Exhibit I

April 25, 2016

Amanda Walsh
Title IX Program Officer
Brown University
Title IX Office Box 2008
Providence, RI 02912

Re: Appeal of Title IX Panel Determination

Dear Ms. Walsh:

The following is my appeal of the April 20, 2016 Title IX Panel decision regarding Ann Roe 's complaint against me. I base my appeal on substantial procedural error and the overwhelming weight of the evidence that is contrary to the Panel's finding.

As you know, the encounter between Ann Roe and me happened on November 10, 2014. That is approximately ten months before Brown adopted the current *Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy* (the "2015 Title IX Policy"). This policy did not exist on November 10, 2014, and it substantively changed Brown's definition of sexual misconduct, which is the offense leveled against me.

On November 4, 2015, Brown's associate general counsel Michael Grabo advised my attorney in writing that Brown would not be adjudicating my conduct according to the new 2015 Title IX Policy standard. Attorney Grabo wrote:

> We will be using the new Complaint Process that I emailed to you yesterday to resolve the complaint against your client B.E. However, since the alleged incident took place last year, the provisions of last year's Code of Student Conduct will apply. I have attached a copy of that Code for your reference

Attorney Grabo's representation apparently was communicated to Brown's Title IX investigator, Djuna Perkins. Ms. Pertkins filed a report on her investigation of Ms. Roe 's complaint. In it, there is a section on page 1 entitled Relevant Policy Sections. In that space, Ms. Perkins listed a single policy section, "2014-15 Code of Student Conduct. Offenses III. Sexual Misconduct." She did not list or refer even once in her 29 page report to the 2015 Title IX Policy. In addressing the prohibited conduct at issue, Ms. Perkins wrote:

> The 2014 Code of Student Conduct forbids "non-consensual physical contact of a sexual nature." Implicit in any common understanding of consent is that it is freely and voluntarily given.

Finally, on April 15, 2016, after the Title IX hearing concluded, Brown's Title IX Program Officer, Amanda Walsh, again assured me that "The panel was provided with the 2014-2015 Code of Student Conduct and instructed to review Section III (Sexual Misconduct) of the listed Offenses when determining whether a violation of the policy occurred."

Holding someone responsible for breaking a rule or policy is only fair if he or she is first advised of the rule or policy, and in this instance, the 2015 Title IX Policy did not exist when Ann Roe and I met that evening in Faunce House. Because the 2015 Title IX Policy changed the definition of sexual misconduct, it would have been starkly unfair to instruct the Panel otherwise. Unfortunately, the Panel decided not to heed these instructions and applied the 2015 Title IX Policy anyway.

In its findings, the Panel Chairwoman wrote:

> Because the 2014-15 Code of Student Conduct does not explicitly define consent, the panel referred to the current Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy, which codified Brown University's existing community standards with respect to "maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents campus cultural norms" (II).
>
> The current policy defines consent as "an affirmative and willing agreement to engage in specific forms of sexual contact with another" (VIIIa). Moreover, "consent cannot be obtained through (1) manipulation or (2) the use of coercion." Coercion is then defined as involving "verbal and/or physical conduct, including manipulation, intimidation, unwanted contact" (VIIIb).

This application of the 2015 Title IX Policy in an effort to delineate the scope of consent was a substantial procedural error that materially affected the Panel's decision. In doing this, the Panel enlarged the definition of sexual misconduct by adding the term "manipulation" to its scope. This expansion is not merely trivial. The term "manipulation" appears nowhere in the 2014 Code. In common understanding, the term means to "control or influence (a person or situation) cleverly, unfairly, or unscrupulously." Synonyms include influence, maneuver, and finagle.

In light of the forgoing, "manipulation" is not comparable to the examples of sexual misconduct provided in the 2014 Code. These examples include "acts using force, threat, intimidation, or advantage gained by the offended student's mental or physical incapacity or impairment of which the offending student was aware or should have been aware . . . ." The closest of any of these to manipulation is intimidation, but

even so, intimidation is significantly different. Intimidation involves fear, and the Panel did not find that I used force or fear. It only found manipulation, which has nothing to do with force or fear. The advertising industry presents a classic example of manipulation, and its influence is everywhere. Consequently, in applying the 2015 Title IX Policy definition, contrary to instruction and contrary to promises made to me, the Panel committed a very substantial procedural error and plainly relied upon that error in finding me *responsible*.

