

# Proposal For Judicial Reform

*This proposal is an outgrowth of the Judicial Workshop held on February 12-14, 1971. Participants in the workshop ranged widely in terms of representing various segments of the university, as well as interested individuals within the City of Albany and other schools within the state.*

*The aims and purposes of this document adhere to the basic concept of a community judicial system in which all members of the university community are subject to the regulations established by the community. The intent of the proposal is to outline the principles upon which such a system would function and to set forth a general structure out of which this system could operate.*

## I. RIGHTS OF COMMUNITY MEMBERS

If the university is to succeed in its pursuit of truth and dissemination of knowledge in a setting where the freedom of inquiry flourishes, the university must provide an institutional framework which encourages debate and freedom of intellectual endeavor without fear of consequences.

The university is in a real sense a laboratory in which the participants—faculty, students, and administrators—unite in their mutual search for intellectual growth. This necessarily means experimentation with new and untried systems and theories. It requires the articulation of views at the frontier of thought which may seem heretical to the majority, and may indeed never gain acceptance. But these experiments, and these testings of sentiment, must not be restricted by artificial or arbitrary rules that would be stifling in the university context, no matter how appropriate they might be in another context. In short, academic freedom in the fullest sense of the expression is indispensable to the existence of the university.

**1. Freedom in the Classroom.** Freedom of discussion and expression of views must be encouraged and protected. It is the responsibility of the professor and the student in the classroom and in conference to insure the realization not only of the fact but also of the spirit of free inquiry. In particular, every effort must be made by all concerned to guard against prejudiced or capricious academic evaluation.

**2. Freedom of Association.** Organizations within the university may be established by members of the university community for any legal purpose, whether the aims are religious, political, educational, economic, or social. Association with an extra-mural organization shall not necessarily disqualify the university-based branch or chapter form university privileges. Membership in all university-related organizations shall be open to any member of the university community who is willing to subscribe to the aims of the organizations and to meet its stated obligations. Organizations are officially recognized according to guidelines established by the Graduate or Undergraduate Student Association, the by-laws of the University Senate, national or statewide professional organizations, provisions of the Civil Service Employees Association, or the Senate Professional Association.

University interest in the existence and objectives of organizations within the university community should focus on the following matters:

**a. Associational Identification.** The university may not require membership lists of any organization but it may require, as a condition for access to university-controlled funds or use of university facilities, the names and addresses of officers and/or individuals within the organization who are responsible for a request for funds or facilities.

**b. Use of Facilities.** University facilities shall be assigned as available to organizations for regular business meetings, social functions, and for programs open to the public. Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of the space assigned, time of use, and to insure proper maintenance of the facilities used.

**c. Allocation of Funds.** The authority to allocate university-controlled funds budgeted for use by recognized organizations should be delegated to a body in which participation by those requesting the

money is involved. Approval of requests for funds may be conditional upon submission of budgets to the body authorized to approve and allocate funds.

**d. Use of the University Name.** No individual, group or organization may use the university name without express authority from the president of the university, except to identify the university affiliation of the individual, group, or organization. Approval or disapproval of any policy or position may not be stated as the position of the university by any individual, group or organization, except as authorized by the president of the university.

**3. Freedom of publication.** All publications produced by university organizations or offices (including the student press) must be free of censorship, and its editors and managers must be protected from arbitrary disciplinary action arising out of disapproval from any source of editorial policy or content. Similar freedom must also be assured any radio stations operated by university organizations or offices.

**4. Freedom to Protest.** The right to peaceful protest within the university community must be preserved. The university, in recognizing its legal obligation, retains the right to assure the safety of individuals, the protection of property, and the continuation of the educational process. Orderly picketing and other forms of peaceful protest are protected activities on university premises if there is no interference with free passage through areas where members of the university community have the right to be.

**5. University Governance.** Members of the university community must be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the community. There must be clearly defined means for participation by all concerned in the formulation and application of institutional policy affecting university affairs.

**6. Violation of Law and University Discipline.** If a member of the university community is charged with an off-campus violation of law, the matter should be of no disciplinary concern to the university unless the individual is unable to comply with the requirements of his particular membership within the community.

If the violation of law occurs on campus and is also a violation of a published university regulation, the university may institute its own proceedings against the offender at any time.

**7. Privacy Rights.** The university must protect the interest of its members in preservation of the right of privacy.

**a.** The university should not regard itself as the arbiter or enforcer of the morals of its members where civil or criminal law is not broken, or where standards of conduct established by the university have not been violated.

**b.** The right of privacy for students in the residence halls is a value which must be protected.

**1)** Nothing in the university relationship or residence hall contract should give the university the authority to consent to a search of a student's room by police or other government officials without a warrant or other state/federal legal authority to do so.

