

Cornell University University Assembly

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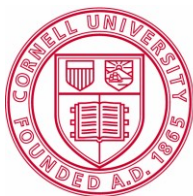
Agenda

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

- I. Call to Order (Chair)**
 - i. Call to Order (2 minutes)
- II. Welcome New Committee Members (5 minutes)**
- III. Approval of Minutes (Chair)**
 - i. May 9, 2018 (1 minute)
 - ii. September 12, 2018 (1 minutes)
- IV. Business of the Day**
 - i. Recommitted: Resolution 1 Appointment of University Hearing Board and University Review Board Members for Academic Year 2018-2019 (45 minutes)
 - ii. For Discussion: Final Report of the Codes and Judicial Committee's Working Group on Hate Speech and Harassment (20 minutes)
- V. Adjournment**
 - i. Adjournment (1 minute)

Attachments

- 1. UA R1 Appointment of University Hearing Board and University Review Board Members for Academic Year 2018-2019
- 2. CJC Meeting Minutes 05.09.2018
- 3. CJC Meeting Minutes 09.26.2018



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Minutes

Codes and Judicial Committee

University Assembly

May 9th, 2018

4:30pm – 5:45pm

163 Day Hall

I. Call to Order

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 4:37pm.
 - ii. M. Battaglia congratulated D. Barbaria for being elected Chair of the Codes and Judicial Committee (CJC) for the 2018-2019 academic year.
- b. Roll Call
 - i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, R. Bense, M. Horvath, R. Lieberwitz, V. Price, C. Riley
 - ii. *Absent:* K. Karr, G. Kaufman, J. Kruser, D. Putnam, E. Winarto, K. Zoner
 - iii. *Others Present:* M. Lee

II. Approval of Minutes

- a. April 25, 2018
 - i. M. Battaglia motioned to approve amendments.
 1. Minutes **approved** by unanimous consent.
- b. May 2, 2018
 - i. V. Price motioned to approve the minutes.
 1. Minutes **approved** by unanimous consent.

III. Business of the Day

- a. Working Group Update and Preliminary Report
 - i. R. Lieberwitz commended the Working Group on a job well done. She said that the Group attempted to create as broad a discussion as it could, and has drafted preliminary proposals based on public forums, which had greater turnout than expected. She added that the Group has decided to put together a draft report, which will be circulated among

its members within the next few weeks and formally given to the CJC for consideration next semester.

- ii. R. Lieberwitz said that members of the public raised concerns about issues of justice through public forums. She said that one of the Group's suggestions is to amend Title I of the Campus Code of Conduct, which includes the statement of principles and policies. She said that the Committee recommended adding positive aspects of university principles and values to Title I, such as including the "any person... any study" motto that affirms diversity and inclusion.
- iii. R. Lieberwitz said that the Working Group will refer to the preliminary reports from the Presidential Task Force on Campus Climate and its subcommittees, which are available online.
- iv. R. Lieberwitz said that the Group raised concerns about clarifying the language on harassment in Title III, Article III. D. of the Code. She said that the Group recommended clarifying the definitions of harassment and specific types of harassment to incorporate language from Policy 6.4. She said that the Group also recommended expanding the provisions of stalking and defining it in line with New York laws and model codes.
- v. R. Lieberwitz said that the Group recommended that the CJC and other university offices create guidance along the lines of the U.S. Office for Civil Rights or Equal Employment Opportunity Commission to expand the meaning of terminology in statutory provisions.
- vi. R. Lieberwitz said that the subcommittee of the Presidential Task Force has outlined recommendations for distinguishing prohibited speech or conduct from protected academic freedom. She said that the Working Group does not have specific recommendations for this matter but has discussed ways in which classroom activity needs to be protected.
- vii. M. Battaglia said that the Group has also discussed provisions outside of the Code.
- viii. M. Horvath said that intentionality may be difficult to prove when expanding the definition of stalking.
 1. R. Lieberwitz said that the Group discussed not to bring in the matter of specific intent.
 2. M. Horvath said that it may still be challenging for the Hearing Board to make a distinction based on the university's current standard of proof.
 3. M. Battaglia said that the Hearing Board's prior decisions have a persuasive but non-binding effect.
 4. M. Horvath said that the Office of the Judicial Administrator interprets any past decision as binding.
 5. R. Lieberwitz said that the Group anticipated such discussions to take place.
 6. D. Barbaria asked whether Hearing Board precedents will be put into the Code as binding or persuasive.
 - a. M. Battaglia said that they will be publicly available and that the Judicial Codes Counselor will allude to the precedents if they can be used.
 7. K. Ashford said that the process of protecting campus climate includes affording due process protections and that the higher intentionality requirement should not be completely dismissed.