As for the Panel's search for a definition of consent, it did not need that in order to adjudicate this matter and its efforts in that regard show that its analysis was fundamentally flawed. The Panel approached the analysis from precisely the wrong direction, and that is the reason for its difficulty in applying the 2014-2015 Code.

In listing its twelve offenses, the 2014-2015 Code does not tell students what conduct is permissible. It does not state that it is ok to borrow a book. It does not state that it is ok to smoke. It does not state that it is ok to have sex. Its focus, rather, is on prohibited conduct, on what is not ok. Thus, stealing another student's book violates the Code, it is not ok. Using illegal drugs is not ok, and engaging in "non-consensual physical contact of a sexual nature" is not ok. The Title IX Panel, by contrast, set out to determine what was *permissible* conduct. But, that simply is not how the 2014 Code is devised.

The 2014 Code identifies offenses and states what conduct is not allowed. By implication, everything else is allowed. But, in my case, the Panel did the opposite. The problem with that is that it casts a wider net than is intended. What the Panel should have done was consider the 2014-2015 Code, which in pertinent part provides as follows:

> III. Sexual Misconduct
>
> a. Sexual Misconduct that involves non-consensual physical contact of a sexual nature.
>
> b. Sexual Misconduct that includes one or more of the following: penetration, violent physical force, or injury.
>
> Comment: Offense III encompasses a broad range of behaviors, including acts using force, threat, intimidation, or advantage gained by the offended student's mental or physical incapacity or impairment of which the offending student was aware or should have been aware . . . .

Then, it should have asked, did John Doe use physical force to overpower Ms. Roe ? The answer would have been no. Did John Doe threaten Ms. Roe ? Again, the answer would have been no. Did John Doe intimidate Ms. Roe or place her in fear? The answer, again, would have been no. There is no contention that Ms. Roe was mentally incapacitated or impaired. Therefore, the Panel's task should have ended right there, and it should have found me *not responsible*. Instead, the Panel borrowed the 2015 Title IX Policy's definition of consent, decided that my conduct did not fit into that definition, and therefore determined it must be a violation. This cast a

wider net than the 2014 Code intended, and again, it is a substantial procedural error that materially affected the Panel's decision.

In addition to the foregoing, the Panel's decision is against the clear weight of the evidence presented. Of all the witnesses interviewed, it found only Ms. Roe credible, and overlooked the illogical and inconvenient holes in her story. While the 2015 Complaint Process purports to limit my appellate rights to instances of procedural error and new evidence, I also have contractual rights that are set out in the 2014-2015 Code of Conduct. That is the Code that applied at the time of my encounter with Ms. Roe so the substantive contractual rights in that Code are still binding on Brown University in adjudicating this matter.

Unlike the 2015 Complaint Process, the 2014-2015 Code provided that "Appeals will *normally* be only considered" in the event of procedural error or new evidence. Use of the term "normally" leaves the door open for consideration of whether the Panel's decision is manifestly contrary to the evidence, as I claim it is. In any event, the standard for interpreting the terms of any contractual relationship between university and student is the standard of reasonable expectations. See *Mangla v. Brown University*, 135 F.3d 80, 83 (1st Cir. 1998). To suggest that a patently ridiculous decision by a Title IX Panel could only be overturned for new evidence or an error in procedure is ridiculous. It defies reasonable expectations. Therefore, in this appeal, I am also entitled to a review of whether the Panel fairly and reasonably construed the evidence. It undoubtedly did not. Please consider the following.

As recounted on page 11 of Ms. Perkins' report, while Ms. Roe was performing fellatio on me, Ms. Roe "states that the light came on and she asked if she should turn it off." I said yes, "so she walked over to the light switch to try to turn it off but couldn't." With my pants around my ankles, I then walked over and turned off the light switch, which was right next to the door. Had Ms. Roe wanted to leave, this was a prime opportunity. She did not try. She did not run. If she had, with my pants around my ankles and a full erection, I was in no position to chase her down the hall. Then, according to her, not me, we walked back to the middle of the room, and Ms. Roe says, "I figured I was supposed to continue [performing oral sex] with him standing," so she knelt down in front of me and did. This is what she "figured" she should do. Then, as I neared ejaculation, I asked her if I could do so in her mouth. Ms. Roe agreed. Ms. Roe says she then swallowed my semen because she did not want to leave a mess on the carpeted floor. See Report, p. 11.