**2)** Where the university or its representative seeks access to a student's room to determine compliance with provisions of applicable law relating to multiple dwelling units, the occupant(s) should be notified of the purpose of said entry in advance (when feasible). Where entry is sought to make improvement or repairs, notices should be given in advance. In emergency circumstances where imminent danger to life, safety, health, or property is reasonably feared, entry should be allowed without advance notice.

**c.** Confidentiality of Records. Respect must be accorded the essentially confidential relationship between the university and the community member by preserving to the maximum extent possible the privacy of all records relating to each member. Controlling principles for the use of records in disciplinary matters are specified in Section VI.

## II. University Regulations

University discipline may cover misconduct by a

community member—student, faculty, or staff—which adversely affects the university community's pursuit of its educational objectives, or threatens the safety of persons and property.

The following actions and/or behavior are expressly prohibited. Violations may result in official disciplinary action by the university. Procedures will be followed as set forth in the following pages, adapted to the role of the accused within the community. It is the responsibility of the individual to familiarize himself/herself with these regulations.

**a.** Violation of any civil or criminal law on university owned or operated property.

**b.** Dishonesty, such as cheating, engaging in fraudulent behavior, forgery, alteration or misuse of university documents, records, or identification; or, knowingly furnishing false information to the university.

**c.** Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other university activities, including its public service functions, or of other authorized activities on university premises, to such a degree that the activity can no longer reasonably continue.

**d.** Failure to answer without reasonable cause a summons to appear at a judicial hearing. The individual who is summoned may refuse to appear, but he/she must answer the summons unless reasonable cause is shown.

**e.** Physical abuse, harassment, or intimidation of any person on university owned or supervised property or at university sponsored or supervised functions, or conduct which threatens or endangers the health or safety of any such person.

**f.** Unauthorized entry to or use of university facilities, property, or equipment, or removal or destruction of such property or part thereof, or of property under university administration and/or supervision.

**g.** Theft and/or destruction to property of a member of the university community while such property is on university premises.

**h.** Violation of university policies or of regulations governing the registration of student organizations, events on campus, and use of university facilities, as described in this publication.

**i.** Violations of rules governing residence in university owned or operated property, as described in this publication, and in the university housing brochure.

**j.** Violation of regulations governing the use of alcoholic beverages on campus as described in this publication.

**k.** Possession, use of distribution of narcotic or dangerous drugs, except as expressly permitted by law.

**l.** Disorderly conduct or lewd, indecent, or obscene conduct or expression on university owned or controlled property or at university sponsored or regulated activities.

**m.** Failure to comply with the directions of university officials acting in the performance of their duties. (Any university official directing any university community member to act in accordance with his wishes must identify himself upon request).

**n.** Failure to present a university I.D. card when requested to do so by a university official. (Any university official requesting identification from any university community member must also present his/her identification upon request).

**o.** Failure to honor all contracts with and debts to the university and to those agencies with which the university contracts.

**p.** Violation of university policies or of regulations governing the possession or use of automobiles, motorcycles, or other motor vehicles on campus; or violation of parking regulations published by the Campus Security Office.

**q.** Possession and/or use of firearms or other weapons or explosives, such as fireworks; or possession and/or use of dangerous chemicals except as authorized for use in class, or in connection with university sponsored research or other approved activities. (Provision has been made to store weapons in the Security Building. Those adhering to the provisions for storage would not be in violation of this regulation).

**r.** Willfully setting fire to university property or creating a conflagration on university property.

### III. The Judicial System—

#### Its Purposes And Composition

**A. Delegation of Authority:** The President. As a technical matter, the University's charter usually gives the power and authority over the educational mission of the institution to a Board of Trustees. They, in turn, assign certain powers to the president of the University as the highest administrative officer. He, in turn, assigns execution of judicial and administrative procedures to subordinate officers, faculty, and, increasingly, to students.

It will be presumed that the president will normally sustain the findings and recommendations reached by any hearing or appeal boards. Question of those findings and recommendations might be expected only when unusual circumstances or new evidence present themselves. In such a case the president would be expected to return findings and recommendations to the appropriate board with full comments of his own as to a need for reconsideration. After such reconsideration by the appropriate board, a reversal by the president should rarely, if ever, occur and should in such cases be fully explained to the university community.

#### B. Clearing House.

1. Composition: In order to assure the effectiveness and efficiency of this group, the following composition is required:

a. The clearing house shall consist of 12 (twelve) members of which no more than six will serve at any one time. The members will serve on a rotating basis, depending on the case load, and the basic ratios of membership representation within the 12 individuals selected will remain the same at all times. If necessary, in times of heavy case loads, two boards of six each should operate simultaneously. Of these 12 members there shall be:

4 students (1 graduate and 3 undergraduate) appointed jointly by Student Association and Graduate Student Association

2 teaching faculty chosen by the faculty

2 non-teaching faculty chosen by the faculty

2 classified service personnel (not including members of the security force) chosen by the classified service personnel

2 representatives from the university security force chosen by the Chief of Security. These representatives will serve as full voting members except in cases related to criminal matters brought to the Clearing House as a result of law enforcement action.

