

Cornell University University Assembly

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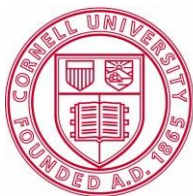
Agenda

Codes and Judicial Committee
University Assembly
October 24th, 2018
4:45pm – 6:00pm
Day Hall Room 163

- I. Call to Order (Chair)**
 - i. Call to Order (2 minutes)
- II. Approval of Minutes (Chair)**
 - i. September 26, 2018 (2 minute)
 - ii. October 10, 2018 (3 minutes)
- III. Business of the Day**
 - i. For Discussion: Future Code of Conduct Changes (25 minutes)
 - ii. For Discussion: Organizing Community Input on the Code (20 minutes)
 - iii. For Discussion: UHRB Staffing Procedures (20 minutes)
- IV. Adjournment**
 - i. Adjournment (2 minutes)

Attachments

- 1. CJC Meeting Minutes 09.26.2018
- 2. CJC Meeting Minutes 10.10.2018



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Minutes

Codes and Judicial Committee
University Assembly
September 26th, 2018
4:45pm – 6:00pm
Day Hall Room 163

I. Call to Order

- a. Call to Order
 - i. D. Barbaria called the meeting to order at 4:51pm.
- b. Roll Call
 - i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, M. Horvath, K. Kebbeh, R. Lieberwitz, R. Parker, A. Viswanathan, K. Zoner
 - ii. *Absent:* J. Anderson, L. Copman, R. Howarth, C. Liang, T. Onabajo,
 - iii. *Others Present:* M. Lee

II. Approval of Minutes

- a. May 9, 2018
 - i. M. Battaglia motioned to approve the minutes.
 - 1. Minutes **approved** by unanimous consent.
- b. September 12, 2018
 - i. M. Battaglia motioned to table approval of the minutes.
 - 1. Minutes **tabled** by unanimous consent.

III. Business of the Day

- a. Recommitted: Resolution 1 Appointment of University Hearing Board and University Review Board Members for Academic Year 2018-2019
 - i. D. Barbaria said that Resolution 1 intended to staff vacancies on the University Hearing and Review Boards (UHRB). He said that names chosen by the Committee last academic year were not presented to the University Assembly (UA) in time for staffing to be completed before the end of the last academic year. He said that after much discussion, it was decided that the UA should not be able to act on nominations provided by the Committee (CJC) because they were provided in the previous term.
 - ii. M. Battaglia said that Resolution 1 was recommitted to the CJC for further

- discussion. He said that once seats on the UHRB become vacant on June 1, the Assembly appears to have the authority for emergency appointment, based on historic measures.
- iii. M. Battaglia said that the faculty members on the UHRB are nominated by the faculty, but other candidates must be nominated to the UA no later than by the last regular meeting of the outgoing assembly. He said that nominations brought forth do not necessarily need to be confirmed, and even if a confirmation is necessary the vacancies can be filled as necessary.
 - iv. M. Battaglia said that none of the UHRB public records formally mentioned concerns over the integrity of those who were staffed on the UHRB by the Assembly, and that this would not stretch the Assembly's emergency authority. He added that the UA does not think it is necessary to create an emergency appointment for an entire year, as this would be neither emergency nor temporary.
 - v. D. Barbaria said that the Committee could vote to pass Resolution 1, have the UA Executive Committee fill the vacancies on a temporary basis for the remainder of this year, or leave the seats vacant.
 - vi. M. Battaglia – point of information – the UA Executive Committee has decided not to pursue the second option of filling vacancies temporarily.
 - vii. M. Horvath said that the decoder key was provided on May 2, but the names for new UHRB members were not passed on May 31 when the last set of resolutions were brought forth to the Assembly. She said that allowing the 2017-2018 UA to appoint as many members as it could for 2018-2019, but only allowing the 2018-2019 UA to appoint members for 2019-2020 is a check on the system. She encouraged the community to consider the checks and balances of the system, and noted that she discussed this matter with the Judicial Codes Counselors.
 - viii. M. Horvath said that she believes vacancies need to be filled by emergency appointments only if someone is to vacate or if there is an emergency. She said that there are approximately 10 to 13 student, 10 to 13 faculty, and 10 to 13 staff members whose terms did not expire, and that this is enough for a conduct proceeding to occur. She said that while this matter is for the Committee to decide, it is important to maintain transparency, follow the process, and read the Code as written instead of following past practices simply because they were done so in the past.
 - ix. R. Lieberwitz asked if all of the nominations were submitted to the UA by its last meeting of the 2017-2018 academic year.
 - 1. D. Barbaria said that they were sent, but were not confirmed by the last meeting. He said that the actual names were never brought forth to the UA.
 - x. R. Lieberwitz asked what the normal procedure would be in which the UA considers nominations.

