



Cornell University University Assembly

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Minutes

Codes and Judicial Committee
University Assembly
January 31st, 2018
4:30pm - 5:45pm
305 Day Hall

In attendance: R. Lieberwitz, M. Battaglia, N. Stetson, K. Zoner, R. Bensel, V. Price, G. Kaufman, D. Putnam, K. Karr, J. Kruser
Others: M. Horvath, N. Hernandez, G. Giambattista

I) Call to Order (Chair)

- The Chair called the meeting to order at 4:33pm
- The chair noted staffing changes to the committee: Sarah Park (SA) and Neeraj Jaisinghani (UA) have stepped down, and vacancy filled by Rina Winarto (from the UA). The SA vacancy will be filled.

II) Approval of Minutes (Chair)

- November 29, 2017 (2 minutes). Will be reviewed at the next meeting

III) Business of the Day

- Beginning of Semester Outlook and Scheduling
- Chair heard from members that the weekly meetings were onerous, so he is reaching out to members for a confirmed time and date for regular meetings, noting that if members cannot attend, or it is difficult to attend, would not be conducive to the work of the committee. The Chair will send out a Doodle poll to members.
- Review of Agenda –
 1. UA R5 sent back to the committee by the UA.
 2. Chair would like to record actions of the committee for institutional memory.
 3. Review of Code Changes, pursuant to UA R4.
 4. UHRB Staffing – invite and hear from the UHRB Chairs
 5. Complaint Advisors (Policy 6.4), be included in Code with parity to the JCCs.
 6. UHRB selection process. Calendar in place. Noting the change to bi-weekly (committee) meetings, to no tax everyone's already-overcommitted time.
 7. Scheduling – we need a time that works for everyone. It will be a busy semester.

IV) For Discussion: Hate Speech Working Group Update and Discussion (15 minutes)

- Hate Speech Working Group had two meetings in the fall, minutes were posted on the OA website.

- The working group has been trying to schedule another meeting for the past two and a half weeks
- The current chair, C. Hodges is unable to discharge the duties of being the chair.
- Committee needs a chair– needs to be operational asap. Working Group is only half-staffed at this point.
- M. Battaglia reviewed the current staffing. Faculty and GPSA are staffed; still waiting on appointments from the undergrads and staff.
- J. Kruser noted the EA has approved an appointment, and will follow up.
- R. Bensel - asked for clarification from the chair about how the new chair of the HSWG will be appointed.
- M. Horvath – there was an effort to staff the committee last semester, and took up a lot of time of the CJC. Concerned that the staffing of the Working Group will take up valuable time of the CJC.
- M. Battaglia – agrees, and asserts that what is most important is to “get it done right”. Goal would be to get it done quickly and right, but right is most important.
- N. Stetson- Because the chair has to be one of the members from the CJC, and since C. Hodges is not able, stated that he would be happy to be a chair, in the interest of time.
- R. Lieberwitz – concerned about need to move forward, feels it is stalling because we can’t get a full complement of people on the committee. In the interest of moving forward, she offered to be chair if necessary, so that the working group could move forward. But also noted her limited time available.
 1. R. Bensel seconded nomination
 2. Call for other nominations
 3. N. Stetson nominated himself
 4. R. Lieberwitz withdrew her nomination, in support of N. Stetson’s nomination.
- Motion to elect N. Stetson as the new chair for the Hate Speech Working Group
- **Approved** by unanimous consent.

V) For Discussion: UA Resolution #5 Bylaws Change Clarifying the Charge of the Codes & Judicial Committee (10 minutes)

- Chair explained the resolution briefly
- A bylaw revision to ensure UA has input on 6.4; holiday symbol policies; Risk Management request that non-matriculated minors not be included as “students”
- M. Horvath – Does the Charter get approved by president?
- M. Battaglia – this is a bylaw change, so only internal. We are documenting something
- M. Horvath – Concern with policy of non-matriculated minors in President Pollack’s denial statement... “I do not agree that the CJC should be involved in policies regarding minors that are not part of the Cornell community...” So, we have already heard from the president that she will not approve, and we are putting forth bylaw changes that are contrary to that...
- M. Battaglia – our charter says we can ask for information as we see fit. The CJC is free to “check in” from time to time and be involved in policies; we can pick up anything on our own prerogative.
- M. Horvath – my concern is that we would have two documents that contradict each other.