Membership within each sub-group should be as divergent as possible, to afford the greatest scope of representation.

b. The Clearing House members will be notified by the president of the university of their appointment in April of each year for a term beginning in September. Each appointed member shall serve for one two-year term, with half of the membership in each category changing each year. No person may serve for two consecutive terms. Provision should also be made in April of each year for one six-member group to be available to function during the summer months. No member may serve concomitantly as a member of the Clearing House and as a member of any hearing or appeal board(s).

#### 2. Nature: The University Disciplinary Clearing House shall serve the following functions:

a. To distribute referral forms to any individual who desires to file complaints or charges against a university community member, and to assist that individual in completing the forms.

b. To be the central "clearing house" for disciplinary matters, to receive referral forms, and to determine the appropriate referral route. In addition to routing referrals through such hearing boards as those noted in this document, the Clearing House may also refer cases or complaints to other university offices, to the chairman of a department, to any existing grievance committee, or to the University Traffic Appeals Committee.

c. To review all security reports forwarded to it by the Director of Security, and to determine which reports warrant university adjudication.

d. To review all incident communication forms forwarded to it by university offices, and to determine which reports warrant university adjudication.

e. To initiate with the appropriate office, organization, or individual any additional investigation, or interview any additional person in order to reach a decision on disposition of any incident under review by the Clearing House.

f. To refer to a university disciplinary system hearing board or other adjudicatory body any case requiring university adjudication, regardless of additional pending action (e.g., criminal court).

g. To refer the complainant to appropriate courses in taking other action when the case is considered by the complainant to be too serious to be handled only within the university.

h. To be the pre-hearing body in any serious or emergency case in which interim action might be necessary before a formal hearing, or where a determination must be made as to whether the university should be taking action in a court of law acting with the hearing board to keep the university community informed about the judicial system.

#### 3. Procedures:

a. Within five working days of receipt of the reports noted in c and d above, the Clearing House shall have completed its review and rendered a decision, in writing, to the appropriate individuals.

b. If such a decision includes the need for university adjudication, the Clearing House shall forward the completed referral forms to the appropriate hearing board.

c. Within three working days of the receipt of all referral forms noted in 2b, above, the Clearing House shall forward the case to the appropriate hearing board.

d. In all severe or emergency cases requiring a pre-hearing, the Clearing House shall meet as soon as possible. If it cannot meet within 48 hours of the incident, interim action should be taken by the Director of Security or his designee, with the preliminary hearing to be held as soon as possible after this (See Section IIIF, part 3E). In instances where action is taken prior to a pre-hearing, the purpose of the pre-hearing would be to review the action taken and to decide upon the need for further adjudication.

e. The Clearing House will not serve as the referring body when another member or group within the university community is willing to fulfill this role. It may, however, serve this function in the absence of such a person or group, when adjudication is seen as necessary by the Clearing House. It may also cosign a referral form, with the knowledge of the referring body, when appropriate. In cosigning a referral form, the clearing house shall be considered to be acting in the name of the university.

f. Some cases will be referred by an individual or group of individuals independent of Clearing House review or cosignature, and some will be reviewed or referred by the Clearing House. Both types of cases shall receive equal treatment by the adjudicating body or the appropriate channel.

g. The fact of pending or completed court action (if known) on any of the primary parties related to a case should be forwarded with the case referral form for consideration by the adjudicating body or other appropriate channel.

4. Quorum: At least three members must be present at all times in order for the Clearing House to operate. A 2/3 vote of those members in attendance is needed for the acceptance of any motion.

5. Officers: There shall be chosen two members of the Clearing House to chair the meetings for each of the two groups which will operate throughout the year. The chairmen will be responsible for all operations of the Clearing House, and shall serve in the capacity of chairman for one year only.

#### C. University Hearing Board.

1. Nature: This board exists to adjudicate charges lodged against student members of the university community. It shall be the highest student hearing board in the judicial system. It also serves as the appeal board for all lower boards. (Its scope of review on appeals is described in Section IV, B6). In addition, the University Hearing Board has original jurisdiction over disciplinary matters involving all university community members on university-owned or operated property, except for those cases handled by any lower boards or other appropriate bodies.

When violation of the Rules and Regulations for the Maintenance of Public Order has occurred, the University Hearing Board shall be the hearing body and shall follow the specific procedures as stated in the Rules and Regulations for the hearing of such cases.

2. Composition: In drawing together the representation described below, the board will assemble a bona fide cross-section of the university community.

munity.

The board will consist of 18 (eighteen) members, of which nine will serve at any given time. The members will work on a rotating basis, and the basic ratios of membership representation within the 18 individuals selected will remain the same at all times. If necessary, in times of heavy case loads, two boards of nine each should operate simultaneously. Of these 18 members there shall be:

12 students (3 graduate and 9 undergraduate) appointed jointly by Student Association and Graduate Student Association

2 teaching faculty chosen by the faculty

2 non-teaching faculty chosen by the faculty

2 classified service personnel chosen by the classified personnel

Membership within each sub-group should be as divergent as possible, to afford the greatest scope of representation.

