law or by existing University policy such as educational records, student-related or personnel-related records, or financial records; or
- c. Classrooms, seminar rooms, auditoriums or meeting rooms in which classes or private meetings are being held or are immediately scheduled; or

d. Hospitals, emergency facilities, communication systems, utilities, or other facilities or services vital to the continued functioning of the University.

3. Individuals or groups violate these Guidelines:

a. If they continue to engage in conduct after the Vice Provost for University Life or delegate has declared that the conduct is in violation of the Guidelines and has instructed the participants to modify or terminate their behavior. Prompt compliance with the instructions shall be a mitigating factor in any disciplinary proceedings based upon the immediate conduct to which the instructions refer, unless the violators are found to have caused or intended to cause injury to person or property or to have demonstrated willfully in an impermissible location.

b. If the individuals or groups refuse to comply with the Vice Provost's or delegate's order, they may challenge the appropriateness of the order to the judicial system. If the judiciary finds that the conduct was protected by the Guidelines, all charges shall be dismissed.

c. Individuals or groups complying with the Vice Provost's or delegate's order may request that the Committee on Open Expression determine if the Guidelines were properly interpreted and applied to their conduct.

IV. Committee on Open Expression

A. Composition

1. The Committee on Open Expression consists of seventeen members: eight faculty members named by the Faculty Senate Executive Committee, two representatives of the Penn Professional Staff Assembly, one representative of the Weekly-Paid Professional Staff Assembly, and three undergraduate students and three graduate/professional students selected by the appropriate student governance organizations (currently the Nominations and Elections Committee of the Undergraduate Assembly and the Graduate and Professional Student Assembly).

2. Members of the Committee are appointed for the following terms:

a. The faculty and representatives of the Penn Professional Staff Assembly are appointed to two-year terms, staggered so that in each year either two or three faculty members are appointed and one representative of the Penn Professional Staff Assembly is appointed.

b. The representative of the Weekly-Paid Professional Staff Assembly is appointed for a two-year term.

c. The undergraduate and graduate/professional student members are appointed to one-year terms.

d. Vacancies shall be filled for the unexpired term by the appropriate nominating body or persons.

3. The Chair of the Committee shall be selected by the Committee on Committees from among the members of the Committee on Open Expression.

B. Jurisdiction

The Committee has competence to act in issues and controversies involving open expression in accordance with these Guidelines. The Committee's responsibilities are the following:

1. Issuing rules to interpret or give more specific meaning to the Guidelines. Before adopting a rule, the Committee must hold an open hearing on the proposed rule and receive the views of individuals or groups. An affirmative vote of eight members is required for adoption, modification or rescision of a rule to be effective.

2. Recommending to the University Council proposals to amend or repeal the Guidelines. An affirmative vote of seven members is required to make such recommendations.

3. Giving advisory opinions interpreting the Guidelines at the request of a member of the University community for the purpose of advising that person or the University community. Such advice is provided to guide future action. If the Committee does not give a requested opinion, it must indicate its reasons for not doing so. The Committee must respond to such requests as soon as feasible but in any event not later than within one month of the receipt by the Chair of the Committee.

4. Giving advisory opinions interpreting the Guidelines at the request of administrative officials with responsibilities affecting freedom of expression and communication. Such advice is provided for the purpose of guiding future action.

5. Mediating in situations that involve possible violations of the Guidelines. Those Committee members available at the time may act on behalf of the Committee. In carrying out the mediation function, the Committee or those members present may advise the responsible administrative officials and any other person with respect to the implementation of the Guidelines. Those Committee members who have acted on behalf of the Committee must report on their activities to the full Committee.

6. Reviewing the following administrative decisions for the purpose of providing advice on future actions.

a. At the discretion of the Committee, administrative decisions involving these Guidelines made without consultation with the full Committee.

b. All instructions by the Vice Provost or delegate to modify or terminate behavior under Section III. B. 3 of these Guidelines.

7. Investigating incidents involving the application of these Guidelines to aid the Committee in its functions of rulemaking, recommending changes in the Guidelines or issuing advisory opinions. Such functions provide guidance to the University community for future action. The results of Committee investigations for these purposes shall not be a part of the initiation, consideration or disposition of disciplinary proceedings, if any, arising from the incidents.

8. Adopting procedures for the functions of the Committee, varied to suit its several functions, consistent with these Guidelines. Procedures that are not wholly matters of internal Committee practice must be made public in advance of implementation. Except as otherwise provided, the Committee may determine its own voting procedures.

9. Submitting an annual report to the Council and the University on the status of the Committee's work in the University's journal of record, Almanac.

C. Procedures

1. Except as provided with respect to the mediation function in Section IV. B.5, nine members of the Committee constitute a quorum.

2. The Committee can authorize subcommittees, selected from its own members, to act for the Committee in any matter except the issuance of rules interpreting or implementing the Guidelines or the making of recommendations to amend or repeal the Guidelines.

3. The Committee shall respect the privacy of individuals as its general policy and shall maintain the right to declare the confidentiality of its proceedings.

a. If a person appearing before the Committee requests that his/her testimony or information be kept confidential, the Committee shall consider such a request. The Committee then shall determine whether to honor that request and shall inform that person of its decision before testimony is given.

b. Minutes of particular Committee meetings may be declared confidential by the Committee or be so declared at the discretion of the chair subject to review by the Committee.

c. All Committee documents containing confidential material, as determined by the chair, shall be clearly marked "confidential" and shall carry a warning against unauthorized disclosure.

V. Responsibilities for Enforcement

A. It is the responsibility of the Vice Provost for University Life (hereafter referred to simply as the "Vice Provost") to protect and maintain the right of open expression under these Guidelines.

B. Observation of meetings, events or demonstrations, when deemed necessary by the Vice Provost to protect and maintain open expression, shall be the responsibility of the Vice Provost, who may delegate such responsibility. This delegate shall have full authority to act in the name of the Vice Provost under these Guidelines.

1. The observer (Vice Provost or delegate) shall identify himself/herself to those responsible for the meeting or event or to the leaders of the demonstration.
2. The Vice Provost shall attempt to inform the chair of the Committee on Open Expression of meetings, events or demonstrations to which an observer will be sent. The chair may designate a member or members of the Committee to accompany and advise the observer. Such a Committee representative shall also be identified to those responsible for the meeting or event or to the leaders of the demonstration.
3. Except in emergencies, the Vice Provost's authority under these Guidelines shall not be delegated to employees of the University's Department of Public Safety ("Public Safety"). The role of Public Safety personnel at a meeting, event or demonstration is defined below, in Section V. C. 3.
4. Any observer or Committee representative who attends a meeting, event or demonstration shall respect the privacy of those involved. If there has been no violation of these Guidelines, other University regulations, or applicable laws, an observer, committee representative, or Public Safety employee who attends a meeting, event or demonstration shall not report on the presence of any person at such meeting, event or demonstration.