1. D. Barbaria said that nominations would have been sent to the UA at a general meeting before the end of the semester.
- xi. K. Ashford asked if applications were already reviewed, but it is just the names that are not there.
 1. D. Barbaria said that the names were not seen because the decoder key was not provided by the Office of the Assemblies (OA) to the UA in time.
- xii. M. Horvath – point of information – based on her understanding, the decoder key was provided by May 10.
- xiii. M. Battaglia said that the applications were anonymized last year which caused a delay.
- xiv. D. Barbaria said that the UA was provided with the decoder key a little less than 3 weeks left in the term, but almost near the last meeting.
- xv. K. Zoner said that everyone appears to be technically correct but the matter in question appears to be more of a process issue. She said that the emergency appointment became necessary only because names and numbers could not be reconciled, not because procedures were not followed through.
- xvi. M. Battaglia said that the process is not perfect, and the goal is to begin early in the next round of appointments. He said that the UA will amend its bylaws to ensure that this does not happen in the future. He said that past precedent is not always indicative of what should be done, but this is a point at which it is necessary to expedite the process and move forward.
- xvii. A. Viswanathan asked when the UA term begins.
 1. D. Barbaria said that it begins on June 1.
- xviii. A. Viswanathan asked whether the UA could have an emergency meeting.
 1. D. Barbaria said that this could be possible in theory, but is unusual for the UA to meet after the term.
- xix. A. Viswanathan asked if the Assembly could theoretically vote on numbers instead of names.
 1. M. Battaglia said that technically and historically this would not be done because the Assembly seeks to publicly have names available.
- xx. R. Lieberwitz said that she understands M. Horvath's line of reasoning. She said, however, that re-nomination would be permissible but not necessary, and that it appears appropriate to pass this resolution.
- xxi. M. Horvath said that approving matters retroactively decreases the transparency of the process as it does not include, for example, seniors who have graduated. She said that the Committee should encourage faith in the system through following what is written in the language – “confirmation no later than the last meeting of the committee”.
- xxii. R. Lieberwitz asked M. Horvath if it would be permissible for the CJC to

simply re-nominate without being retroactive.