The board will be appointed in April of each year for a term beginning in September. Each appointed member shall serve for one two year term, with one half of the board changing each year. No person may serve for two consecutive terms. Provision should also be made in April of each year for one nine-member group to serve during the summer months. No member may serve concomitantly as a member of the Hearing Board and as a member of the Clearing House or other hearing or appeal board.

3. Quorum: At least six members must be present at any time in order to conduct business. A vote on disciplinary action also requires the participation of six members.

4. Officers: The 18 members will choose two of its membership to serve as chairmen of the hearing boards. The chairmen should serve not more than one year in that position. Their responsibilities are:

a. Establishing the calendar for hearings

b. Notifying all persons to appear at the hearing, including other board members

c. Writing all decisions or delegating the responsibility to another board member

d. Signing all decisions

e. Following up on all cases as necessary

f. Presenting orientation sessions each year for new members

g. Acting along with the Clearing House, keeping the university community informed about the judicial system

h. Initiating changes in the system as needed.

There should also be a full-time secretary who shall serve the hearing board and the appeal board. The secretary shall maintain all records concerned with the disciplinary system, and shall assist the various chairmen of any hearing body or other appropriate channel with any correspondence related to the boards.

#### D. University Appeal Board

1. Nature: The University Appeal Board hears appeals on student cases from the University Hearing Board (appeals from lower student hearing boards must first be heard by the University Hearing Board before they can go to the University Appeal Board). It will also hear appeals from any other source except in cases where one of the campus bargaining units has already begun formal grievance procedures in accord with provisions of their contract and the Taylor Law. It has no original jurisdiction. Because it is the final arbitrator in matters of campus, it should be highly sensitive to and capable of weighing the interest of the person who has appealed with the interests of the institution, and should be representative of the various segments of the university community.

2. Composition: The University Appeal Board shall consist of:

3 students (1 graduate and 2 undergraduate) appointed jointly by Student Association and Graduate Student Association

2 teaching faculty chosen by the faculty

2 non-teaching faculty chosen by the faculty

2 classified service personnel chosen by the classified service personnel.

Any other persons (up to three additional provisional members) may be added to the University Appeal Board for specific cases as a majority of the board deems necessary. Such additional persons might be named if the case, for example, requires the knowledge of an expert in a particular area, or if the individual lodging the appeal comes from a constituency within the university which is not adequately represented on the appeal board.

3. Quorum, Term of Office, Voting procedures and other procedural questions should follow the same guideline as for the University Hearing Board.

#### E. Other Student Judicial Bodies

Other student hearing bodies, if they demonstrate that they contribute significantly to the university, should be organized within the university. Organizations would fall below the University Hearing Board and would use the latter as an appellate body to deal with cases falling within their jurisdiction and would mete out university sanctions (see Section IIIF, official university sanctions). If appropriate, these boards would be subject to the University Hearing Board. Each board desiring recognition within the university disciplinary system should submit its constitution to the University Hearing Board for approval. Included in the constitution should be the board's jurisdiction, quorum, and other procedures. If a board is recognized, the Clearing House should apply all applicable cases to the new board. Examples of boards which may want to be organized would be traffic violations committee, quadrangle boards.

#### F. The University Security Force

The question of the role of the university security force is of great importance in developing a university disciplinary system. There are many unanswered questions on this topic. There are some definite principles which should be followed in order for the force to be successful.

1. While responsible for enforcing the university security force is a part of the university community, responsible to the university.

2. In line with this responsibility, the security force must act in accordance with the goals of the university, including the use of its disciplinary system.

3. With these principles in mind, guidelines must be followed which the university community is free to follow. If a university regulation is violated, a university regulation officer becomes involved with the case.

a. If the infraction is clearly a violation of a university regulation, the officer must be arrested at the direction of the security of his designee, and a report should be filed with the Clearing House.

b. If the infraction may be a violation of a university regulation, one of the following actions should be taken in consultation with the director of security:

1) no action other than a warning

2) the case may be referred to the Clearing House for appropriate action

3) if the individual refuses to cease his activities, and a warning is not sufficient, a security officer may make an arrest.

c. If the infraction could result in a misdemeanor, the case should be referred to the University Hearing Board for decision as to whether the case should be handled outside the university community. If the Clearing House cannot handle the case, the incident according to the time limit established in Section IIIF, the director of security should use his own discretion upon the question of action outside the university community with the understanding that the case will be conducted by the Clearing House at the earliest possible time.

d. Decisions on action to be taken by the security or his designee prior to review should be considered in light of past Clearing House review.