8. R. Lieberwitz said that it would be useful to garner feedback regarding this matter. She said that the Group discussed that specific intent is a rather high standard, which is not used by New York State.
- ix. R. Lieberwitz said that the Group also discussed considering Greek organizations as university registered organizations under the Campus Code of Conduct. She said that this issue was also raised from the subcommittee of the Presidential Task Force.
- x. R. Lieberwitz said that the Group recommended that the CJC develops guidance for what constitutes a “serious violation” that extends jurisdiction beyond the campus. She also said that the Group recommended expanding the jurisdiction of the Code to clarify provisions on electronic communications. She added that the Group recommends that the Committee considers whether it would be necessary for the President to be involved in the decision to expand jurisdiction.
- xi. M. Horvath asked what the conversation on on-campus jurisdiction entailed.
 1. R. Lieberwitz said that some off-campus incidents of assault and harassment were close to campus, raising questions of whether the Code should include events that take place beyond campus borders.
- xii. C. Riley said that it is important for the university to protect students under all circumstances. He said that while fraternities may not be considered under the Code, they are student organizations that affect students.
- xiii. V. Price said that opinions from the community may warrant extending jurisdiction.
- xiv. M. Horvath said that the Judicial Administrator (JA) views “serious violation” as incidents such as off-campus drug sales, physical altercations, hazing, property damage, theft of a certain amount, and other cases to be determined on a case-by-case basis.
 1. R. Lieberwitz asked how often the JA has asserted off-campus jurisdiction.
 2. M. Horvath said that the figure was at around 50 to 70 times this year.
- xv. R. Benseal said that the notion of extended jurisdiction appears to have three dimensions – university activities, serious violations, and space. He raised concerns about the ambiguity of serious violations.
- xvi. K. Ashford asked whether the matter of extending jurisdiction is more focused on categories such as drugs and physical assault, or on applying the Code more broadly by considering all issues under the Code.
 1. R. Lieberwitz said that it entails both. She said that part of the recommendation was to clarify the term “serious violation” in the form of guidance and consider whether guidance should be considered as a separate document to clarify the scope of jurisdiction.
- xvii. V. Price said that it is more important to shift university community members’ understanding that the Code should apply to them wherever they are, rather than draw jurisdictional lines.
- xviii. K. Ashford said that extending jurisdiction over off-campus electronic communication may be difficult legally unless there is a material disruption.
 1. R. Lieberwitz said that the Committee should ensure that members of the community do not feel expanded jurisdiction as an additional layer of surveillance.