1. M. Horvath said that the timeline of the last outgoing UA meeting was May 31, and the new terms began on June 1. She said that it would be retroactive for this year's UA to re-nominate the 2018-2019 UHRB members.
- xxiii. D. Barbaria asked how the CJC and UA would act to fill a vacancy.
1. M. Horvath said that provision 2 of the Code regarding emergency appointments concerns when someone is actually a member, but is not about pools.
- xxiv. M. Battaglia said that he fully concedes that words were poorly written, but the Code gives the Committee authority over the language. He said that since there are members who are willing to serve on the UHRB, it would be a plausible interpretation that they should be allowed to serve.
- xxv. M. Horvath said she does not see why the UA could not vote on numbers instead of names.
- xxvi. R. Lieberwitz asked when there was a gap between numbers and names.
1. D. Barbaria said that it was for a fairly extensive period, after which the UA sent verbal communication to VP of University Relations Joel Malina requesting the OA to expedite the process.
- xxvii. R. Lieberwitz said that if the delay was caused by an office that the CJC had no control over, the office should not cause the entire procedure to fall part.
- xxviii. A. Viswanathan agreed with R. Lieberwitz. He said that it should be clarified in the resolution that administrative delays had caused this problem.
- xxix. M. Battaglia said that the UA and the OA was in strong disagreement over seeing the decoder key. He said that much time had lapsed since this disagreement and the UA's subsequent communication with VP Malina, which was what caused a delay in the overall process.
- xxx. A. Viswanathan said that he did not mean to condemn the OA, but noted that this necessitates a need to repair problems.
- xxxi. R. Lieberwitz asked if the Dean of Faculty nominating new members over the summer recess is a different issue.
1. D. Barbaria said that this is a different process for faculty appointments.
- xxxii. The Committee took a five-minute break.
- xxxiii. A. Viswanathan **amended** Resolution 1 to replace lines 11-13 with the following:
- Whereas**, due to procedural delays in that process, the nominees were recommended in timely fashion but were not ultimately appointed to the UHRB in the Academic Year 2017-2018; and
- Whereas**, the executive committee of the University Assembly authorized

the appointment of individuals on a temporary basis to the UHRB until such time as the full Assembly could confirm them; and

Whereas, due to such procedural delays, the UHRB would be left at approximately half-strength without confirmation of the individuals timely nominated in the Academic Year 2017-2018; and

xxxiv. M. Battaglia motioned to vote on A. Viswanathan's amendment to Resolution 1.

1. Motion **passed** by a vote of 5-0-1.

xxxv. M. Battaglia motioned to pass Resolution 1 with the amendment.

1. Motion **passed** by a vote of 5-0-1 to send the names of UHRB nominees to the UA for confirmation.

b. For Discussion: Final Report of the Codes and Judicial Committee's Working Group on Hate Speech and Harassment

i. R. Lieberwitz said that the Working Group gathered together to finalize what had been done. She said that the report is expected to be issued within the next week or so.

ii. D. Barbaria asked if R. Lieberwitz would be interested in presenting the report to the UA on Tuesday.

1. R. Lieberwitz said that it would be best for the CJC to review the report first.

iii. M. Horvath asked if there are any recommended timelines for this committee to act upon.

1. R. Lieberwitz said that there is nothing on the report that concerns timelines, but the hope is to expedite processes. She said that many of the recommendations overlap with those from the Presidential Task Force, and that this would be mutually reinforcing since some of the Working Group's recommendations may fit into work that is already being done.

iv. M. Battaglia said that procedurally the UA meets on September 25, and the President will be addressing the UA on October 16. He said that gathering the President's first impressions on the report would be helpful.

v. M. Horvath – point of information – a timeline would be useful with the Presidential Task Force and Committee developing recommendations. She said that she is interested in knowing if there is a plan in place since a Code revision would take ample time.

vi. D. Barbaria said that the Committee does not have an immediate plan as of now, but will present a proposed timeline at the next meeting. He expressed his hopes that the President would provide a more specific set of public recommendations. He said that the Committee hopes to have a draft language submitted by the end of the semester for the President to review

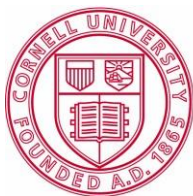
over winter break.