4. In cases where a university community member has caused to lodge a complaint against a university officer, the matter may be brought to the University Hearing Board for referral, or the individual may bring the matter to the attention of the director of security.

g. Faculty, staff and Faculty Student groups have within them a method for dealing with complaints. In all cases involving individuals within these groups, the University Hearing Board will assist the individual in locating the appropriate complaint in pursuing the complaint.

#### IV. DUE PROCESS

##### A. The Judicial System

1. Hearing Procedures for student bodies are described below. As

**Judicial Bodies**

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for student adjudicatory ow. As far as the Taylor

Law permits, these procedures should also be followed in hearing cases involving any other member of the university community.

a. The calendar for hearings shall be fixed by the chairman of the Hearing Board after consultation with the individuals involved in the proceedings. The chairman shall have the discretion to alter the calendar for good cause. The date for the hearing shall be set no later than three working days after the receipt of the referral forms, and the hearing itself shall take place no later than ten working days after receipt of the forms.

b. The hearings shall be conducted in such a manner as to do substantial justice, and shall not be unduly restricted by rules of procedure or evidence (see Section IV, A5).

c. The charges and evidence shall be presented by the complainant and/or, if the university is the injured party, by a person designated by the president of the university to serve such a function.

d. The Hearing Board may address questions to any party to the proceedings or to any witnesses called by either party or by the board itself. Any party may request the cross-examination of other parties. The chairman may use his discretion and limit the number of witnesses to be heard.

e. The hearing shall be private if requested by the person charged, or by the complainant (with sufficient reason), or if disruptions of the proceedings require it (see Section IV, B3).

f. Right to counsel: See Section IV, B1.

g. A record shall be made of all proceedings at the hearing except that, on order of the chairman, procedural matters may be discussed in executive session. This record shall be available under the supervision of the chairman to all parties at the hearing. The deliberations of the board after the formal hearing of the case shall not be recorded.

h. The chairman shall determine, after consultation with the parties to the proceedings, whether a summation of one or more aspects of the case would be helpful to the board.

i. No—appearance at a hearing: see Section IV, B5.

j. The board shall write a report containing the decisions of the board and the reasons for those decisions, and have them made available to the parties in the case.

k. When two or more people are jointly charged with the same alleged infraction, their hearings will be held jointly. (Excessively large numbers of violators may, in the judgment of the hearing board, jeopardize the fairness and impartiality of the hearing. In such cases the board may conduct several hearings in order to reduce the number of cases heard at one time and in order to restore fairness and impartiality to the hearing procedure.) If one or more of these individuals desires a private hearing while the other(s) desires a public hearing, the hearing will remain a joint one with the public being excluded from those portions of the hearing involving those persons desiring the closed hearing. (See Section IV, B3)

**2. Pre-hearing Disciplinary Action**

One of the problems which arises in a university disciplinary system is the use of pre-hearing disciplinary action. In general, the following principle would hold in determining any pre-hearing action: the individual's status on campus should not be altered except when that person's status represents a danger to his own safety and well-being, or to the safety and well-being of other students, faculty, or university property.

In any case where pre-hearing action is seen as necessary or at least as possible, the alleged violator should be given the opportunity to be informed of the offense, of the possibility of pre-hearing action, and be permitted to make a statement before any decision is made. A detailed denial of the offense, supported by names of witnesses would probably require further investigation.

In the case of our disciplinary system, the Clearing House would function as the preliminary hearing body in all cases, except when a quorum of that board cannot convene within the time parameters specified in Section III, B. In this case, pre-hearing action would be taken with the pre-hearing itself to be held as soon as possible.

These guidelines pertain also to those violations of civil or criminal law, other than felonies, in which a determination must be made as to whether the accused should be arrested in addition to being referred within the university disciplinary system.

**3. Double Jeopardy**

Unlawful action should not preclude or mandate

disciplinary action by both the university disciplinary system and the courts of law. The focus, rather, should be on the most effective way of dealing with the individual(s) involved. Since the same act may violate both university regulations and the laws of other jurisdictions, both the courts and the university have the right to adjudicate such a case. This is not double jeopardy. Double jeopardy occurs only when the courts of a given jurisdiction try a person more than once for the same violation.

The university's concern is not double jeopardy in such cases, but rather a concern for unnecessary duplication of punishments. Unless the interests of the university or of any member of the university are implicated in some way, prosecution should not take place within the university. The university should also avoid employing diverse channels of action where there has been essentially one offense, if that one offense can be handled effectively by the University Hearing Board.

**4. The Transcript**

A record shall be made of all proceedings of the hearing, except as specified by the chairman (see Section IVA, 1g). In the event that a written transcript of the record is requested by either the defendant or complainant (e.g., for the purpose of preparing an appeal), the cost of such a transcript shall be borne by the individual making the request.

