



# Cornell University University Assembly

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## Minutes

Codes and Judicial Committee

University Assembly

May 2nd, 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.

#### b. Roll Call

- i. *Present:* D. Barbaria, M. Battaglia, R. Bense, M. Horvath, G. Kaufman, V. Price, E. Winarto, C. Riley, K. Zoner
- ii. *Absent:* K. Ashford, K. Karr, J. Kruser, R. Lieberwitz, D. Putnam
- iii. *Others Present:* M. Lee

### II. Approval of Minutes

#### a. April 25, 2018

- i. M. Horvath requested to **amend** the minutes to resolve typographical errors and reflect M. Horvath and K. Karr's concerns about asking complainants for feedback on the Judicial Administrator (JA).
- ii. Approval of minutes **tabled** to the next meeting.

### III. Business of the Day

#### a. Working Group Update

- i. M. Battaglia said that the Working Group on Hate Speech and Harassment and the Presidential Task Force are two separate bodies who have reached different conclusions. He said that the Working Group has discussed placing sanctions under a guidance document directly under the Code as it has been in the past. He noted his approval of the proposals and agreement with the idea of the Greek system being placed back under the Code. He expressed his availability to talk individually with members who are interested in learning more about what the Group has done.

#### b. For Discussion: Proposed Changes to the Judicial Administrator Re-Appointment Process

- i. M. Battaglia said that G. Kaufman, J. Kruser, and himself had met with the administration on Friday to talk through the procedures. He said that the administration had no concerns with leaving the Judicial Administrator (JA) search committee membership to consist of 2 administration members. He added that the new language has been placed into the document based on the Committee's discussion from last week.
- ii. D. Barbaria entered the meeting.
- iii. Regarding point 3 of the draft language for JA reappointment, M. Battaglia said that the President will nominate the Chair for the JA search committee, which will be confirmed by the UA. He noted that this is a rough draft and he would be happy to rework the language of point 3 as the Committee sees fit.
- iv. Regarding point 4, M. Battaglia said that concerns were raised that the JA performance review process was too joint and the language implied that the administration was taking a lead rather than a supporting role. He noted that the new language reflected M. Horvath and K. Karr's concerns about complainants and respondents providing feedback about the JA. He said that the administration is open to concerns and in ensuring that there are appropriate privacy rules.
- v. Regarding point 5, M. Battaglia said that the new language for the JA removal process reflects concerns from last week on the President and University Assembly (UA) having an equal lever. He said that the new provision allows either the President or UA to initiate the removal of the JA, and the Board of Trustees would act as a check for this process.
- vi. R. Benseal asked who M. Battaglia negotiated with.
  1. M. Battaglia said that he spoke with VP for University Relations Joel Malina, VP and Chief Human Resources Officer Mary Opperman, and the President's Chief of Staff Kelly Cunningham. He added that the President has been briefed about the Committee's informal discussions and that she is pleased about where it is going.
- vii. M. Horvath expressed concerns that the new language on the JA performance review process had changed from what was discussed last meeting, to include a full evaluation committee every year.
  1. M. Battaglia said that the language is the same as what was given last week.
- viii. M. Horvath expressed concerns about receiving feedback from complainants and respondents, as they would be evaluating the Associate JA (AJA), not the JA. She noted that this concern was also shared by K. Karr last week.
  1. M. Battaglia said that his understanding was that the language meant to make the process more participatory and to include those who have been consulted. He added that there is value to having the AJA in the process as well.
- ix. M. Horvath expressed her belief that a "satisfaction guaranteed" is not what should be aimed through this judicial system. She said that complainants and respondents would be addressing their concerns with the AJA, not the JA.
- x. V. Price echoed M. Horvath's concern. She said that soliciting feedback is not a bad idea but this is not the appropriate place to do so.
- xi. R. Benseal suggested to strike "The evaluation process shall also include an opportunity for a reasonable number of complainants and respondents who have participated in the

judicial process, with opportunity for them to privately share their experience” from the draft language.