- M. Battaglia – Code doesn't mention the CJC at all, so no technical conflict.
- R. Bensel – Clarify: If we do not have jurisdiction over non-matriculated minors. Then it is a moot issue. But we should be clear.
- N. Stetson – Understand that the president wants input from the community. Hopefully input from the constituent assemblies will be included.
- M. Battaglia – This is an internal, bylaw change; does not need the president's approval.
- R. Bensel – The UA is responsible to its constituents, through its assemblies. He doesn't think it's the president's job or responsibility to tell us how we do that. We should do more community outreach, but not to satisfy the president's opinions or wishes. She could take some lessons on that. I want to be clear that we are doing this to address a constituency, but it is not our responsibility to respond to the president.
- N. Stetson – amend resolution so it is clearer with objective. The CJC is the best, and most experienced with adjudicative and rules-based matters; so the CJC would be happy to give advice to the UA on this resolution.

VII) For Discussion: University Hearing and Review Boards Staffing Update and Discussion (10 minutes)

- M. Battaglia – stated that the process was begun in the fall and applications will be open for about two weeks, a goal is to have this done by March; with a separate goal to institutionalize some sort of process
- The UHRB chairs will be coming to talk to us in the near future because they were invited
- M. Horvath – giving the chairs at least a month advanced notice is a courtesy we should extend to them

VIII) For Discussion: Concerning the Holistic Approach to Addressing the Campus Code (10 minutes)

- M. Battaglia – resolution was returned with three or four items for us to reconsider. Some slight typographical question. Biggest issue was under the JA Reappointment process. We would like to pull out those things to fix and re-submit. Most of what we did here is likely to be approved. Everything we did was already voted through.
- G. Giambattista – community outreach was concern, even for provisions the president was ready to approve.
- M. Horvath - Meaningful public notice and comment – how is it historically defined?
- M. Battaglia – historically, the UA has put it on their website for public comment for a period of time. Personally, will shop this around to the other assemblies; to make sure they are aware of it. In terms of public comment, there are areas we won't hear anything about; the language is mostly set; but will personally do outreach, and then elevate it back to the UA.
- M. Horvath – Code states the procedures (proposals) need to be posted in the Cornell Chronicle – is this something we have traditionally done? Or has it been in the Sun?
- M. Battaglia – That is not something traditionally done. Traditionally the UA puts it out on our agenda and opens it for public comment. In this case, will personally shop this around send it out to the other assemblies, to ensure maximum opportunity for visibility; meaningful and substantial engagement that is satisfactory to the president.
- M. Horvath – does the UA Agenda go to the whole community? How will we meet the requirements, and demonstrate our response to the president's request for "broad-based community interest"?
- G. Kaufman - traditionally code changes are presented at CJC in a public way and the CJC

spends enough time on it, gets passed to the UA, which also sends it to their agenda; that has been enough in the past and now we have a new president who may want to send the agenda to the whole campus community.