**5. Rules of Evidence**

Although rules of evidence need not be followed in university disciplinary hearings, it is suggested that standards of relevance and materiality be maintained in order to preclude the utilization of unreliable information. The hearing board must base its decision on substantial evidence, and only on evidence presented during the hearing. In keeping with the standard of fundamental fairness, it is acceptable to permit charged persons to testify concerning moral justifications, motives, and reasons for their acts, in order to assist in the determination of the appropriate sanction.

Any past infractions which are on record within the files of the hearing board and/or presented to the board during the hearings or the deliberations by be used to determine the sanctions which are the most appropriate to the charges for which in individual has been brought to the hearing.

**6. Publication of Decisions**

Once a decision has been made by a hearing board, the results of the proceedings must be made available in writing to the defendant, with copies available to the complainant and to any other persons who took part in the hearing of the case. Any member of the hearing board or appeal board may attach a minority report to the final report of the board. Such minority reports, along with the final report, may be used by the complainant or defendant in developing an appeal.

Where a hearing is open to the public, any interested community members or groups may view a copy of the decision. However, it shall be within the power of the hearing board to determine the validity of motives for requests of results of the hearing, and to have the power to keep confidential from the public any information which it feels will not be used in a manner consistent with the principles of the judicial system. An example of circumstances which might lead to a decision to restrict the availability of information would be: a case arises in which testimony reveals highly confidential information related to psychological problems of the involved individual(s). Public access to these facts could only be detrimental to the individual(s) concerned.

Periodic notice should be distributed throughout the university stating the results of recent hearings. This information should be general, giving no names and only the types of cases and the results. The purpose for publication of this information is to inform the university community as to the workings of the judicial system.

**7. Other Recognized Procedures for Adjudication of Cases**

Pursuant to the Taylor Law, the following pertain:

a. Faculty members, or professional staff not in the classified service of the civil service: charges of misconduct in violation of the rules of the university shall be made, heard, and determined in accordance with Title D of Part 338 of the Policies of the Board of Trustees. Those found guilty of misconduct may be subject to dismissal or termination of employment or such lesser disciplinary action as the facts may warrant including suspension without pay or censure.

b. Staff members in the classified service of the civil service: charges of misconduct in violation of the rules of the university shall be made, heard and determined in accordance with Section 75 of the Civil Service Law. Those found guilty of misconduct may be subject to the penalties prescribed in said section.

Any other faculty or staff member of the university community found guilty of misconduct by a recognized university hearing body shall be dismissed, suspended, or censured by the appointing authority prescribed in the Policies of the Board of Trustees.

For all procedures as recognized above by the university in the adjudication of cases, criteria for due process as outlined in Section IV must apply.

**B. The Individual****1. The Right to Counsel**

Any individual charged with misconduct has the right to be advised at the hearing by anyone of his choice, including a lawyer, but he must represent himself. To have an advisor or a lawyer speak for any parties concerned with a case would escalate the nature of the hearing to something approximating a legal trial. Because the hearing is being conducted within the university by a community hearing body, and not in a court of law, the speedy and informal characteristics associated with the hearing are preferred over a legal atmosphere. The system is not intended for legal adversaries to use as a "battle ground" but for members of the same community to decide what is best for the accused and for the community. Trained, paid attorneys would add little to this.

The University Hearing Board will attempt to maintain a file of faculty and staff as well as interested students, who would be willing to assist a complainant or defendant in any case which comes before the hearing bodies. Such advisors, like lawyers, have the right to be present during a hearing, but as in the case of lawyers, will not be permitted to speak for either complainant or defendant.

This restriction on lawyers and/or advisors within the hearing itself in no way restricts the right to counsel and representation outside the hearing room.

**2. Self Incrimination**

An individual has the right at a university disciplinary hearing not to incriminate himself, and he may not be punished solely for asserting this right. In claiming the right to refuse to answer questions, the individual is asserting his right not to disclose information which could be used to incriminate himself further.

**3. Private and Public Hearings**

As a general rule, hearings should be open to any member of the university community. In asserting this stance, the university is acknowledging the validity of public hearings when they insure observers that justice is done, when more university community members may view the judicial process, when community members may make comparisons between cases, and when possible suspicions of special treatment and/or prejudice are tested.

Although hearings are generally open to the public, requests for press coverage by local news media should be directed to the hearing board for approval. In general, still or television cameras, lights or electronic recordings will not be permitted during any hearing, public or private.

The hearing board begins, then, with the assumption of an open hearing. It can proceed to change this in view of one or more of the following circumstances:

a. the accused requests it.  
b. The complainant requests it (with sufficient reason)  
c. disruptions of the proceedings require it.

The closing of the hearings to the public would in each case be ordered only when needed to insure a fair and impartial hearing. It is vital that the rights of cooperating community members be preserved.

**4. Group Hearings**

It is recommended that group hearings be held in cases where a number of individuals are involved in the same alleged infraction, and where the facts of involvement are identical. Group hearings are favored under these specific circumstances in order to assure greater objectivity on the part of the members of the hearing board. The provision guards against a tendency to use the first case as a precedent in hearing the other cases which follow,

when the facts are basically alike. It also allows all defendants to present their cases, retains fairness to all parties, and retains the context of the incident within which the alleged infraction(s) took place. See Section IVA, 1k for additional information.