1. K. Zoner supported R. Bensel’s suggestion.
- xii. R. Bensel motioned to strike the aforementioned language and replace with “opportunity for university community to provide feedback on JA including individuals who have had experience with the judicial process”.
  1. K. Zoner expressed concerns that it would be difficult to manage that process.
  2. R. Bensel **withdrew** his motion.
  3. R. Bensel said that the larger public lacks awareness on the judicial process, and it would help to include insight from someone who has been through the process.
- xiii. M. Horvath said that it would make most sense to strike “The evaluation process shall [...] privately share their experience”. She approved of having the public provide feedback for comment on the judicial process.
  1. K. Zoner asked if this feedback process would only consist of a submission process, rather than having a blog list of responses.
    - a. M. Battaglia said that it would be submission only.
- xiv. R. Bensel said that the Committee had previously discussed striking “performance” for the process to merely include a “review” of the JA. He added that the Committee had agreed that a performance review would seem too much like an HR process.
- xv. R. Bensel motioned to strike “The evaluation process shall [...] privately share their experience” from the draft language.
  1. Motion **approved** by unanimous consent.
- xvi. M. Horvath motioned to add “to the Judicial Administrator” at the end of “This feedback shall be conveyed privately to the Chair of the University Assembly (or designee) and the President’s designee”.
  1. Motion **approved** by unanimous consent.
- xvii. G. Kaufman entered the meeting.
  1. M. Battaglia updated G. Kaufman on the draft language.
- xviii. G. Kaufman asked how the Chair of the JA search committee would be selected jointly.
  1. M. Battaglia said that the President will nominate and the UA would concur.
- xix. M. Horvath requested clarification on what “full participation” from point 4 means.
- xx. R. Bensel asked if the Chair of the search committee would be one of the members of the Committee.
  1. M. Battaglia replied in the affirmative.
- xxi. R. Bensel asked if there are any other important points to make note of regarding proposed changes to the JA reappointment process.
  1. M. Battaglia said that there are two major facets to the proposed changes. The first one is that the President’s designee and the UA Chair are placed as equals in spearheading the review process. Second, the President now has the same lever as the UA in the removal process. He noted that this will further be discussed in the UA meeting.
- xxii. K. Zoner motioned to strike “full participation” from point 4 and replace with “input

from” and strike “two additional members of the University Assembly” and replace with “the University Assembly”.

1. M. Battaglia noted that he will check with administration to understand the intent of the language.
  2. Motion **passed** by unanimous consent.
- xxiii. V. Price asked for clarification on point 5b.
1. M. Battaglia said that if the President wishes to remove the JA, he or she will notify the Chair of the UA. The JA may be removed if the UA agrees by a majority, but the matter will go to the Board of Trustees if the UA disagrees with the President.
  2. V. Price expressed that she does not find this provision to be necessary.
    - a. M. Battaglia said that this process would facilitate consultation between the President and UA in theory.
- xxiv. D. Barbaria asked what would happen if the President and Board decides to eliminate the JA even if the community approves of him or her.
1. M. Battaglia said that this provision gives the President and Board the authority to do so. He noted that, however, it also acts as a counterbalance since no one would wish for the matter to become public.
- xxv. G. Kaufman asked if this process is a means of keeping the President in check to ensure that he or she attempts to reach agreement before publicizing the matter.
1. M. Battaglia said that this provision is indeed a codification of that idea. He said that the President would be forced to converse with the UA Chair before voting on the matter.
- xxvi. G. Kaufman noted that the language indicates that if the President disagrees with the UA, he or she could merely approach the Board of Trustees and thus the Board does not play a large role in ensuring that the process is kept in check.
- xxvii. D. Barbaria made a motion to amend point 5b of the draft language from “taken at a regularly scheduled meeting” to “taken at the next regularly scheduled meeting after the Chair was notified”, as well as amend “Should the University Assembly not agree” to “Should the University Assembly have voted but did not vote in favor of termination and no mutually agreeable resolution”.
1. M. Battaglia suggested amending D. Barbaria’s proposed language to “Should the University Assembly not agree by formal vote” and add a clause stating that the President may not approach the board until a formal vote has been made.
  2. G. Kaufman acknowledged the importance of leaving room for UA leadership and the President to have a discussion. He said it should only be made public if the two constituents do not agree.
  3. M. Battaglia suggested having a meeting on this matter to find a mutually agreeable solution. He noted that the Board traditionally backs the President’s decisions.
  4. G. Kaufman said that there is no deterrence in having the President go to the Board, but the deterrence lies in ensuring that the matter is resolved without the need for making it public.