C. The Vice Provost or delegate is responsible for enforcing Section III. B. and may instruct anyone whose behavior is violating or threatens to violate these Guidelines to modify or terminate such behavior. The instruction shall include notice that failure or refusal to comply is a further violation according to Section III. B. of these Guidelines. However, an instruction or warning by the Vice Provost or delegate is not a prerequisite for a finding that a violation has occurred.

1. When the Vice Provost or delegate declares that an individual or a group has violated the Guidelines, he/she may request to examine their University identification.
 - a. Failure to comply with this request is in violation of the Guidelines.
 - b. In the event that any person(s) are deemed by the Vice Provost or delegate, in consultation with available members of the Committee on Open Expression, to have violated the Guidelines and such person(s) refuse to show University or other identification, the Vice Provost or delegate shall if practicable inquire of other individuals present as to the identity of the claimed violator(s). Identification by two other individuals shall suffice to establish identity. Should it not be possible to establish identity in this way, the Vice Provost or delegate may direct that photographs be taken of the participant(s) in the claimed violation. The

Vice Provost or delegate must warn the individual(s) that their photographs will be taken unless identification is presented. Photographs and videotapes obtained without such warning may not be used as evidence in disciplinary proceedings. It is preferred that a member of the Committee on Open Expression take any such photographs; however, if no such person is able or willing to do so, another member of the University community may be requested to do so. As soon as safely practicable, all such photographs shall be turned over to the Vice Provost or delegate. Any photographs taken (including videotapes and negatives) shall be used solely by the Office of Student Conduct for the purpose of investigation of alleged violations and possible identification of alleged violators of these Guidelines. If it is determined that no violation has occurred, the Vice Provost or delegate shall destroy the photographs. If a violation is found to have occurred, after identification has been made and the case has been adjudicated, the Vice Provost or delegate shall destroy the photographs. None of the photographs shall be published. After each incident at which photographs are taken, the Committee on Open Expression shall report on the incident to the University Council, via the chair of the University Council Steering Committee, regarding what happened in the incident, which individuals saw the photographs, and the disposition of the photographs.

2. In carrying out this responsibility for safeguarding the right of open expression, the Vice Provost shall obtain the advice and recommendation of the representatives of the Committee on Open Expression whenever feasible.

3. The Vice Provost or delegate may request members of the University Police to attend meetings, events or demonstrations to help protect the open expression of those involved.

a. Any person acting as an agent of the Division of Public Safety who attends a meeting, event or demonstration in a University location shall be clearly identifiable as such and in normal duty uniform. (Arms may be carried if they are part of "normal duty uniform. ")

b. Public Safety personnel also may attend meetings, events or demonstrations when requested to do so by the person or group responsible for the event, when prominent public figures are involved, or when the Vice President for Public Safety or delegate determines that there exists an imminent danger of violence at the event.

4. Terminating a meeting, event or demonstration by force is a most serious step, as this action may exacerbate existing tensions and may lead to personal injury and property damage.

a. Avoidance of injury to persons by the continuation of a meeting, event or demonstration is a key factor in determining whether it should be forcibly terminated. Property damage and significant interference with educational

processes are also factors to be considered and may be of sufficient magnitude to warrant forcible termination.

b. Whenever possible, the Vice Provost or delegate should consult with the Committee on Open Expression before seeking a court injunction against those involved in a meeting, event or demonstration or calling for police action.

c. The Vice Provost or delegate shall inform those involved that he/she intends to seek an injunction or call for police intervention before he/she does so.

d. When a meeting, event or demonstration is forcibly terminated, a full statement of the circumstances leading to the incident shall be publicized by the Vice Provost within the University.

D. Adjudication

1. Cases involving undergraduate students are referred to the Office of Student Conduct, which investigates the event and decides what disciplinary proceedings, if any, to pursue.

2. Cases involving graduate or professional students are referred to the Office of Student Conduct or to the established disciplinary body of the school in which the student is enrolled.

3. Cases involving faculty are referred to the appropriate dean or to the Provost.

4. Cases involving University staff or administrators are referred to that individual's supervisor or any other person with supervisory responsibility over that individual.

5. Cases involving trustees and associate trustees of the University and members of the Boards of Overseers or other bodies advisory to the University are referred to the Executive Committee of the Trustees.

E. The Division of Public Safety shall not collect or maintain information about members of the University community*, except in connection with alleged crimes, violations of University regulations, or as specifically authorized in writing by the President (to Public Safety and the Open Expression Committee). This regulation shall not affect personnel information concerning current, past or prospective employees of the Division of Public Safety.

(*Videotaped or closed circuit television information collected by posted, fixed location cameras is excluded, as long as it is in conformance with the rules of the CCTV policy as of January 13, 1999.)

VI. Non-University Persons

These Guidelines address themselves explicitly to forms of individual and collective expression in a University location by members of the University community. The extent to

which the privileges and obligations of these Guidelines may be made applicable in particular circumstances to individuals who are not members of the University community shall be determined by the Vice Provost or delegate. Participants in meetings, events and demonstrations in a University location are required to comply with the instructions of the Vice Provost or delegate. (See section III. A. 2. c. of this policy.)

(See page 6-8 - [Almanac, March 16, 1993](#))

COLUMBIA UNIVERSITY REGULATIONS (INCLUDING RULES OF CONDUCT)

According to University regulations, each person whose registration has been completed will be considered a student of the University during the term for which he or she is registered unless the student's connection with the University is officially severed by withdrawal or otherwise. No student registered in any school or college of the University shall at the same time be registered in any other school or college, either of Columbia University or of any other institution, without the specific authorization of the dean or director of the school or college of the University in which he or she is first registered.

The privileges of the University are not available to any student until he or she has completed registration. A student who is not officially registered for a University course may not attend the course unless granted auditing privileges. No student may register after the stated period unless he or she obtains the written consent of the appropriate dean or director.

The University reserves the right to withhold the privilege of registration or any other University privilege from any person with an unpaid debt to the University.