- vii. M. Horvath said that it is her understanding that a change in the entire language of the Code is necessary.
- viii. D. Barbaria said that the Committee will need to discuss whether it will go into a whole Code overhaul.
- ix. M. Horvath said that when benchmarking Brown University's Code of Conduct, it is important to note that it is currently being overhauled because it is too judicial and not fitting with the community.
- x. M. Battaglia said the Brown example was a mere example of how to make the language more approachable.
- xi. R. Lieberwitz said that there are some recommendations for very specific changes in the code, as will be seen in the report. She said that the Group notes areas in which there are agreements or disagreements with recommendations from the Task Force. For example, regarding regulation of speech and harassment, the Task Force recommended to remove parts of ADR to the Dean of Students' Office, but the Working group does not take a position on that.
- xii. R. Lieberwitz said that M. Horvath's idea of a timeline would be appropriate, but there are also philosophical questions that need to be addressed as a Committee. She said that one of the recommendations of the Working Group is to add guidance to provide further explanation of the Code. She said that a timeline is important, but would be more relevant after the Committee has a better sense of actually knowing what to do.
- xiii. D. Barbaria asked if the report could be given to Committee members before fall break.
 - 1. R. Lieberwitz said that the report is complete, but the logistics need to be arranged.
- xiv. M. Horvath agreed with R. Lieberwitz in asking philosophical questions regarding whether the Code of Conduct should only include students or include students, faculty, staff, and student organizations. She said that the Committee should contemplate on the issue of standard of proof.
- xv. M. Battaglia said that he has not met anyone hoping to lower the standard of proof.

IV. Adjournment

- a. Adjournment
 - i. The meeting was adjourned at 5:57pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Codes and Judicial Committee Clerk



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Minutes

Codes and Judicial Committee

University Assembly

October 10th, 2018

4:45pm – 6:00pm

Day Hall Room 163

I. Call to Order

- a. Call to Order
 - i. D. Barbaria called the meeting to order at 4:55pm.
- b. Roll Call
 - i. *Present:* D. Barbaria, K. Kebbeh, R. Lieberwitz, A. Viswanathan, S. Vura, K. Zoner
 - ii. *Absent:* K. Ashford, L. Kenney, T. Onabajo
 - iii. *Others Present:* J. Anderson, M. Battaglia, M. Horvath, M. Lee

II. Approval of Minutes

- a. September 12, 2018
 - i. Minutes **approved** by unanimous consent.
- b. September 26, 2018
 - i. M. Battaglia moved to table the minutes.
 - 1. Minutes **tabled** by unanimous consent.

III. Business of the Day

- a. For Discussion: Final Report of the Codes and Judicial Committee's Working Group on Hate Speech and Harassment
 - i. R. Lieberwitz said that the Working Group's Final Report is structured by proposals, language from the Campus Code of Conduct (meant to aid readers), and recommended changes (to be considered by the Committee). She said that the report contains a general narrative of what is recommended to be changed, mainly in consideration with the language of the Code.
 - ii. R. Lieberwitz provided an overview of the Final Report in detail. In reference to page 25 of the document, she said that the Working Group proposed changes outside the scope of the Code, which may include a systemic analysis based on open forums. She also said that the report

outlines areas in which there are agreements with the Presidential Task Force on Campus Climate.

- iii. R. Lieberwitz noted that recommendations were based on campus-wide discussion and broad community engagement. In reference to page 5 of the document, she said that the proposals reflect a consensus among Working Group members as well as those from the greater university community.
- iv. R. Lieberwitz referred members to pages 10 through 15 of the document, which concern issues of harassment, stalking, and assault. She said that there are some areas in which proposals overlap but are not necessarily the same as those provided by the Presidential Task Force. She said that the Working Group recommended making changes that draw on Policy 6.4 to Title Three Article II. A. 1. She said that these proposed changes are very important and are reflected in the suggested Code language changes. She added that the Group recommends that the Codes and Judicial Committee (CJC) creates a guidance document on harassment and hostile environment – as an appendix to the Code to aid interpretation. She said that a separate appendix or guidance document would be better than overloading the Code with information.
- v. R. Lieberwitz referred members to page 16 of the document. She said that members of the public have raised concerns on how Policy 6.4 on harassment is so distant from the Code.
- vi. R. Lieberwitz said that the document has not yet been distributed publicly and that the Committee should consider when and how to distribute more broadly, including to members of the administration. She added that it is important to publicize what has been done to continue with community engagement and ensure accessibility.
- vii. M. Battaglia thanked R. Lieberwitz for her efforts as Chair of the Working Group. He said that he has talked with the Office of the Assemblies about placing the Group's prior work into an archive and then focusing on publicizing the report itself. He added that President Pollack will speak to the University Assembly (UA) on October 16 and asked if R. Lieberwitz would be interested in speaking to the Assembly about the Report on that day.
 - 1. R. Lieberwitz said that she will be able to attend the UA meeting on October 16.
- viii. D. Barbaria asked if it would be possible to amend the report before the UA meeting on October 16.
 - 1. R. Lieberwitz said that it could make more sense to maintain the report within the Committee instead since October 16 is approaching soon. She recommended publicizing the report at the UA meeting on the 16th while noting that the CJC will be reviewing the document.
 - 2. M. Battaglia agreed with R. Lieberwitz. He said that the report