- xxviii. Motion **passed** by unanimous consent to amend the language to “Should the University Assembly not agree after taking a formal vote”.
- xxix. M. Battaglia **called the question** to advance the language to the full UA for consideration.
  - 1. Draft language for JA reappointment **passed** for UA consideration by a vote of 5-0-1.
- c. For Discussion: University Hearing and Review Boards Staffing Update
  - i. M. Battaglia said that the Committee can move forward now that he has received the coder key from the Office of the Assemblies (OA). He noted that, however, the OA has not provided the resumes of University Hearing and Review Boards (UHRB) applicants. He said that emergency appointment measures may need to take place in the summer.
  - ii. G. Kaufman asked if the Committee will be conducting emergency appointments this year.
    - 1. M. Battaglia said that the Committee currently lacks the time to do so because the coder key was received today.
  - iii. M. Battaglia said that vacancies will be cleared assuming that the President accepts the Code amendment to increase the size of the Board. He said that the Committee intends to have as full a Board as possible before next semester.
  - iv. D. Barbaria asked if there are Code amendments that haven’t been passed yet.
    - 1. M. Battaglia replied in the affirmative.
  - v. D. Barbaria asked if M. Battaglia had reached out to Joel Melina, VP for University Relations.
    - 1. M. Battaglia said that he had reached out to receive the key, which was given to the Executive Committee of the UA.
- d. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor
  - i. M. Battaglia said that he has incorporated typographical errors and discussions from last meeting. He said that the original Question 4 is now in Question 13, and Question 6 has now been flipped.
  - ii. M. Battaglia noted that V. Price asked if the Policy 6.4 selection questions could include a maximum word count.
    - 1. V. Price clarified that she asked for a minimum word count, not a maximum.
  - iii. E. Winarto asked if whoever is reading the answers would be doing so anonymously.
    - 1. M. Battaglia said that the process is not anonymous and Committee members have information as to who wrote which responses.
  - iv. V. Price suggested omitting “bias” from “do you believe bias” in question 5.
    - 1. The language has been incorporated.
  - v. C. Riley expressed that he was unsure what Question 6a was attempting to accomplish.
    - 1. M. Battaglia said that for the first time, one of the Policy 6.4 members did not wish to go through with the training process this year and hence the question seeks to try to recruit as unbiased members as possible through asking if applicants have opinions that affect their ability to be impartial.
    - 2. K. Zoner said that the question seeks to allow applicants to think whether they