- [Attendance](#)
- [Religious Holidays](#)
- [Hazardous Activity in Connection with Initiations and Affiliations \(often referred to as hazing\)](#)
- [University Policy on Possession of Firearms on Campus](#)
- [Student Discipline](#)
- [Academic Discipline](#)

Attendance

Students are held accountable for absences incurred owing to late enrollment.

Religious Holidays

It is the policy of the University to respect its members' religious beliefs. In compliance with New York State law, each student who is absent from school because of his or her religious beliefs will be given an equivalent opportunity to register for classes or make up any examination, study, or work requirements that he or she may have missed because of such absence on any particular day or days. No student will be penalized for absence due to religious beliefs, and alternative means will be sought for satisfying the academic requirements involved.

Officers of administration and of instruction responsible for scheduling of academic activities or essential services are expected to avoid conflict with religious holidays as much as possible. If a suitable arrangement cannot be worked out between the student and the instructor involved, they should consult the appropriate dean or director. If an additional appeal is needed, it may be taken to the Provost.

Hazardous Activity in Connection with Initiations and Affiliations (often referred to as hazing)

University policy and state law (New York Penal Law Section 120.16 and New York Education Law Section 6430), prohibit what is often referred to as hazing. In accordance with New York Education Law Section 6430, the following rules and regulations supplement existing University rules and regulations for the maintenance of public order on University campuses and other University property used for educational purposes:

1. Any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization is prohibited.
2. Any person who engages in conduct prohibited by the foregoing paragraph shall be subject to ejection from University campuses and property and, in the case of a student or faculty violator, to suspension, expulsion, or other appropriate disciplinary action by the Dean or other University officer having jurisdiction. Any organization that authorizes such conduct may be subject to rescission of its permission to operate on University campuses or property.
3. A copy of these rules and regulations shall be given to all students enrolled in the University and shall be deemed to be part of the bylaws of all organizations operating on the University's campuses. Each such organization shall review annually such bylaws with individuals affiliated with such organization.
4. These rules and regulations are applicable to all students, faculty, and other staff as well as visitors and other licensees and invitees on University campuses and properties.

University Policy on Possession of Firearms on Campus

University policy and state law, New York Penal Law Section 265.01(3), prohibit possession of firearms on campus without the University's written authorization.

The University's prohibition against possession of firearms on campus extends to all University owned or controlled locations used for residences of affiliated persons, including all housing obtained through the Office of Housing Services and University Apartment Housing. Firearms possessed in violation of this University policy will be confiscated. Violators of the policy may be subject to University discipline as well as criminal prosecution.

Student Discipline

Students may continue at the University, receive academic credits, graduate, and obtain degrees subject to the disciplinary powers of the University. The Trustees of the University have delegated responsibility for student discipline to the Deans of the individual schools or divisions, and their administration of student discipline is known as Dean's Discipline.

Students should be aware that academic dishonesty (for example, plagiarism, cheating on an examination, or dishonesty in dealing with a faculty member or other University official) or the threat of violence or harassment are particularly serious offenses that will be dealt with severely under Dean's Discipline.

Academic Discipline

In addition to Dean's Discipline, each school or division of the University has established standards of academic progress and requirements for remaining in academic good standing. Progress and standing are monitored by the Dean's Office of the respective school or division. For further information about academic standards and requirements students should consult the bulletin of the school or division in which they are enrolled.

The continuance of each student upon the rolls of the University, the receipt of academic credits, graduation, and the conferring of any degree or the granting of any certificate are strictly subject to the disciplinary powers of the University.

Rules of University Conduct

Chapter XLIV of the Statutes of Columbia University

The Rules of University Conduct (Chapter XLIV of the Statutes of the University) provide special disciplinary rules applicable to demonstrations, rallies, picketing, and the circulation of petitions. These rules are designed to protect the rights of free expression through peaceful demonstration while at the same time ensuring the proper functioning of the University and the protection of the rights of those who may be affected by such demonstrations.

The Rules of University Conduct are University-wide and supersede all other rules of any school or division. Minor violations of the Rules of Conduct are referred to the normal disciplinary procedures of each school or division ("Dean's Discipline"). A student who is charged with a serious violation of the Rules has the option of choosing Dean's Discipline or a more formal procedure provided in the Rules.

All University faculty, students, and staff are responsible for compliance with the Rules of University Conduct. The text of the Rules of University Conduct is reproduced here.

[§440. Demonstrations, Rallies, and Picketing](#)

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[§451. Committee on Rules of University Conduct](#)

§440. Demonstrations, Rallies and Picketing

Demonstrations, rallies, picketing, and the circulation of petitions have an important place in the life of a university. They are a means by which protests may be registered and attention drawn to new directions possible in the evolution of the University community. But in order to protect the rights of all members of the University community and to ensure the proper functioning of the University as an institution of teaching and research, it is necessary to impose reasonable restraints on the place and manner in which picketing and other demonstrations are conducted and on activities of counter demonstrators or self-appointed vigilantes. This is the intention of the Rules of University Conduct: to protect the concurrent rights of both the University community as a whole and demonstrators.

While the University as a private institution is not subject to the Constitutional provisions on free speech and due process of law, the University by its nature is dedicated to the free expression of ideas and to evenhanded and fair dealing with all with whom it conducts its affairs. The Rules of University Conduct are thus enacted by the University to provide as a matter of University policy the maximum freedom of expression consistent with the rights of others and a fair and speedy hearing to any person charged with a violation of these Rules.

A violation of these Rules is an offense against the entire University community. However, such violations are not here considered as crimes, and University disciplines should not carry the same stigma as a criminal conviction. All members of the University community are assumed to be innocent until proven guilty of a violation of the Rules. The University shall publicize the existence of the Rules and make them readily available to persons who may be affected by them. Such persons are responsible for being aware of all provisions contained in the Rules.