Keep in mind that this is not my version of events. This is what Ms. Roe told Djuna Perkins. It is her story, and I find it absolutely extraordinary that a woman in the middle of a sexual assault would be so conscientious and concerned for the cleanliness of the carpeting that she would swallow her assailant's semen. It is equally extraordinary that, in the middle of the assault, she would ask her assailant if he wanted the lights turned off. What, I ask, is the purpose of that? Ambience is the only answer that comes to mind, and Ms. Roe 's conscientiousness is once again astounding. Finally, if this were an assault, why on earth did Ms. Roe not step out the door and run instead of

turning off the lights, particularly when I - ten feet away - began to waddle over toward her with a full erection and my pants around my ankles?

Absent the presence of a weapon or threat, neither of which are involved here, what sort of assault victim chooses fellatio over flight when presented the opportunity? Those are the facts according to Ms. Roe at the time of our encounter. And, while our texts before and after are relevant, our actions at the time of our encounter are what matter most.

Brown University is at risk here of applying a double standard. Just as I could not rely on a "yes" text from Ms. Roe hours before our encounter, she should not be allowed to rely on a "no" text before our encounter. Please understand, I do not agree that she said that, but the Panel must not be allowed to seize upon what it determines to be a "no" text and use it to excuse Ms. Roe 's actions at Faunce House. But, that is what it has done, and it is brazenly biased.

Beyond the foregoing, it appears the Panel did not credit a single witness other than Ms. Roe . For instance, though she claims she went home in shock and upset on November 10, 2014, the witnesses Ms. Perkins interviewed had a starkly different recollection. One was a friend of Ms. Roe identified in the report as Witness 1. Witness 1 recounted that one night she was staying in Ms. Roe 's room and was up until 4:00 am watching "New Girl" on Netflix when Ms. Roe came in and said, "Oh my God, I have to tell you something. Do you guys remember that guy [me] I've been telling you about?" When Witness 1 and Ms. Roe 's roommate said they did, Witness 1 recalled her to say, "I just hooked up with him. It was like really weird because we were just in Faunce and hooked up." According to Witness 1, Ms. Roe made the whole thing sound "sexy and cool." She asked if we had sex, and Ms. Roe said, "No, but it was really hot. I mean, you know it wasn't reciprocal because he only fingered me--he didn't eat me out - but we might hook up again, I don't know." Ms. Roe elaborated further and stated that she gave me a "blowjob." Witness 1 said Ms. Roe made it sound as if she wished we had done more and was her typical "happy, bubbly" self. Apparently, the Panel found this disinterested witness entirely mistaken, and she was not the only witness the Panel failed to credit.

Other witnesses interviewed by Ms. Perkins recalled Ms. Roe expressing annoyance with me because I was ignoring her. Witness 3, who is also a friend of Ms. Roe , recalled her saying at a mock trial tournament at Yale, "[he] still hasn't talked to me. Is that what he's going to do after me giving him head?" Witness 5 remembered Ms. Roe describing our encounter while in the car at a tournament in Washington, D.C. and saying that she told me, "I can't really do anything but if you want to do something [to me] you can." Apparently, none of these witnesses were credible, despite the fact that some were Ms. Roe 's own friends.

Then, there are Ms. Roe 's own words after the alleged assault. "Assault" is not the word she used to describe our encounter. "Hook up" is the word she used. That is what she said to Witnesses 1, 2, 3, 6, 8, 9, and 10. She also described or acknowledged our encounter to witnesses 4 and 5 without giving any indication whatsoever that it was

non-consensual. Moreover, Witness 10, who is a friend of Ms. Roe and told Ms. Perkins that she does not like me, recalled that at the Brandeis mock trial tournament, Ms. Roe did not say I assaulted her. Rather, she nonchalantly stated, "oh, yeah, I sucked that guy's dick."