Group hearings by no means predispose the hearing board to render the same judgment for each defendant. Each shall be judged on the facts of *his/her* participation in the incident, and not by the actions of others who were involved.

In the case where one or more of the defendant requests a private hearing while the others desire a public hearing, the public would only be excluded during the testimony or cross-examination of those requesting the private hearing. (See Section IVA, 1k and Section IV, B3).

### 5. Non-appearance

Section IId requires that all parties, including the accused, must appear before a hearing board when summoned, or give reasonable cause for their absence. The appearance of the defendant at the hearing in which he is accused, however, is not necessary in order for the proceedings to be fair and in keeping with due process. The only necessary condition for a fair hearing is the *opportunity* to be heard. This implies that the person(s) involved must be informed of the charges and the possible consequences and has been given the opportunity to attend a hearing.

Non-appearance of the defendant should never be caused by the establishment of an inconvenient hearing calendar. Alternative dates should be available. If, within reason, the defendant has been given viable alternatives to the date of his hearing, and there is still no mutually agreed-upon time and date, the hearing board may proceed to fix the date of the hearing. A three-working day advance notification to the defendant should be issued, along with a statement that the hearing will proceed whether or not the defendant is present.

Non-appearance does not mean that the appropriate procedures need not be followed in hearing evidence, weighing facts, and rendering judgment. In addition, the non-appearance of one party does not prevent the appearance of any other individual associated with the case. Non-appearance (except in violation of Section IId) shall not be considered as a valid justification for the imposition of disciplinary penalties.

Under the conditions of non-appearance, the defendant does not admit guilt, nor does he waive his rights to due process. He simply implies by his absence and his negative answer to the summons that he will not participate in the hearing process. In doing so, he does not lose the right to appeal (based on inadequacy of process or severity of punishment, not on non-appearance), and he does not lose the right to a transcript of the proceedings.

### 6. The Right of Appeal

a. Both defendant and complainant have the right to appeal the decision of a hearing body.

b. An appeal of the decision of the hearing board must be submitted to the appeal board within seven calendar days of receipt of the decision of the hearing board. This appeal must be in writing.

c. An appeal, when accepted by the appeal board, must be based upon one of the following issues:

1) Questions of procedure at the hearing which involve due process

2) Was the evidence sufficiently strong to justify a decision?

3. Was the sanction imposed in keeping with the gravity of the wrongdoing?

4) Appearance of substantive new evidence related to the case.

d. The appeal board may accept the original decision of the hearing board, may reverse the hearing board's decision and return the case to that board for a further hearing, may reverse the hearing board's decision and dismiss the case, or may reduce the sanctions imposed. They may not, however, increase the sanctions imposed.

If the appeal board accepts the decision of the hearing board the matter is deemed final, except that either party may petition the president of the university for a new hearing. In cases where the president grants the petition for a new hearing, he may conduct the hearing himself or designate the individual(s) who will hear the case. The accuse, additionally, has the right to petition the original hearing board to reopen the case upon discovery of new evidence. The hearing board will judge the sufficiency for the new evidence, and no appeal can be taken for its decision.

Normally the appeal board reviews the written record from the hearing board in determining whether to accept the request for an appeal, or in actually hearing an appeal. However, the appeal board may ask for an oral presentation concerning the grounds for appeal, and may also ask for rebuttal statements from the hearing board. The appeal board should invite the chairman of the hearing board to be present at appeal hearings, to clarify the actions or decision of the hearing board.

e. Hearings of lower boards, appealed to the hearing board, terminate at the hearing board level.

### V. DISCIPLINARY ACTION

#### A. Sanctions

The most important principles which should guide hearing bodies in choosing sanctions are:

a. Relevance to the gravity of the offense.

b. Relevance to the area of activity or circumstances in which the offense occurred (i.e., residence halls, parking lot, etc.).

The following sanctions are the official university sanctions which may be used by the hearing board and by the appeal board. *Additional sanctions which apply to faculty and staff are noted in Section IV, A7.*

1. Admonition. An oral statement to the offender that he has violated a university rule.

2. Censure. Written reprimand for violation of specific regulations, including note of the possibility that more severe disciplinary action could occur in the event of confirmed violation of any other university regulation. The censure should contain a specific period during which the censure is in effect.

3. Disciplinary Probation. Exclusion from participation in privileges or activities as set forth in the notice of disciplinary probation. The length of probation should be stated in the notice of such action.

4. Disciplinary removal from residences. Exclusion from the residence halls for a specified amount of time. This action will involve forfeiture of all room and/or board charges.

5. Restitution. Reimbursement for damage to or misappropriation of university property or of property under university administration and/or supervision, or of property of a member of the university community while such property is on university premises.