§441. Definitions

Terms used in this Chapter XLIV shall have the following meanings: (Comment: While gender-neutral language is employed in these Rules whenever possible, "he," "him," or "his" occasionally appear. They are used to avoid awkward locutions and are not intended to perpetuate gender stereotypes.)

a. University means Columbia University in the City of New York.

b. University facility means that place where a University function occurs.

c. University function means any charter or statutory operation or activity of the University, including instruction, research, study, administration, habitation, social life, space allocation and control, food supply, and other functions directly related thereto. Specifically included are both functions of fixed-time duration (e.g., classes, examinations, lectures) and functions of continuing duration (e.g., the operation of libraries, research laboratories, maintenance shops, computers, business offices). Also included are functions ancillary to directly educational purposes such as meetings, disciplinary proceedings, and athletic and social events sponsored by any University-approved organization.

d. Deans mean persons appointed by the President, and approved by the Trustees, either as Dean, Acting Dean, or Director of one of the divisions or schools of the Columbia Corporation or such staff persons as they may assign to administer disciplinary affairs.

e. Delegates. A "Presidential delegate" is appointed by the President, and a "divisional delegate" is appointed by the Dean or Director of a division or school. Delegates have principal authority for the enforcement of these Rules. They shall warn individuals and groups whose actions may violate these Rules and may declare their belief that the demonstration is illegal under Sections 443a (18), (19), and (20). They shall, when facts known to them or brought to their attention warrant, file a complaint with the Rules Administrator against alleged violators.

f. Dean's Discipline means in the case of students the normal disciplinary procedure of a school or division that would ordinarily apply but for these Rules; in the case of faculty and staff, Dean's Discipline means the normal disciplinary procedure that would ordinarily apply but for these Rules.

g. Day means a calendar day, regardless of whether the University is in academic session except for purposes of the appeal procedures set forth in §448. Whenever any time limit expires on a nonworking day, it shall be extended to the next working day.

h. Students mean any persons registered in any division of the University, whether for courses or research, and whether or not they are candidates for a degree or certificate. It also includes persons who are on leave or suspended or continuing matriculants for any degree or certificate. It includes persons registered during any preceding terms and who have not since that time earned the degree or certificate or withdrawn from the University.

i. Faculty means officers of instruction or research appointed to any division, school, or other department of the University, including officers on leave.

j. Staff means members of the administration, administrative staff, research staff, library staff, or supporting staff.

k. Violation means the commission of an act proscribed by these Rules. However, inadvertent or accidental behavior shall not be considered to be the substance of a violation.

l. Sanctions comprise the following penalties for violation of these Rules:

1. Disciplinary Warning. A disciplinary warning states that future violations will be treated more seriously. It in no way limits consideration for, or receipt of, financial aid or compensation for which the individual may be eligible. The period of warning shall be for not less than the remainder of the term in which the warning occurs nor for more than three regular terms, including the term in which the warning occurs. Upon notification by the proper authority, there shall be entered on the individual's transcript or personal record the notation: "Disciplinary Warning, from (date) to (date)." This notation is removed when the disciplinary warning has been terminated.

2. Censure. In addition to the provisions listed under disciplinary warning, censure remains on students' records until completion of the degree or certificate for which they are candidates. For faculty and staff this notation remains on the record for a maximum of four years. It in no way limits consideration for, or receipt of, financial aid or compensation for which the individual may be eligible. Subsequent conviction for a simple offense requires suspension for a term or dismissal from the University; subsequent conviction for a serious offense requires dismissal from the University.
3. Suspension. Individuals who have been suspended are not permitted to continue their association with the University or reside in one of the University residence halls during the period of suspension, nor may they receive a leave of absence of any kind. The period of suspension shall be for not less than one regular term nor for more than three regular terms, not counting the Summer Session, but including the term in which the suspension occurs. The period of suspension shall be determined by the Hearing Officer; it may not be adjusted except under the appellate procedures set forth in these Rules or by an act of Presidential clemency. Upon notification by the proper authority, there shall be entered on the individual's record the notation: "Suspended, from (date) to (date)." Upon termination of the period of suspension, the individual may apply for reinstatement. The notation on the record is permanent.
4. Dismissal. Unlike suspension, when an individual is dismissed, no time period is specified, nor is reinstatement anticipated, but in no case shall reinstatement occur less than one year after the imposition of the sanction except by act of Presidential clemency. Upon notification by the proper authority, there shall be entered on the individual's record the notation: "Dismissed, (date)." Should the individual be subsequently readmitted or reemployed, upon notification from the proper authority, there shall be entered on the individual's record the notation: "Readmitted or reemployed (date)." The notations on the record are permanent.

m. Respondent means a person against whom a charge for violation of these Rules has been filed.

n. Rules Administrator means the Rules Administrator appointed under §445b.

o. Hearing Officer means a Hearing Officer appointed under §445d.

p. University Judicial Board means the appellate review board appointed under §445e.

§442. Jurisdiction

The Rules of University Conduct shall apply to all members of the University community: administrators, administrative staff, research staff, library staff, supporting staff, faculty, and students. Also visitors, licensees, and invitees on a University facility shall be subject to the Rules of University Conduct. Violations by such persons may result in the revocation of their invitation or license to be on a University facility and their subsequent ejection.

The Rules of University Conduct apply to any demonstration, including a rally or picketing, that takes place on or at a University facility. Such facilities include, but are not limited to, all University campuses, research laboratories, maintenance shops, business offices, athletic fields, dormitories, classrooms, and meeting halls. The Rules of University Conduct do not apply to participation in a demonstration, including a rally or picketing, by full-time employees of the University represented by a collective bargaining agent, where the demonstration arises in the course of or is incident to a labor dispute involving the University.

§443. Violations and Sanctions

a. Violations.

A person is in violation of these Rules when such person individually or with a group, incident to a demonstration, including a rally or picketing:

- (1) (simple violation) engages in conduct that places another in danger of bodily harm;
- (2) (serious violation) causes or clearly attempts to cause physical injury to another person;
- (3) (simple) uses words that threaten bodily harm in a situation where there is clear and present danger of such bodily harm;
- (4) (serious) uses words in a situation of clear and present danger that actually incite others to behavior that would violate Sections 443a (2) or (6);
- (5) (simple) causes minor property damage or loss, or endangers property on a University facility;
- (6) (serious) misappropriates, damages, or destroys books or scholarly material or any other property belonging to the University, or to another party, when that property is in or on a University facility, and by such action causes or threatens substantial educational, administrative, or financial loss;
- (7) (simple) interferes over a very short period of time with entrance to, exit from, passage within, or use of, a University facility but does not substantially disrupt any University function;
- (8) (serious) continues for more than a very short period of time to physically prevent, or clearly attempt to prevent, passage within, or unimpeded use of, a University facility, and thereby interferes with the normal conduct of a University function;
- (9) (serious) enters or remains in a University facility without authorization at a time after the facility has been declared closed by the University; (Comment: The University shall make all reasonable attempts to publicize this declaration to the fullest extent possible.)
- (10) (simple) enters a private office without authorization;
- (11) (serious) holds or occupies a private office for his own purposes; (Comment: Persons may not enter a private office unless invited and then not in excess of the number designated or invited by the occupant. Anyone so entering must leave on request of a recognized occupant of such office or on request of another authorized person. Passage through reception areas leading to private offices must not be obstructed. Clear and

unimpeded passageway through lobbies, corridors, and stairways must be maintained at all times. For this purpose, the delegate may advise demonstrators as to the permissible number of participants in such restricted areas and regulate the location of such participants. Persons may use rooms in which instruction, research, or study normally take place only when such rooms are assigned to them through established University procedures.)