None of this suggests a non-consensual encounter, and Ms. Roe 's texts to me afterward further support that conclusion. On November 14, 2014, Ms. Roe explicitly bantered via text with me about our encounter, and her messages kept on coming for days. I cannot help but wonder how many assault victims contact their alleged assailant afterwards with messages like, "whacha been up to stranger?" and "I wish I could see you in action," and "Hit me up sometime if you're bored [winking smile] see ya!" A couple months later, I apologized to Ms. Roe for ignoring her. She replied, "Thank you!! Apology accepted, I really appreciate that . . . Im sorry for making the awkwardness worse and signing you up for obscure dating sites . . . I definitely overreacted . . . im sorry, I was upset . . . Does this mean you'll add me back on snapchat now loser!" I said, "perhaps." Ms. Roe replied, "Yassss best day everrr." For the life of me, I cannot understand why someone would write such messages to someone they believe attacked them.

Finally, to return one last time to procedural errors, Ms. Perkins' investigation had some serious deficiencies. One is aptly illustrated in footnote 26 on page 15 of her report. In that footnote, Ms. Perkins references my request for a complete set of the electronic communications between Ms. Roe and Witness 9 to support my claim that Ms. Roe fabricated her claim against me. Ms. Perkins wrote that to do that would be "overly burdensome" and "unlikely to lead to the discovery of any non-duplicative evidence that tends to undermine the Complainants claim that she was coerced." Frankly, I do not understand how cherry-picking messages is fair and less burdensome than simply printing off all of them back to a specified date. Moreover, without looking at the messages, how could Ms. Perkins know what they contain? Certainly, with respect to her texts with me, Ms. Roe failed to produce all relevant exchanges, and she had no explanation for why she deleted her post-November 10, 2014 texts. I am not sure what basis there is to believe that she was not similarly selective in what she chose to reveal regarding her communications with Witness 9. Regardless, Ms. Perkins refused, but in the interest of fairness, Ms. Roe should have had to disclose those texts. I was denied that evidence.

In addition, on pages 27-28 of Ms. Perkins report were several paragraphs of statements largely from Witness 9, but also from others, that had absolutely nothing to do with my encounter with Ms. Roe . Therefore, I asked Ms. Perkins to remove the following paragraphs:

> *Not long after this decision, Witness 4 hosted a party at his apartment at which numerous members of Mock Trial, including the Respondent, Witness 9, Witness 4 and Witness 3, but not the Complainant, were present. At the party, which Witness 3 states took place the day of the Harvard-Brown football game, which occurred on September 26, the Respondent confronted Witness 9 in a hostile manner and mocked her for*

reporting him to E-Board. To Witness 4, it was clear that the Respondent was still angry about the decision not to make him a captain, and angry at Witness 9 for complaining about him. Witness 9 states that she told her parents and the Complainant about what happened with the Respondent at the party the next day, and all were very upset. Witness 5 said after the incident at the party, the Complainant seemed very shaken, even though she had not even attended the party and it did not directly impact her. Witness 9 said her parents told her to seek help from the University, so she called Brown's Department of Public Safety (DPS) and asked how to report an incident of bullying. DPS referred her to the Title IX Program Officer.

The Complainant states that by September, 2015, her contact with the Respondent was minimal, but she continued to hear of his behavior with Witness 9, and it frightened her. Witness 6 recalled the Complainant and Witness 9 approaching her one day after practice in September, 2015 and telling her that the Respondent was still sending Witness 9 unwanted text messages and wanted to discuss their options with her because they were very concerned about disrupting the team but they were considering getting no-contact orders against him. Witness 6 said she told them the team had already done everything it could, but they should pursue any options they had.

The Complainant states that based on the Respondent's conduct toward Witness 9, she was concerned for her own safety, and raised her concerns with a dean in the Office of Student Life. The Office of Student Life issued No-Contact Orders between both the Complainant and Witness 9 and the Respondent on October 2, 2015. The Complainant states that she did not file a complaint at this time because she feared retaliation.

On October 3, Witness 4 recalled tailgating with members of the mock trial team before a football game. He states he was talking to talking to a group of people standing in a circle that included Witness 9 and Witness 3 when the Respondent, who had not been part of the circle, came up to Witness 4 out of the blue, took Witness 4's glasses off, and put them back on upside down. The Respondent also said, "Hi, [redacted]" in an exaggerated tone. Witness 4 and Witness 3 were standing very close to Witness 9 at the time, and it seemed to Witness 4 that the Respondent's actions were intended to intimidate Witness 9. Witness 9 and Witness 3 told the Complainant what happened.

