



Cornell University University Assembly

Minutes

Codes and Judicial Committee
University Assembly
November 29, 2017
4:30pm-5:45pm
316 Day Hall

I. Call to Order (Chair)

- a. M. Battaglia called the meeting to order at 4:34pm.
- b. Roll Call:
 - i. *Present*: M. Battaglia, R. Bensel, C. Hodges, M. Horvath, N. Jaisinghani, K. Karr, G. Kaufman, R. Lieberwitz
 - ii. *Absent*: J. Kruser, S. Park, D. Putnam, K. Zoner
 - iii. *Others Present*: K. Ashford, T. Malone, M. Peralta-Ochoa, V. Price, N. Stetson, E. Winarto

II. Approval of Minutes (Chair)

- a. November 15, 2017
 - i. **Tabled** by unanimous consent until the Spring semester.

III. Business of the Day

- a. End of the Semester Outlook and Thank You (Chair)
 - i. The Chair, M. Battaglia thanked everyone for their hard work and service on the Codes and Judicial Committee this semester. He also recapped some of the highlights of the work of the Codes and Judicial Committee over the course of the past semester.
- b. Discussion with Hearing and Review Boards Chairs (Facilitated by Chair)
 - i. A Chair of the University and Hearing Review Boards, ____, introduced herself to the Codes and Judicial Committee and fielded questions from the Codes and Judicial Committee.
 1. R. Bensel spoke about the issues regarding the rights of defendants. He said that he is concerned that these issues aren't addressed, and that a chair of the University Hearing and Review Boards being able to, in his opinion, deny a defendant his or her basic rights.
 2. M. Horvath said that this is an educational administrative process. She said the process is very different from a court of law. She said the right to confront witnesses is a provision in the Campus Code of Conduct. She said that the Campus Code of Conduct can only participate in cases of suspension or dismissal. She said that, she spoke with Gabe Kaufman and Matt Battaglia about the University Assembly paying the cost, in the

case that there is another open hearing. She said, after a cost analysis, it will cost \$10,000.

3. N. Stetson said that the rules do good, but could do better at avoiding legalism.
4. A. Waymack discussed the Hearing Boards case of Mitch McBride and livestreaming during the public hearing. She said that there is no exemption for tape recording. She said that there needs to be very clear guidelines on how the public can share information from the hearings.
5. R. Lieberwitz said that she likes procedures. She said that education is fine, but that there is also a punitive nature to this. She said that is for due process, but not for pretending that this process is just educational. She said rehabilitation and due process are not exclusive at all.
6. R. BenseL said that the case [that he is thinking of] is egregious. He said that there was a premeditated intervention to add bias to the proceedings. He said that the actions of the administration and the actions of the Provost should be condemned. He said that the resources should be equal and balanced, because in the case of Mitch McBride, there was a power and resource imbalance. He said that procedural rights are the minimum.
7. M. Horvath said that she agrees with R. BenseL, which is why [she said] her office does not issue comments. She said that we [the Codes and Judicial Committee] need to be careful when we [the Codes and Judicial Committee] say we [the University] are not restorative, but 99% of the cases at the University are restorative. She said that the dismissal and suspension rate is small. She said that the system is complex and disproportionally fair. She said the University only needs to meet a fundamental fairness standard because the University is private.
8. N. Stetson spoke about a possible resolution to the University Assembly to stop administrators from commenting on cases heard by the University Hearing and Review Boards. He said that there needs to be clarification of the language to reflect the parts that are educational, punitive, and rehabilitative.
9. A. Waymack said that she urges us [the University] to move towards a system where no one has access to legal counsel outside of the University because it advantages the well-off. She said that she would like to see a system where counsel is not necessary, but it is difficult to achieve because of the issues previously raised.
10. M. Battaglia said that, in his interaction with the Judicial Codes Counselor, the Judicial Codes Counselor does not see outside counsel as being beneficial.
11. D. Putnam-Point of Information-Who owns the documents? Who can direct the owner to clarify and update the language of the document?
 - a. M. Battaglia said that there is a relationship between the Codes and Judicial Committee and the University Hearing and Review Boards. He said that the chairs would typically alter the documents.
 - b. M. Horvath said that it is typically the Administrative Chair, and in this case, Joel Cisne.

12. R. Lieberwitz said that the Codes and Judicial Committee should commit to clarifying the language. She said that she would not like to run away from the term of “due process,” as a term of art that is not specific to public institutions. She said that the term captures a notion of fairness.
 13. M. Battaglia spoke about University Counsel, and their relationship with the Codes and Judicial Committee.
 14. R. Benseal said that fear leads to bringing in outside counsel. He said that, in that fear, to deny someone the choice, no matter if it is bad, is a mistake. He said that there is an asymmetry of power.
 15. A community member spoke in support of A. Waymack’s ideas and the general power dynamics in cases that involve counsel.
 16. A community member spoke about the comments made during the Mitch McBride case.
 17. M. Horvath said that something missing in the procedures is a timeline for exchanges. She said that it is frustrating for her office when respondents fail to sign their SDA, resources are lost because her office must act to assemble a hearing. She asked why this process is so feared? She said that it is important that there is the option of having an attorney.
 18. V. Price said that, from a student perspective, it is worrisome that it will tarnish one’s record and transcripts.
 19. M. Horvath said that probation is reportable, but not notated.
 20. N. Stetson said that, one problem may be that the Campus Code of Conduct does not cover administrators. He said that he has mixed feelings about everyone being under the same Code of Conduct. He said that the easier thing to do would be to ask the University Assembly to request the administration to not comment on cases.
 21. M. Horvath said that faculty and staff are held to a higher standard of proof than students.
- c. For Discussion: University Hearing and Review Boards Staffing Update and Discussion
- i. M. Battaglia discussed the updated University Hearing and Review Boards questions and the upcoming staffing procedures.
 - ii. M. Horvath said that there should be a process of notifying individuals as alternates to train them for vacancies because the process to fill vacancies can be cumbersome.
 - iii. N. Stetson moved by unanimous consent to extend the meeting by 5 minutes.
- d. For Discussion: Hate Speech Working Group Update and Discussion
- i. M. Battaglia said that the Hate Speech Working Group met on Monday and discusses timelines and logistics, and that the bulk of the work would need to be done by the end of February, 2018. He said that they are still waiting on an employee representative and an undergraduate representative. He said that one faculty member was appointed.
 - ii. N. Stetson said that there is now a listserv. He said that they are working on producing a website under the Assemblies website.
 - iii. R. Lieberwitz said that it is important that, as the Hate Speech Working Group begins to meet regularly, it needs to be publicized so that the community will be aware.

- iv. N. Stetson moved by unanimous consent to extend the meeting by 5 minutes.
- e. For Discussion: Concerning the process of a holistic evaluation of the Campus Code of Conduct
- f. For Discussion: Discussing recent Department of Education policy shifts, our Quantum of Proof, and Policy 6.4

IV. Adjournment

- a. N. Stetson motioned to adjourn. There was no dissent. The motion was adopted. The meeting was adjourned at 5:55pm

Respectfully submitted,

Terrill D. Malone
Codes and Judicial Committee Clerk