(12) (simple) causes a noise that substantially hinders others in their normal academic activities;

(13) (simple) briefly interrupts a University function;

(14) (serious) disrupts a University function or renders its continuation impossible;

(15) (serious) illicitly uses, or attempts to use, or makes threats with a firearm, explosive, dangerous or noxious chemical, or other dangerous instrument or weapon;

(16) (serious) fails to self-identify when requested to do so by a properly identified delegate;

(17) (serious) prevents a properly identified delegate from the discharge of his official responsibilities under these Rules, except through a mere refusal to self-identify;

(18) (simple) fails to obey the reasonable orders of a properly identified delegate regulating the location of demonstrators or others within the vicinity of a demonstration to assure unimpeded access to or use of a facility or to avoid physical conflict between demonstrators and others; (Comment: This regulation gives the delegate authority to regulate assemblies. The check against abuse of such authority is provided by the test of reasonableness imposed by the Hearing Officer in such disciplinary proceedings as may result from noncompliance. Should a delegate in the exercise of discretion fail to disperse an assembly in which some or all of the participants are violating or have violated the Rules, this should in no way be construed as excusing the violators, who remain liable for their acts under these Rules.)

(19) (simple) fails to disperse from an assembly upon order of a properly identified delegate when such order results from repeated or continuing violations of these Rules by members of the assembly and the delegate has by verbal directions made reasonable effort to secure compliance before ordering dispersal;

(20) (serious) fails to disperse from an assembly upon order of a properly identified delegate when such order results from serious violations of these Rules by members of the assembly and the delegate so states in his order to disperse;

(21) (simple) aids and abets others or other groups in a simple violation of these Rules;

(22) (serious) aids and abets others or other groups in a serious violation of these Rules.

b. Reserve Clause.

Disciplinary matters not specifically enumerated in these Rules are reserved in the case of students to the Deans of their schools or their delegated authorities and to the regulations and mechanisms they have established, and in the case of faculty and staff to the President of the University or his delegated authority and to the regulations and mechanisms that have been established to deal with such matters.

c. Sanctions.

(1) A respondent who is found guilty of a simple violation of these Rules shall be sanctioned by: Disciplinary Warning or Censure. Censure is the most severe penalty that may be imposed for a simple violation.

(a) For repeated violations of a simple nature, or for a simple violation by a respondent already on Disciplinary Warning, the respondent shall be subject to Censure or Suspension; if already under Censure, the respondent shall be subject to Suspension. In especially extreme cases, Dismissal may be imposed.

(2) A respondent who is found guilty of a serious violation of these Rules shall be sanctioned by Censure, Suspension, or Dismissal.

§444.Enforcement

a. Summoning a Delegate.

Should any member of the University community believe that participants in an assembly or other demonstration are violating the Rules of University Conduct, he or she should notify the appropriate delegate(s) by calling the Office of Public Safety. The delegates shall proceed to the site of the demonstration and gather information for possible transmission to the Rules Administrator. This includes the identities of any participants who the delegate feels are violating the Rules and the facts surrounding the demonstration.

b. Warning and Advice.

Properly identified delegates shall warn those parties whose actions they consider to be in violation of these Rules. However, a member of the University community may be charged with a violation of these Rules even if no prior warning has been given or perceived. The Hearing Officer (or Dean or other person conducting the proceedings in the case of Dean's Discipline) shall in either case determine whether the actions of the accused were in violation of these Rules.

c. Creating Separate Areas for Demonstrations Believed to Be in Violation of These Rules and for Permissible Demonstrations/Observation.

Delegates believing that an assembly or other demonstration is violating Sections 443a(7), (8), (9), or (14) of these Rules should, to the extent practicable in their sole judgment, immediately make all reasonable efforts to create separate areas for demonstrators whose actions are believed to violate the Rules and for those wishing to demonstrate permissibly or to observe. There should be a reasonable distance between these areas, with a presumption in favor of allowing unobstructed view and observation, and they should be graphically delineated without creating barriers, to the extent feasible. Failure by a delegate to create these areas shall not excuse a violation of these Rules.

d. Distribution of a Flier Conveying Pertinent Information to Demonstrators and Observers.

Whenever an assembly or other demonstration believed to be in violation of these Rules continues for more than a very short period of time, the Presidential delegate shall consider preparing a flier for distribution to persons in the area of the demonstration. The flier should repeat any previous warning by a delegate concerning the violation or violations of these Rules that are believed to be taking place, describe the location of any areas cordoned off under Section 444c, and identify the locations where full copies of these Rules are available. Failure by the Presidential delegate to prepare and distribute such a flier shall not excuse a violation of these Rules.

e. Self-identifying.

A properly identified delegate may request individuals believed to be violating these Rules to identify themselves through production of their University ID cards. Their cards will be returned immediately after the delegate has recorded the individual's name and ID number. Members of the University community who do not self-identify may be charged with serious violation of these Rules under Section 443a(16).

f. Treatment of outsiders.

In accordance with the jurisdiction of these Rules (Section 442), any visitor, licensee, or invitee who the delegate determines is violating these Rules, and who does not comply with the delegate's warning and advice, may be ejected from a University facility without regard to the procedures set forth in Sections 446-448 herein. Delegates also have a responsibility to protect the rights of lawful demonstrators. Counterdemonstrators or vigilantes may be warned by delegates if they consider their actions to be in violation of the Rules. The same procedure of information gathering shall be initiated by delegates for all suspected violators. Members of the University community should not take enforcement of these rules into their own hands, since such action may result in violations of these rules.

If the President, upon consultation with a majority of a panel established by the Executive Committee of the University Senate, decides that a demonstration poses a clear and present danger to persons, property, or the substantial functioning of any division of the University, he shall take all necessary steps to secure the cooperating of external authority to bring about the end of the disruption. The President shall make public his decision to the fullest extent possible as soon as it is feasible. Nothing in the above shall be construed to limit the President's emergency authority to protect persons or property.