- xix. R. Bensel suggested extending jurisdiction through a non-arbitrary metric such as density of residential students per square mile.
- xx. R. Lieberwitz said that some of the Group's recommendations call for greater clarity in the language of the Code.
- xxi. M. Battaglia said that a guidance document could diminish ambiguity without directly amending the Code itself.
- xxii. M. Horvath noted that the Code covers not only students but also faculty and staff.
- xxiii. D. Barbaria said that mentioning population density may increase fairness but not clarification.
- xxiv. R. Bensel said that the principle would include members of the Cornell community regardless of who they are, based on the probability of personal contact.
- xxv. M. Horvath said that anyone who is associated with the university should abide by the university's values.
- xxvi. R. Lieberwitz said that these discussions raise useful questions.
- xxvii. R. Lieberwitz said that the Group supported encouraging the CJC to expand its use of alternative dispute resolution (ADR) and restorative justice programs. She said that this allows the Code to be educational rather than merely communicative.
- xxviii. R. Lieberwitz said that the CJC should be involved with actions and provisions that increase transparency. She said that the Group recommended greater comprehensive and ongoing training to safeguard the educational aspect of the Code. She added that the Group recommended that Cornell have a bias assessment response team.
- xxix. R. Lieberwitz suggested increased representation and diversity on governance bodies and greater support for academic programs such as Latin studies, Asian studies, Feminist, Gender and Sexuality studies.
- xxx. R. Lieberwitz noted that serving as Chair on the Working Group has been rewarding.
- xxxi. M. Battaglia thanked everyone on the Working Group and Codes and Judicial Committee for all their efforts. He said that President Pollack is interested in the Group's work, and that the Group and Task Force are essentially on the same page. He said that a guidance portion could make the Code more transparent and informative.
- xxxii. D. Barbaria asked if the guidance document would be legally binding.
 - 1. M. Battaglia said that the Committee has a full range of options. He said that increased transparency in reporting should not require changing the Code each time.
 - 2. R. Lieberwitz said that this is a complex question. She said that the Committee needs to discuss how this guidance document would be used next year.
 - 3. D. Barbaria said that if a guidance document were to be put in place, it should be followed by the Hearing Board.
 - 4. C. Riley suggested including provisions in the Code for Hearing Board members to see relevant information on the guidance document. He said that this would ensure that the members at least reference the document.
- xxxiii. M. Horvath motioned to extend the meeting.
 - 1. Motion **approved** by unanimous consent.

- xxxiv. R. Bensel said the guidelines should either be incorporated into the Code or removed once fully revised.
- xxxv. R. Lieberwitz said that having a reference of the guidelines in the Code does not mean that it is unenforceable, but that they reflect considerations about educating the public.
- xxxvi. R. Bensel asked if Appendix A can be changed without amending the Code.
 - 1. R. Lieberwitz said that it can be changed if the CJC wishes. She said that this warrants further study on what guidance means.
- xxxvii. M. Battaglia said that the greatest question lies in how to manageably express shortcomings in the Code. He commended the Working Group for its efforts.
- b. For Discussion: University Hearing and Review Boards Staffing Update
 - i. M. Battaglia said that the Committee received the decoder key last week. He said that Joel Cisne will inform him of members who wish to renew.
 - ii. M. Horvath said that she believed ranked members were submitted to the University Assembly.
 - 1. M. Battaglia said that this could not happen procedurally.
 - iii. M. Horvath said that she will need a full Board, as there is a possibility of seven hearings over the summer.
 - 1. M. Battaglia said that he hopes this will be completed within the next couple of weeks before current terms expire on May 31.
- c. For Discussion: The role of ADR in the Code, Reorganization of the Code Update, and UHRB Hearing/Sanctioning Guidelines
 - i. M. Battaglia said that the reorganization of the Code is ongoing. He said that a guidance document warrants a larger discussion of how the reorganization all fits together. He said that it would remove superfluous language while ensuring balance.
 - ii. M. Battaglia said that Committee members had brought forth questions about retention policies and asked the Committee to reference the retention policy document for this matter.
- d. Update Concerning the Previously Passed Amendments to the Campus Code
 - i. M. Battaglia said that the JA reappointment language was approved by the Committee last week and that amendments from this Committee were addressed. He said that the President informally supported it, and that he expects the language to go forward.
 - ii. M. Battaglia said that he has posted the Code amendments as an advertisement in the Cornell Daily Sun and has held public office hours.
 - iii. M. Battaglia said that the President has recommended adding a date in the JA reappointment language in lieu of “indefinite suspension”. He said that this language may be slightly amended, but it will be formally adapted by the end of the week or early next week.
 - iv. M. Horvath said that she did not see Code revisions in Resolution 4.
 - 1. M. Battaglia said that this was a logistical mistake and that they are broken up as requested by the Committee.
- e. Closing Remarks
 - i. M. Battaglia said that the University Assembly passed a formal resolution to thank

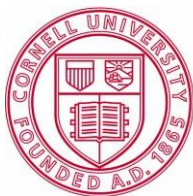
everyone on the Codes and Judicial Committee, University Hearing and Review Boards, and Working Group. He also personally thanked the Committee for its hard work.

- ii. M. Battaglia said that the Committee may revert to biweekly meetings as weekly meetings may be onerous.
 1. R. Bensel suggested meeting biweekly, but doubling the length of meeting times.