- should be presented as a product of the Working Group's efforts, which the CJC could later amend.
3. R. Lieberwitz said that the Committee is free to amend the report as it wishes, but this is where the report is at now.
- ix. J. Anderson asked how Policy 6.4 could be brought closer to the Code, and whether this would be a formalization inside the Code.
1. R. Lieberwitz said that to some extent, the recommendations do bring the language from Policy 6.4 closer to the Code. She said, however, that the Group was not in a position to make a definitive recommendation on that matter because it concerns a much larger question. She said that the Group felt there was enough dissatisfaction and confusion that this was an appropriate moment for the CJC and others to consider more of a seamless approach of integrating Policy 6.4 and the Code.
- x. J. Anderson asked if bringing Policy 6.4 closer to Code would also concern quantum of proof.
1. R. Lieberwitz said that this would require further discussion as there will certainly be much debate on the issue.
- xi. M. Horvath said that the community seems to want greater accountability. She asked if there was any discussion on how having a higher standard of proof would ensure greater accountability.
1. R. Lieberwitz said that she did not recall any discussion about lowering the standard of proof. She said members of the community requested more clarity and understanding on what the penalties would be, and how sentencing would be carried out.
- xii. M. Battaglia said that there was a little discussion on bringing Greek organizations back under the Code, in reference to page 17 of the report. He said that he personally agrees that accountability and quantum of proof are not necessarily linked. He added that the intention is to bring Policy 6.4 and the Code closer together, while the UA wanted to keep quantum of proof where it was.
1. D. Barbaria asked if such an intention is noted anywhere.
- a. M. Battaglia said that it is in the appendix of the Code.
- xiii. J. Anderson said that there are many discussions in progress regarding Greek organizations and their relationship to the Code. He said that the Greek organizations have a lower standard of proof than the Code and this has garnered criticism. He added that such larger conversations would be valuable.
- xiv. M. Horvath said that she supports utilizing alternative dispute resolution for non-Code violations. She added that the Code currently lacks a non-compliance enforcement mechanism except for Title 4.