§445. Administrative and Judicial Personnel

a. The Delegate.

1. The Dean or Director of each division or school shall appoint one or more divisional delegates.
2. Divisional delegates may be called upon to enforce these Rules by anyone subject to them; or they may proceed to enforce them on their own initiative.
3. Whenever feasible, a divisional delegate is obliged, upon the request of another delegate, to assist that delegate.
4. There shall be one or more Presidential delegates who shall have the powers and responsibilities of divisional delegates but who shall, in addition, be kept informed of all actions and charges undertaken by the divisional delegates.

b. Rules Administrator.

The Rules Administrator, whose office shall be in the University Senate offices, shall have primary responsibility for the administration of these Rules. He shall maintain and have custody of the records of proceedings under these Rules; shall prepare and serve notices and other documents required under these Rules; shall accept and investigate complaints, file charges, organize informal settlements, and present evidence in support of charges to the Hearing Officer. The Rules Administrator shall be appointed by the President after consultation with the Executive Committee of the University Senate and shall serve at the pleasure of the President. The Rules Administrator may appoint one or more assistant administrators, who may act in his stead. Persons otherwise concerned with the disciplinary procedures of a particular school or division may not be appointed as the Rules Administrator or an assistant administrator.

c. Deans and Supervisors.

The dean of a school or division or the dean's designee shall hear all charges of simple violations of these Rules brought against students of that school or division, applying the substantive law of these Rules (including sanctions) in accordance with the procedure for Dean's Discipline of the school or division. Charges of simple violations of these Rules brought against faculty and staff shall be heard by the respondent's supervisor or other person who would normally conduct disciplinary proceeding against the respondent but for these Rules, applying the substantive law of these Rules (including sanctions) in accordance with the procedure of the Dean's Discipline applicable to the respondent.

d. Hearing Officer.

The Executive Committee of the University Senate shall at its first meeting each year appoint or fill vacancies in a panel of not less than three Hearing Officers, each of whom shall serve for a term of two years. It shall also designate the order in which persons on the panel shall serve as Hearing Officers. A Hearing Officer shall conduct hearings on charges of a serious violation of these Rules. Hearing Officers shall be lawyers appointed from without the University and shall be chosen for their professional competence and experience in the conduct of hearings. A person with a full- or part-time affiliation with the University as faculty, student, or staff shall be considered from within the University for the purposes of these Rules; a person whose only direct affiliation is as an alumnus shall be considered from without the University. The Executive Committee of the University Senate may appoint additional persons to the panel of Hearing Officers should the need arise. Persons otherwise concerned with disciplinary procedures may not be appointed as Hearing Officers.

e. University Judicial Board.

The Executive Committee of the University Senate shall at its first meeting each year appoint or fill vacancies in a University Judicial Board consisting of five members, one of whom shall be a student, one of whom shall be a faculty member, and one of whom shall be from administration, administrative staff, research staff, or library staff. The Executive Committee shall designate the Chairman of the Board and shall make appointments to the Board, which shall ordinarily be for a term of three years, so as to provide for staggered terms to ensure continuity in the Board. The members of the University Judicial Board shall be persons from within the University, and no person otherwise concerned with disciplinary procedures may be appointed to the Board.

§446. Pre-Hearing Procedures

a. Filing Complaints.

Any member of the University who believes a violation of the Rules has been committed may file a written complaint with the Rules Administrator. The complaint shall state with particularity the person(s) involved, the nature of the offense, and the circumstances under which the offense may have been committed.

b. Investigation of Complaints.

Upon receipt of a complaint, the Rules Administrator, after such investigation as he deems advisable, shall determine whether there is reasonable cause to believe an offense has been committed. The Administrator may interview any person, including a prospective respondent.

c. Complaints Dismissed.

If the Rules Administrator determines that there is no reasonable cause to believe an offense has been committed, he shall so inform the complainant.

d. Informal Settlements; Charges Filed.

If the Rules Administrator determines that there is reasonable cause to believe an offense has been committed, such Administrator shall interview the prospective respondent(s). The Rules Administrator shall notify the respondent(s), during the interview, of the substance of the charges that may be filed. On the basis of the complaint investigation and the interview, the Rules Administrator shall:

1. attempt an informal settlement of the matter with the respondent(s), either alone or in conjunction with the Dean(s) of such respondent(s)' division(s); with the written consent of the respondent, the Rules Administrator may accept an admission of guilt of a simple or a serious violation and impose the sanction the Rules Administrator deems appropriate, without the necessity of formally filing charges; or
2. prepare charges for filing. The charges shall be in writing, stating with particularity the offense alleged, and shall charge one or more simple violations or one or more serious violations; the charges may not include both simple and serious violations against any one respondent based on the same conduct (similar conduct occurring at clearly different times is not considered "same conduct"); in case of serious violation, the charges shall state the witnesses likely to be called in support of the charges. The Rules Administrator may file charges against a prospective respondent who has attempted and failed to achieve informal settlement with the appropriate dean or with the Rules Administrator.

e. Duties of the Rules Administrator after Deciding to Prepare Charges.

Promptly after deciding to prepare charges of a violation of the Rules, the Rules Administrator shall either:

1. In the case of charges of a simple violation (subject to §446h), file the charges with the respondent's dean or supervisor (or other person referred to in §445c), as the case may be, sending a copy by hand delivery to the respondent's campus address or by hand delivery or regular mail if the respondent has an off-campus address; or

2. in the case of charges of a serious violation,
 - i. notify the Hearing Officer next available to serve in the order designated by the Senate Executive Committee as provided in §445d.
 - ii. in consultation with the Hearing Officer, set a time and place for a hearing. The hearing may not be held less than 10 days after notice is given to the respondent.
 - iii. file the charges with the Hearing Officer.
 - iv. give notice to the respondent(s) by hand delivery or by registered mail. Notice shall be considered given when delivered or, if mailed, five days after being deposited in the mail. The notice shall include:
 - A. a copy of the charge;
 - B. the name of the Hearing Officer;
 - C. the time and place of the hearing;
 - D. a copy of these Rules; and
 - E. any other information the Rules Administrator thinks relevant.

f. Procedural Motions Prior to the Hearing on Charges of a Serious Violation.