In October, 2015, after the Complainant had obtained the No-Contact Order, Witness 5 recalled holding a mock trial meeting at which they viewed a Powerpoint on the rules of evidence. Witness 5 said he knew about the no-contact order, and saw that the Complainant was sitting with [redacted] far away from the Powerpoint so he suggested they move up so they could see. Witness 5 said he did not mean for them to suggest they should sit closer to the Respondent. Witness 5 states that the Complainant "gave

him a death glare." Midway through the presentation, Witness 5 states that the Complainant started crying.

Witness 3 states that in the fall of 2015, she met Witness 14 at a party Witness 3 attended with a friend, aaaaa who is also Witness 9's roommate. Neither the Complainant nor Witness 9 were there. Witness 14 told her about some interactions with the Respondent that made her uncomfortable. Witness 3 states that she and her roommate told the Complainant and Witness 9 about her conversation with Witness 14 the next day.

Witness 9 states that sometime between October 16 and October 30, 2015, Witness 3 told her she had met Witness 14, who described behavior of the Respondent that made Witness 14 uncomfortable.

Witness 11 is a fraternity brother of the Respondent. He does not know the Complainant except by sight. On October 30, 2015, he states that he was in the Ratty in line to get food when he recognized the Complainant directly ahead of him in line. The Complainant was talking to a female friend. The friend was crying and the Complainant was comforting her. The friend said, "We failed. We messed up. It didn't work. Every time we try and get him on something it doesn't work." Witness 11 states that several times they heard the Complainant and her friend say the Respondent's name. He also recalled the Complainant saying, "We'll get him. My uncle is an important lawyer in New York and [the Respondent] can't keep countersuing us." Witness 11 also heard them say, "We'll figure this out, we'll get Sasha [Witness 14] to do something." Witness 11 states that he told the Respondent later what he had heard. The Respondent told him the Complainant and her friend, Witness 9, had "sued" him and then the University had breached some kind of confidentiality so the Respondent had "countersued" the University. He states that the Respondent also told him that earlier that week, he had been called in to speak to the dean of residential life about a complaint they had received about him "going around hallways naked and drunk until four am and putting condoms on people's doors and generally being disruptive."

The Complainant recalled being in the Ratty one day when Witness 9 was very upset and having a conversation along the lines described by Witness 11. The Complainant states that Witness 9 had just learned that the Respondent had taken some legal action against the University for violating the Respondent's FERPA rights by disclosing his sanction for violating the No-Contact Order to Witness 9. She and Witness 9 felt this action was unjustified, and Witness 9 was worried about what other unjustified actions the Respondent might take against her if she filed a Complainant in light of the aggressive action he had taken against the University. Sometime after October 30, Witness 9 states that she had dinner with Witness 14, and Witness 14 described her negative experiences with the Respondent. Witness 14 also told Witness 9 that the

> *Respondent had sent her a text message on October 30 saying, "There are two girls here who are out to get me and I want to explain myself." Witness 9 states that she told the Complainant about her conversation with Witness 14.*

These paragraphs state that I engaged in "bullying" (para. 1), sent Witness 9 "unwanted text messages" (para. 2), was the subject of multiple no contact orders (para. 3), acted to "intimidate Witness 9" (para. 4), made Ms. Roe cry at a mock trial lecture (para. 5), acted inappropriately with Witness 14 (paras. 6, 7, and 9), and was "going around hallways naked and drunk until four am" (para. 8). This is highly prejudicial and made me out as some sort of evil person. It had absolutely nothing to do with my encounter with Ms. Roe on November 10, 2014. Ms. Perkins, nonetheless, refused to remove them. They were submitted to the Panel, and more likely than not contributed to the Panel's decision that I am a bad person who deserves to be punished, regardless of what happened between Ms. Roe and me in Faunce House.

For these reasons, the Title IX Panel committed multiple substantial procedural errors and entirely failed to fairly and reasonably construe the evidence against me. Ms. Roe is using Title IX to avenge hurt feelings, not a genuine sexual assault. Thus, I appreciate the opportunity to present this appeal. I hope you will give it thoughtful consideration and reverse the Panel's finding. Thank you.

Respectfully submitted,

John Doe