



**Cornell University**  
**University Assembly**

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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.
- x. 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