Not less than five (5) days prior to the hearing, the Rules Administrator and the respondent may each file with the Hearing Officer, in writing and stating the reasons therefor, the following procedural motions:

1. motion to postpone the hearing;
2. motion to consolidate this hearing with that of another respondent;
3. motion to sever this hearing from that of another respondent;
4. motion to dismiss the charges.

The Hearing Officer shall decide whether to grant a motion set forth in (1)-(4) above and shall communicate this decision to the Administrator and to the respondent. Not less than two (2) days prior to the hearing, the respondent may file with the Hearing Officer a request for a closed hearing. The Hearing Officer shall automatically grant such a request. The Hearing Officer may in his discretion receive and rule upon other pre-hearing motions.

g. Respondent's Right to an Adviser.

A respondent may be assisted in his or her defense of charges of a serious violation by an adviser of his or her choice from within or without the University; the adviser may be a lawyer. In the case of charges of a simple violation, the respondent may be assisted by an adviser only to the extent provided under the procedure of the relevant Dean's Discipline.

h. Procedure for Charges of a Simple Violation by a Respondent under Censure.

Charges of a simple violation brought against a respondent for conduct while under Censure (where a finding of guilty requires the sanction of suspension) shall not be heard under Dean's Discipline but shall be filed with a Hearing Officer and treated for all procedural purposes as if they were charges of a serious violation. If a respondent is found guilty of a simple violation under Dean's Discipline for conduct not while under Censure, only the sanction of Disciplinary Warning or Censure may be imposed; any prior discipline for an offense not related to these Rules shall not be taken into account. Multiple charges of simple violations against a respondent for conduct while not under Censure shall be heard under Dean's Discipline as herein provided, and the dean or other person imposing a sanction after one or more findings of guilty may impose only the sanction of Disciplinary Warning or Censure.

i. Interview of a Respondent under Dean's Discipline.

Notwithstanding anything to the contrary in the procedures of the Dean's Discipline applicable to a particular respondent, in the case of charges of a simple violation of these Rules to be heard under Dean's Discipline, the dean or other person conducting the proceedings shall schedule an interview with the respondent, such scheduling to occur within 48 hours of the filing of the charges by the Rules Administrator. At the interview the respondent shall be informed of the evidence against him or her and shall have the opportunity to be heard in his or her defense. Failure to attend the interview unless excused for cause may be taken into account in considering the charges against the respondent.

§447. The Hearing on Charges of a Serious Violation

a. Presentation by the Rules Administrator.

The Rules Administrator, who may be assisted by a lawyer from within or without the University, shall produce all evidence and call all witnesses in support of the charges. The respondent and his adviser may examine any evidence and cross-examine any witness.

b. Presentation by the Respondent.

Following presentation by the Rules Administrator, the respondent and his adviser may produce evidence and call witnesses in his defense. The Rules Administrator may examine any evidence and cross-examine any witness.

c. Role of the Hearing Officer.

The Hearing Officer shall have broad discretion in the conduct of the pre-hearing procedures and the hearing, subject only to the express provisions of these Rules and to the principle that these Rules are intended to provide to the respondent a speedy and a fair hearing. The Hearing Officer will normally rely primarily on the Rules Administrator and the respondent and his adviser to present the case for and against the charges, but the Hearing Officer on his motion may call and examine witnesses and invite the submission of additional evidence.

d. Record of the Hearing.

The Hearing Officer shall provide for a verbatim record of the hearing, which may be by court reporter, tape recording, or such other means as the Hearing Officer shall determine. Unless the hearing has been closed at the request of the respondent, the verbatim record of the hearing shall be a public record.

e. Open Hearing.

Unless a closed hearing is requested by the respondent, the hearing shall be open to members of the University community and to the University news media, except that the Hearing Officer may impose reasonable limits on the number of persons admitted, may exclude witnesses from attendance at the hearing, and may close the hearing as provided in §417g if it is disrupted by disorderly behavior of the participants or spectators.

f. Attendance of Witnesses; Testimony by Respondent.

Members of the University community subject to these Rules are compelled, under penalty of disciplinary action under these Rules, to appear as witnesses if summoned by the Hearing Officer. Failure to appear shall constitute a simple violation, provided there is proof of notice. The respondent is compelled to attend the hearing under penalty of suspension. He may be a witness only if he freely consents to be; failure to testify may not be weighed against him; however, failure to answer any question on the part of a respondent who agrees to testify may be weighed against him.

g. Contempt Procedures; Disruptions.

The Hearing Officer may find a person in contempt of the Rules who fails to obey a proper order of the Hearing Officer during the hearing. If any person present at a hearing continues seriously to interfere with or substantially disrupt the orderly functioning of the hearing, after being given proper warning by the Hearing Officer, the Hearing Officer may find the person in contempt of the Rules. The Hearing Officer may hear and decide cases of contempt by summary proceedings during the hearing.

If the person found in contempt is a respondent, he shall be subject to either Disciplinary Warning or Censure and shall be warned that any further contempt, including further disruption, will lead to his Suspension. The penalty for being twice found in contempt shall be Suspension, in accordance with Section 441.1(3) of these Rules.

If the person found in contempt is not a respondent, he shall be subject to either Disciplinary Warning or Censure and shall be asked to leave the hearing. The Hearing Officer will warn the party that if he does not leave he will be suspended. Failure to leave at this time shall mandate a suspension in accordance with Section 441.1(3) of these Rules. If a disruption occurs, the Hearing Officer may:

1. order a recess and reconvene;
2. reconvene at an alternate place;
3. reconvene and limit the number of spectators;
4. reconvene and exclude designated spectator participants in the prior disorder;
5. reconvene in a closed hearing, provided that members of the University news media shall be excluded only on request of the respondent, save when an individual reporter acts obstreperously, in which case the Hearing Officer may admit a replacement for him.

h. Respondent's Right to Elect Alternate Procedures in the Case of Charges of a Serious Violation.

At any time up to the day of the hearing, student respondents may elect Dean's Discipline in lieu of these Rules; faculty and staff respondents may elect the disciplinary procedures to which they would ordinarily be subject but for these Rules.

A respondent who has once elected the alternate procedure shall not thereafter be subject to these Rules with respect to the violations with which he was charged.

i. Status of Respondent during Proceedings.

Any respondent granted a leave of absence during the pendency of proceedings shall not, on that account, be granted a postponement or deferment. If, however, a respondent, having been notified of charges brought against him, voluntarily withdraws from the University permanently or indefinitely, the charges shall be dropped and proceedings shall be terminated. Upon any subsequent application for readmission to the University by a respondent who has withdrawn under such circumstances, the dean shall decide whether the applicant shall be subject to further discipline as a requirement for readmission.