IV. Adjournment

- a. The meeting was adjourned at 6:00pm.

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



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Minutes

Codes and Judicial Committee
University Assembly
September 12th, 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 5:03pm.
- b. Roll Call
 - i. *Present:* D. Barbaria, M. Battaglia, M. Horvath, K. Kebbeh, C. Liang, R. Lieberwitz, A. Viswanathan, K. Zoner
 - ii. *Absent:* J. Anderson, L. Copman, R. Howarth, T. Onabajo, R. Parker
 - iii. *Others Present:* G. Giambattista, M. Lee

II. Introductions and Committee Overview

- a. Members went around the room to introduce themselves.

III. Approval of Minutes

- a. May 9, 2018
 - i. M. Battaglia motioned to table approval of the minutes until the next meeting when more members are present.
 - 1. Minutes **tabled** by unanimous consent.

IV. Business of the Day

- a. For Discussion: Conclusions of the CJC's Working Group on Hate Speech and Harassment
 - i. R. Lieberwitz said that she informed President Pollack on the Working Group's progress, and has received a positive response that the President looks forward to a report. R. Lieberwitz said that a draft report will be prepared very soon.
 - ii. M. Horvath asked if the University Assembly (UA) will be re-chartering the Working Group, as the Group's term has ended procedurally.
 - 1. D. Barbaria said that the Group is compiling the work completed

last academic year, and thus there will not be any more formal meetings.

2. M. Battaglia said that the Group's work is complete and that members will be going through the draft report. He commended the Working Group's efforts and noted that he does not see re-chartering as a necessary procedure.

b. For Discussion: AY 2017-2018 Resolution 24

- i. M. Battaglia said that he received positive feedback from the President, and that she hopes to work collaboratively and host discussions to understand where the Committee is at.
- ii. M. Horvath said that the Committee had passed four separate resolutions last year.
- iii. M. Battaglia said that the UA Executive Committee requested for "subparts" within the resolutions, for the Assembly to be able to decipher them more easily. He said that each subpart could on their own be accepted individually, but the President did not accept the resolution as a whole.
- iv. M. Horvath noted her frustration on the progress of the resolutions. She said that the Committee had purposefully grouped resolutions to increase likelihood of passing, and that it feels disingenuous that the work of the Committee was not conveyed or advocated for. She said that there is work that needs to be done for increased safety measures around the campus.
- v. M. Battaglia said that he held long conversations with the former leadership of the Student Assembly (SA). He said that some of the changes have not been implemented for many years. He said that the President could only accept the resolutions if presented as two items, but there was no single part where she would have accepted all points. He noted that it was not his intent to circumvent the will of the Committee, and that President Pollack is willing to engage in the process much earlier.
- vi. M. Horvath said that the resolutions were presented from the Committee to the UA. She added that she hopes that precautionary measures are taken by the UA in the future when resolutions are written from this Committee and presented to the UA.
- vii. D. Barbaria said that he is in favor of working towards that in the future. He added that it would be best if more UA executive members attend CJC meetings in the future.
- viii. R. Liberwitz asked about next steps in the procedure and what becomes of items that the President did not accept.
- ix. D. Barbaria said that there will be discussions on that issue both publicly and in Executive Session where matters of where the Committee is headed will be discussed. He said that none of the amendments have passed, and that the Committee will be addressing how to respond to the President's concerns.

c. For Discussion: Conclusions of President Pollack's Task Force on Campus Climate

- i. M. Battaglia summarized a number of recommendations that he had discussed in a meeting with President Pollack.
 1. M. Battaglia said that President Pollack recommended significantly simplifying the Code, as it is written in language that is opaque. He

added that Brown University's Code includes explanatory notes providing definitions on terms.