- xv. M. Horvath said that she was curious to know where concerns about sanctions arose from, in reference to page 19 of the Working Group's report.
- xvi. K. Zoner said that having different levels of discipline offers greater opportunity to address each specific issue, whereas choosing a certain quantum of proof for all cases limits conversations.
- xvii. M. Battaglia said that members of the community have discussed the long-term effect of sanctions, and have largely been in support of alternative dispute resolution (ADR). He added that he personally believed that the past pilot year for ADR has been excellent. He also said that it would be useful to have an educational rather than punitive effect to the Code, and that our system has a strong presumption of innocence and community involvement.
- xviii. R. Lieberwitz said that everyone involved with the Working Group's discussions agreed that bringing Greek organizations back under Code would be a good idea, as this would allow such organizations to be viewed as a part of the community and held accountable under the Code. She said that this would also allow for Greek organizations to be held to the same standard of proof as other community members, while requiring less self-regulation from the organizations themselves. She said, however, that nothing is mutually exclusive by bringing Greek organizations back under the Code as they could choose to have stricter self-regulation.
- xix. R. Lieberwitz said that in terms of guidelines for sentencing, the Working Group recognized that the approaches sometimes seem to be in conflict, in reference to page 19 of the report. She said that the guidelines were not meant to criticize what was being done, but rather to enhance transparency, predictability, openness, community education, and reporting.
- xx. R. Lieberwitz said that many community members supported having an educational realm to address "gray areas" to potential Code violations through ADR. She said that she believes that the Code is punitive in that it has potential penalties, but also has proactive or responsive measures.
- xxi. R. Lieberwitz said that different standards of proof for sexual and racial harassment leave room for interpretation when there is an intersection between the two. She said that there are many strong opinions for keeping the standard of proof high, but that is related to a larger discussion.
- xxii. J. Anderson said that alternative dispute resolution serves in similar but different functional capacities in the Judicial Administrator's office and the Dean of Students' office. He added that it would be interesting to see the effects of a change in standard of proof on Greek organizations.
- xxiii. D. Barbaria said that the Committee shall continue such discussions and possible amendments to the Code in the coming months.
- xxiv. M. Battaglia said that alternative dispute resolution would be most beneficial to the community if it is non-mandatory. He said that he

personally believes that ADR should remain in the Code because it gives parties more control over their outcomes, but only poses a good solution for those who are willing to partake in it.

- xxv. M. Battaglia said that in terms the Code itself, he believes that it should be named “Cornell Code of Conduct” instead of the “Campus Code of Conduct” as this allows the Code to be expanded and applied to the broader community. He added that based on his discussions with the Judicial Codes Counselors, it is his understanding that they seek a higher quantum of proof.
- xxvi. M. Horvath said that the Code of Conduct in itself is an ADR resolution and that no sanction can be compelled by the Judicial Administrator. She said that in terms of transparency, some students choose not to disclose information. She said that as a private institution, Cornell does not follow due process and emphasizes the educational aspect of the Code rather than assessing its members in a criminal setting. She also said that she agrees with many points raised in the Working Group’s final report. She added that identifying core institutional values or grouping protected classes together could be useful for further discussion.
- xxvii. R. Lieberwitz said that the term due process is not merely meant in a constitutional context. She said that due process carries meaning that can be adopted – not as a public institution, but because Cornell embraces those rights. She said that “due process” does not merely concern technical language but is also part of a broader discussion.
- xxviii. K. Zoner said that having a different standard of proof for off-campus matters has made it difficult for those involved in this community to be held to some degree of accountability.
- xxix. D. Barbaria asked what deters from including off-campus matters in the Code.
 - 1. K. Zoner said that language such as “serious violation” in the Code needs to be more clearly defined.
- xxx. M. Battaglia said that he agrees that “due process” is constitutional but is unique within the context of Cornell. He added that he encourages members of the community to stop by the Hearing Boards’ office for a better understanding of processes.
- xxxi. M. Horvath said that the Judicial Administrator’s annual report from last year is now available on the Judicial Administrator’s website.
- xxxii. J. Anderson said that the language in the Code needs to remain consistent once solidified, since various interpretations can arise from different members of the community.
- xxxiii. M. Horvath – point of information on timelines for Code revisions. She said that she is concerned about how little time is left.
 - 1. D. Barbaria said that the Committee had not yet agreed on a timeline because it was awaiting the Working Group’s report. He said that he

is open to any Committee member's recommendations regarding a timeline.

- xxxiv. M. Battaglia said that he would like to formally thank the Working Group once again for its efforts.
- xxxv. D. Barbaria said that the Committee will need to decide the extent to which it will seek community input on possible Code revisions, and where to begin.
- xxxvi. R. Lieberwitz said that next Wednesday could be an appropriate time for informal discussions.

IV. Adjournment

- a. Adjournment
 - i. The meeting was adjourned at 6:02pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Codes and Judicial Committee Clerk