- would be willing to be impartial and dispassionate.
- vi. V. Price said that the language could be amended to “Do you believe that your personal opinions about [...] could interfere with your ability to be impartial?”
    - 1. M. Battaglia said that is essentially the language before amendments from last meeting.
  - vii. C. Riley said that he sees the use of the question now that it has been clarified.
  - viii. V. Price said that Questions 6, 7, 8, 9, 11 could make use of a minimum word count since they are important to the selection process.
  - ix. M. Horvath motioned to extend the meeting by 20 minutes.
    - 1. Motion **approved** by unanimous consent.
  - x. M. Battaglia said that the Committee discussed last meeting to have these questions sent as an informal document to the Title IX office instead of having it formally go through the UA.
    - 1. V. Price suggested sending it to the Title IX office after incorporating changes noted today.
  - xi. M. Battaglia said that he will incorporate edits, circulate concerns through the Committee listserve, and transmit to the Title IX office to see if they have any concerns.
    - 1. **Passed** by a vote of 5-0-1.
  - e. For Discussion: Codifying Prior Practices for UHRB Staffing
    - i. M. Battaglia said that the UA has been briefed on Appendix A, and that it is important to ensure that the UHRB is fully staffed.
    - ii. D. Barbaria – point of information on what expiration of emergency appointments is.
      - 1. M. Battaglia said that the Code gives discretion to make temporary appointments.
    - iii. D. Barbaria asked if the Committee could only solicit applications in the spring.
      - 1. M. Battaglia said that the Committee could solicit applications in the fall if it sees fit. He noted the low turnout in this year’s applications.
    - iv. M. Battaglia said that the Committee could vote now or via email or amend further before Appendix A is sent to the UA meeting.
      - 1. Vote to approve Appendix A **passed** by 5-0-1.
  - f. Update Concerning the Previously Passed Housekeeping Amendments to the Campus Code
    - i. M. Battaglia said that the language is currently being discussed in the UA, and that he is working with the OA to get an advertisement in the Cornell Daily Sun notifying community members about the Code amendments.
    - ii. M. Battaglia said that he has presented the content of the 10 Code amendments to the Student Assembly, and will be bringing it to the Graduate and Professional Students Assembly meeting. He added that several office hours have been conducted, during which a community member asked questions about why UHRB appointment procedures were being amended.
    - iii. M. Battaglia said that he has asked for the link to the OA’s comment box through which the Committee receives feedback from community members regarding concerns about the Code. He said that he has shown G. Kaufman that the Committee’s own anonymous comment box is currently empty.

- iv. M. Horvath – point of information on whether the proposed amendments have been sent in as 4 separate resolutions.
- v. D. Barbaria asked where one would be able to go to the comment box from the OA website.
  - 1. M. Battaglia said that it may be difficult to find, and that is why the Committee has its own comment function.
- g. For Discussion: The role of ADR in the Code, Reorganization of the Code Update, and UHRB Hearing/Sanctioning Guidelines
  - i. M. Battaglia said that in terms of reorganization of the Code, he hopes to have something more concrete by the last meeting next week. He noted that the main concern lies in making the reorganization more understandable.
  - ii. M. Battaglia said that the ADR portion of the Code is in its second semester of pilot and has been going well. He said that concerns were raised that the Judicial Codes Counselor (JCC)'s absence in the process makes it difficult for students to understand the sanctioning process. He added that once this portion becomes more established, it could be placed into the Code to ensure community input and to act as a notice function.
  - iii. M. Battaglia said that a concern was raised in that the JCC has been making the process more adversarial or argumentative. He expressed that he personally has no concerns with the JCC and believes that the JCC is enforcing the highest standards to his knowledge.
  - iv. M. Battaglia said that students are taking a more active role and utilize ADR to make the process more of a learning experience, which is why ADR should belong in the Code. He noted that this would be a longer-term project, but is promising.
  - v. M. Horvath noted that this is the third semester of the program, not the second. She said that ADR ensures development and dialogue is facilitated for impacted parties. She expressed her content with the success of the program and noted that there is a document that outlines the process available for Committee members to view.
  - vi. M. Battaglia said that he believes this is an excellent program. He expressed hopes for the Committee to become more involved with the matter and to ensure that the community is aware of this program.
  - vii. D. Barbaria asked if the Committee will be discussing preliminary comments from the Working Group.
    - 1. M. Battaglia said that the Committee will be hearing a final report from the Group next week, during its last meeting.
  - viii. D. Barbaria asked if there are any plans of reconvening the Working Group in the fall.
  - ix. M. Battaglia noted that two of the Group's members are graduating. He said that the report would be a deliverable and recommendations would still need to come through this Committee.

#### **IV. Adjournment**

- a. The meeting was adjourned at 6:07pm.

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