2. M. Battaglia said that one of the recommendations was to narrow the focus of the Code and have it only apply to students.
 3. M. Battaglia said that the President recommended simplifying the process for administration of the Code.
 4. M. Battaglia said that the President suggested clarifying what the Code does regarding language concerning student's compliance with official university duties.
 5. M. Battaglia said that the President recommended expanding the Code's treatment of harassment to mirror Policy 6.4. He said this includes placing Greek organizations under the Code or completely out of university jurisdiction, and rationalizing the various systems on campus based on Policy 6.4.
- ii. D. Barbaria referred to the "Make significant changes to the Campus Code of Conduct" initiative listed under the Diversity and Inclusion Initiatives page in the Office of the President's website. He said that his immediate thought is that the Committee needs more specific ideas from the President.
 - iii. M. Battaglia said that the Executive Session will allow for the Committee to candidly discuss concerns in private.
 - iv. M. Horvath motioned to move into Executive Session.
 1. Motion **approved** by unanimous consent.

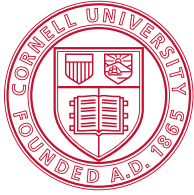
V. Executive Session

- a. Executive Session
 - i. The Committee went into Executive Session to discuss strategic matters regarding the Committee. Only voting members and the Chair of the University Assembly were permitted to remain for the discussion.

VI. Adjournment

- a. Adjournment
 - i. The meeting was adjourned at 6:05pm, following the Executive Session.

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



U.A. Resolution #1

Appointment of University Hearing Board and University Review Board Members for Academic Year 2018-2019

September 4, 2018

Sponsored by: Dale Barbaria, Undergraduate; Chair, Codes & Judicial Committee

On Behalf Of: The 2017 – 2018 UA Codes & Judicial Committee (K. Ashford, D. Barbaria, M. Battaglia, R. Bense, J. Kruser, R. Lieberwitz, V. Price, D. Putnam, E. Winarto, C. Riley, K. Zoner)

Whereas, the 2017 – 2018 Codes and Judicial Committee (CJC) received and reviewed applications for service on the University Hearing and University Review Boards (UHRB) from students and employees and made recommendations on appointments; and

Whereas, due to administrative delays in that process, the Executive Committee of the University Assembly (the 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, the students and staff temporarily appointed were formally vetted and recommended by the Codes and Judicial Committee during the 2017 – 2018 academic year; and

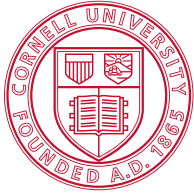
Whereas, the faculty members temporarily appointed were formally nominated for service by the Dean of the University Faculty; and

Whereas, the Dean of the University Faculty nominated additional faculty members for service on the UHRB over the Assembly's summer recess; and

Whereas, all individuals appointed to serve on the University Hearing and Review Boards must be confirmed by the University Assembly; therefore

Be it Resolved, the following student members are appointed to the UHRB for a two-year term beginning retroactively from June 1, 2018 lasting until May 31, 2020 or their graduation from the University, whichever is sooner:

Christopher Arce



Cornell University University Assembly

- 32 Keenan Ashbrook¹
33 Lauren Elaine Fairman
34 Emma Li¹
35 Sean McCoy¹
36 Milam Milhouse
37 Michael Redmond Daly
38 Varun Rohatgi
39 John Sullivan Baker
40 Alice Nam
41
42 **Resolved**, the following staff members are appointed to the UHRB for a two-year term
43 beginning retroactively from June 1, 2018 lasting until May 31, 2020 or their separation from the
44 University, whichever is sooner:
45
46 Natasha Aumick
47 Brigid Beachler
48 Joel Cisne
49 Eric Michael Giese¹
50 Michelle Hubbell
51 Jami Joyner
52
53 **Resolved**, the following faculty members are appointed to the UHRB for a two-year term
54 beginning retroactively from June 1, 2018 lasting until May 31, 2020 or their separation from the
55 University, whichever is sooner:
56
57 Celia Bigoness²
58 Susanne Bruyere
59 Angela Cornell
60 Laurie Drinkwater²
61 Alex Flecker
62 Robin Gleed
63 James Lloyd
64 Jeffrey Graham Scott

No signature block is present until the resolution has been disposed of by the Assembly (Passed, Failed, Withdrawn, etc.) Then a block with the certifying member (customarily Chair/Vice-Chair) verifying the authenticity and vote tally of the resolution.

¹ Individual not previously given an emergency appointment.

² Nominated by the Dean of the University Faculty during the Summer of 2018, not previously given an emergency appointment.