- J. Kruser - the expectation for campus outreach has never been clearly defined, we have used the process in the past, but does not do decent outreach to the part of the community who might be interested. Thinks a mass email for every Code change would not be the way. Proposes the UA contact the constituent assembly with any code changes, and let the assemblies determine whether or not it would significantly impact their constituency, maybe that would meet the expectations of the president.
- N. Stetson – Supports Jeramy’s idea. Cornell Chronicle is sort of like the Federal Registry, so put changes there; include link to public comment site on OA website. Gets us close to representative democracy.
- Victoria – echo Nate’s idea. Mimics the federal government. People who want to read it will read it, and those not interested will not. Communicating through the constituent assemblies makes sense. We don’t have a way to communicate to the entire campus about every Code change. If it’s available to everyone then it should be enough.
- G. Giambattista –historically changes to the code have included a two-week comment period and community input. The Cornell Chronicle is the newspaper of record for the university.
- R. Bense - Likes Nate’s suggestion. Whole thing is a bizarre conversation. The president is asking us to do outreach because, why? We are not the arm of her administration; we don’t do outreach to inform her; we do outreach to inform ourselves. I worry about it in terms of governance. The autonomy of governance is really important. If there is going to be any counter-weight to central administration it’s going to be one of the governance organizations. So, the (president’s) appeal to outreach, trying to make us feel some guilt; works on disabling our own autonomy and how we govern ourselves. Dislikes it. The president has complete discretion; like a constitutional monarchy. She can turn over anything, for any reason. Is against this. Would have been against asking her what she thought outreach was as a condition on our governance. The autonomy of this group, and every other governance group outside of the central administration is very important.
- J. Kruser – we came up with a really good procedure to do outreach. We can centralize them through the Office of the Assemblies. Newspaper, website, constituent assemblies.
- M. Horvath – only thing to add is an ad in the Sun with details of the proposals. Notes interesting in statement from the president is an interpretation of the UA’s own charter, and seemed to highlight the times that Gabe and Matt spoke with impacted constituents. Risk Management; Greek community, etc. so also create a document stating the impacted constituents. Suggests adding this.
- N. Stetson – if we tell our assemblies, and they tell their communications people, it will filter out to the community by word of mouth. But in response to the president’s statement, thinks this is a worrisome tone and worrisome take to our governing documents, and we should keep an eye on it. It’s not the first evidence that we are already seeing a worrisome trend and our governance is a little more vulnerable than it ever has been in history. We need to stand up for our role, but also hold “congressional hearings” of our stakeholders. We need them in here really quickly, to hear your concerns, and then send back a message to the president telling her, not only did we enhance our public comment, which we thought was good, but now is better, but we’ve reached out to stakeholders, which would give us additional coverage with the president.
- M. Battaglia – Next time, we will be exceptionally clear
- R. Lieberwitz –Thinks this has been a good discussion. No one is against complying with meaningful discussion. Don’t think we need to go overboard and have every stakeholder attend. These are open meetings, anyone can come. But along the lines of what Richard said, I ask myself where is this coming from... what is motivating this? Can’t completely tell. Experience with the Faculty Senate where if the administration doesn’t like what the

FS votes on, then we get a response of “you’re just a bunch of faculty, and you don’t really know what the rest of the faculty wants.” But, we were elected to speak for all of the faculty, and it relates to the issue of autonomy that was raised. That is the control we maintain. We are representative bodies. And the point of irony: how many years have we chased the administration to (allow shared governance to) provide consultation and input in their own decision making; this may be a case of “physician, heal thyself”. This president wasn’t here back then, but perhaps we can use this as an opportunity to say we’re all in agreement. We want to have the constituent assemblies working with you early to inform policy. How do we do that?

- J. Kruser – If we have a page on the website for Code amendments, people who are interested will know where to go. On the economy of shared governance, with the delegated authority from the president’s office there is a push and pull. We don’t have true autonomy, and we must remember that.
- M. Battaglia – Notes, the UA’s authority in the charter comes directly from the Trustees, so in terms of being autonomous from the president’s office... we are. In this case, we can be autonomous. We are not an arm of the administration, we are as autonomous as can be, even though we are in Day Hall. In our decision-making, we are autonomous.
- K. Zoner – Uniformly we have heard that people want more input; it may be what she (president) is trying to do; she is getting that pressure too. President is new to us. But, she doesn’t know us; hasn’t seen us work. We are tempering everything that we do to the best of our ability; we have always been a very thoughtful in moving forward. Let’s be more communicative of what we’ve done. The opinion of the day matters. Let’s re-shop it and determine if this still represents what we want to say.
- G. Kaufman – looking at the president’s response, she specifically said community outreach in the UA’s charter. The way I see it, that leaves outreach up to us. Maybe we did all of those things, maybe we did most of them. Thinks we fulfilled the requirement. Next time we pass a Code change, we need to make sure we specifically address this portion of our Charter. So, she will not be able to send it back. She can disagree, but she could not say we were not transparent.
- M. Battaglia – there is wiggle-room; “be as transparent as possible” gives us authority to do it the best way we decide.
- J. Kruser – What we’re aiming for is “spirit” and not just “letter”. If we document what we discussed here today, we should not run into similar situations in the future.
- R. Bense – Institutional memory. Interpretation of language in our bylaws should be tracked, so we know what it “means”. Don’t put things in the bylaws, but rather document what we want the bylaws to say. Point is that we are satisfying our bylaws. We are not satisfying the president. Make clear that distinction. We are not doing this to satisfy her request; we are doing this for ourselves.
- M. Battaglia- Bylaw amendments should be included for institutional memory. We should specify, “what constitutes public comment”, to ensure we are institutionally sound.
- J. Kruser – on documenting procedures, we could use the tool of “Standing Rules” to document procedures; much quicker to adapt than bylaws.

IX) For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, and the Complainants Advisor (10 minutes)

a) Tabled

X) Adjournment (Chair)

a) Adjournment at 5:47pm