Whether degrees or certificates shall be withheld from candidates charged with violations of these Rules pending hearings is a matter of administrative discretion to be exercised by the appropriate dean. The decision should take into account the seriousness of the charge, the degree of punishment likely to be given, and the extent to which the plans of the respondent will be disrupted.

A student's transcript shall not be withheld during the pendency of hearings, but the transcript shall be issued with a notation thereon of the pendency of the hearing and the possibility of sanctions if the respondent is found guilty of a violation of the Rules. The requirement of the notation may be waived in the discretion of the appropriate dean.

If the respondent is charged with a violation of these Rules and criminal or civil charges are brought against the respondent for the same occurrence as the result of police action or civil proceedings, the University may proceed with disciplinary action, with the understanding that the respondent's response to the criminal charge shall take precedence should a conflict in hearing times occur.

j. Conduct of Hearings after the End of an Academic Term.

Except for the appeal procedures set forth in §448, the processes of these Rules shall go forward notwithstanding the end of an academic term. The University shall provide housing free of charge for up to seven days to all student respondents who remain at the University to participate in a hearing on charges against them after their room contracts with the University expire; the Hearing Officer in his discretion may extend the University's obligation to house respondents free of charge. The Hearing Officer in his discretion may excuse any student respondent from attendance at a consolidated hearing on a showing of hardship, provided the respondent agrees to be bound by the Hearing Officer's decision made on the basis of the consolidated hearing conducted during the respondent's absence.

k. Decision of the Hearing Officer.

The Hearing Officer promptly after the conclusion of the hearing shall prepare and send to the Rules Administrator and the respondent and such respondent's adviser, by hand delivery or registered mail, a written decision with an explanation of the reasons therefore, either acquitting the respondent of the charges or finding the respondent guilty of the charges on the basis of the clear preponderance of the evidence. The Hearing Officer may not find a respondent guilty of a simple violation subsumed under charges of a serious violation. If the Hearing Officer finds the respondent guilty, the Hearing Officer shall in his or her decision impose the sanction of Suspension or Dismissal, giving due regard to the circumstances of the offense and the offender, the seriousness of the offense, and offender's prior disciplinary record, except that the sanction of Suspension shall be imposed if the Hearing Officer finds the respondent guilty of charges of a simple violation based on conduct occurring while the respondent was under Censure.

§448. Appeal Procedures

a. In cases of charges of a simple violation, the appeal procedure shall be as provided in the relevant Dean's Discipline. Only the respondent may appeal in the case of charges of a simple violation.

b. In the case of charges of a serious violation, the appeal procedure shall be as follows:

1. Right to Appeal; Notice of Appeal. Either the Rules Administrator or the respondent may appeal the decision of the Hearing Officer by filing a notice of appeal with the Chairman of the University Judicial Board within 10 days after the sending of the decision by the Hearing Officer. A person found in contempt by the Hearing Officer may appeal the Hearing Officer's decision by filing a notice of appeal with the Chairman of the University Judicial Board within 10 days after the Hearing Officer's decision. A notice of appeal shall be in writing and shall include a brief statement of the reasons therefor. For purpose of this §448, only those days shall be counted that occur during the University's fall or spring term; any action taken between those terms shall be considered as having occurred on the first day of the next following fall or spring term.
2. Arrangements for the Appeal Hearing. Promptly after the filing of a notice of appeal, the Chairman of the University Judicial Board shall:
 - i. designate a time and place for the appeal hearing, which shall not be less than 10 nor more than 14 days after the filing of the appeal;
 - ii. notify the other members of the University Judicial Board and the Rules Administrator and the respondent and his adviser, or the person appealing a contempt decision, of the time and place of the appeal hearing;
 - iii. designate, in consultation with the Rules Administrator and the respondent and his adviser, or the person appealing a contempt decision, the portions of the hearing record to be considered by the University Judicial Board. The record will normally consist of the record of the pre-hearing procedures, the verbatim record of the hearing, and the Hearing Officer's decision.
3. Appeal Hearing; Scope of the Review of the University Judicial Board. At the appeal hearing, the Rules Administrator and the respondent and his adviser, or the person appealing a contempt decision, shall present the case for and against the appeal to the University Judicial Board. In the case of an appeal of a contempt decision, the Rules Administrator shall present the case against the appeal. The case presented shall consist of reasoned argument based on the hearing record; the University Judicial Board shall not

hear the testimony of witnesses and shall not consider any evidence not considered by the Hearing Officer. In its review the Board shall consider if requested:

- i. whether the Hearing Officer erred in the interpretation of these Rules;
 - ii. abuse of discretion by the Hearing Officer;
 - iii. the reasonableness of the Hearing Officer's decision on factual matters in light of evidence presented;
 - iv. the reasonableness of the sanction imposed.
4. Decision of the Board. Within 14 days after the conclusion of the appeal hearing, the chair of the University Judicial Board shall prepare and send to the Hearing Officer, the Rules Administrator, and the respondent and his adviser, or the person appealing a contempt decision, by hand delivery or registered mail, the Board's written decision, with an explanation of the reasons therefor. The Board's decision may affirm or reverse the Hearing Officer's decision in whole or in part, including reversing an acquittal and imposing sanctions, and may remand to the Hearing Officer or the Rules Administrator for such further proceedings as the Board may direct, but the Board may not increase the sanctions imposed by the Hearing Officer. The Board's decision shall be by majority vote, including the chair.

§449. Presidential Action

A final appeal may be made to the President for clemency or review, which the President may hear in his discretion in the case of charges of a serious violation, and in the case of charges of simple violation only if provided by the relevant Dean's Discipline.

§450. Additional Judicial Boards

Should further University Judicial Boards be needed, the Executive Committee of the University Senate may appoint additional University Judicial Boards and shall seek to divide the original University Judicial Board as equitably as possible to ensure maximum continuity of experience.

§451. Committee on Rules of University Conduct

a. The University Senate Committee on Rules of University Conduct shall prepare any material that will facilitate the functioning of the procedures.

b. Persons otherwise connected with the disciplinary procedures shall be excluded from the University Senate Committee on Rules of University Conduct.

c. All changes in these Rules shall be passed by the University Senate for approval and acceptance by the Trustees in accordance with the Statutes of the University.

8/2012