6. Disciplinary hold on records and/or right to register for classes. Action taken as an assurance that other conditions of disciplinary action are met.

7. Incorporation of notice of any official sanction into the academic transcript and/or the official sanction into the academic transcript and/or the official personnel folder of the individual.

8. Suspension. Exclusion from classes and other privileges or activities as set forth in the notice of suspension. The length of suspension should be stated in the notice of such action, as should conditions for readmission, if any.

9. Expulsion. Termination of a person's status at the university for an indefinite period.

#### B. Expulsion and Suspension

Expulsion should be used only in the most serious cases where no amount of rehabilitation would warrant reconsideration of the individual's status within the community. Sanctions such as "suspension term" and "suspension - conditional" are recommended in place of expulsion in order to give the greatest latitude to the individual and the future improvement of his/her ability to function within the university.

#### C. Return to the Community

The process of gaining readmission to the university after the individual has completed the terms of a particular disciplinary action is as follows:

1. Expulsion. Readmission must be requested first through the hearing board or other adjudicatory body which first imposed the sanction of expulsion. Since any petition for return would be extraordinary, since no provision would ordinarily be made for the person's return to the community, and since no guidelines for the return process should exist, such a petition should be directed to the person or persons most likely to exercise competent judgment over the petition for readmission. The judgment of the group which imposed the sanction should carry

This is a reprint of a special insert which was included in the Albany Student Press (ASP) on Tuesday, November 16, 1971. This special reprint is provided through the Office of the Vice President for University Affairs in an effort to bring this important proposal for judicial reform to the attention of all members of the university staff. The proposal, submitted by the Judicial Workshop Steering Committee, is an outgrowth of the Judicial Workshop held on February 12-14, 1971. Participants in the workshop ranged widely in terms of representing various segments of the university, as well as interested individuals within the city of Albany and other schools within the state.

primary weight with the person or persons who would then review the application for readmission.

#### 2. Suspension.

a. Term: The individual is automatically readmissible by the proper authority to the first regular semester after the completion of his/her term of suspension. No disciplinary review is needed.

b. Conditional: The board which suspended the individual must review the petition for readmission. This petition should contain evidence supplied by the individual that he had fulfilled the conditions of the suspension. If a simple majority of the board agrees that the conditions have been met, they would authorize the readmission. The petition for readmission would at this point then be treated as any other petition for readmission.

3. Removal from Residences. This sanction may also be imposed for a term or with conditions, and petitions for readmission to the residence halls should be handled in a manner similar to suspensions, with the appropriate administrative office in this case being the Office of Residences.

### VI. MAINTENANCE OF CONDUCT RECORDS

The university's policy of record keeping in disciplinary matters should always be in accord with the gravity of the offense, and its long term effect on the individual. The university shall provide that minor disciplinary matters, or matters which relate more to personal growth patterns rather than to deep-rooted personality flaws will not be permanently recorded. If a hearing body determines that a disciplinary matter is of sufficient importance to appear in the individual's official record, an adequate explanation should be attached.

The following provisions will be followed in the regulation of conduct records. In cases involving members of local bargaining units, contractual agreements on the maintenance of records shall also apply.

A. Each hearing body shall maintain in a central location shared by all hearing bodies a set of records consisting of all the official material which has been assembled during the hearing of each case. These records will be destroyed two calendar years after

the specific sanctions imposed as a result of the hearing of a particular case have been met (i.e., if an individual is reprimanded on 1/1/70, his/her files will be destroyed on 1/1/72. If a person is placed on probation for two years, his/her records will be destroyed two years after those two years of probation have been fulfilled).

B. It shall be the function of the chairman of each hearing body to maintain the records related to his/her hearing body, and to authorize their use.

C. There shall be nothing in an individual's record of hearing(s) which he/she has not seen, and each person shall have access to his/her own record (subject to reasonable regulations as to time, place, and supervision).

D. Any person wishing to challenge the accuracy of any entry in his/her record of hearing(s) may do so by appealing to the board which maintains this record.

E. Except with the prior written consent to the person involved, no information in any such record may be released to any individual or group other than another hearing body or individual within the university which/who is concerned with hearing a case in which the individual is accused of a violation. Individuals or groups concerned with hearing a case where a witness or a complainant in a former case is now the accused will be denied access to the records of the former case.

F. If, as a result of the hearing of a case, the hearing body determines that some record should be placed in the individual's permanent file, this determination must be in writing as part of the decision on the case. The information would then be sent to the appropriate dean or vice president for inclusion in the permanent file. Individuals for whom disciplinary action did not include the placement of a record of the case in the permanent file should be considered as having no disciplinary record within the university.

G. The parents of any minors involved in disciplinary action should not be informed of any disciplinary action except for that of suspension or expulsion, or major alteration in college-related expenses (i.e., requirement to give restitution for extensive damage, removal from residences).