



Cornell University University Assembly

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Minutes

Codes and Judicial Committee
University Assembly
September 30th, 2019
1:00pm – 2:30pm
305 Day Hall

I. Call to Order

- a. Call to Order
 - i. L. Kenney called the meeting to order at 1:12pm.
- b. Roll Call
 - i. *Present:* J. Anderson, R. Bensel, J. Bogdanowicz, M. Hatch, L. Kenney, R. Lieberwitz, J. Michael
 - ii. *Absent:* G. Martin, L. Taylor, K. Wondimu
 - iii. *Others Present:* K. Clermont, G. Giambattista, M. Lee, M. O’Gara

II. Approval of Minutes

- a. September 23, 2019
 - i. M. Hatch requested to have his name reflected accurately.
 - ii. J. Michael moved to accept the friendly amendments and approve the minutes.
 1. Minutes **approved** by unanimous consent.

III. Business of the Day

- a. Discussion of Questions for the President
 - i. L. Kenney said that President Pollack will attend the University Assembly (UA) meeting tomorrow at 4:30pm. She said that she has requested that the she, on behalf of the Codes and Judicial Committee (CJC), be given time to ask questions to the President.
- b. Campus Code of Conduct – M. Hatch Proposed Resolution
 - i. L. Kenney recommended to table the resolution either indefinitely or for a specified period of time, as it is merely reinforces the rights of the CJC which are already within the bylaws. She opened the floor for discussion.
 - i. M. Hatch recommended to include R. Bensel as one of the sponsors of the resolution, based on what was discussed last meeting.
 - ii. R. Bensel said that tabling makes sense but passing the resolution today

- would help L. Kenney be better equipped for the UA meeting tomorrow.
- iii. M. Hatch recommended friendly amendments to the resolution for accuracy.
 - iv. R. Bensel moved to pass the resolution.
 - v. R. Lieberwitz said based on her understanding, the intent of the resolution is to make clear that the CJC will consider whether to have a separate Student Code of Conduct, but the Committee hasn't decided to do that. She said that she would be for passing the resolution if the Committee is making clear that it is not committing to a decision on whether to have a separate Student Code.
 - vi. L. Kenney said that her rationale for tabling the resolution was for that precise reason – so that the Committee is not giving any indication that it is writing a Student Code of Conduct.
 - vii. M. Hatch said that was why the resolution states that several amendments have been proposed, but it doesn't point to any specific type of Code that the Committee is considering. He said that there are reasons not written in the resolution as to why the Judicial Administrator (JA) and President want a student Code. He also said that the CJC is vested with the responsibility of the Code by approval of the former President and the Board of Trustees, but he has heard of the possibility that the Board of Trustees could reject the UA/CJC's charge of the Code and is uncertain how that could take place.
 - viii. K. Clermont said that he believes the Board of Trustees has the plenary power to do so.
 - ix. L. Kenney introduced guest K. Clermont as professor of law and one of the original drafters of the Code.
 - x. K. Clermont said that mentioning a Student Code of Conduct may potentially legitimize the suggestion.
 - xi. M. Hatch said that the fourth "Whereas" clause that includes the language of a Student Code of Conduct could be removed.
 1. R. Bensel accepted the friendly amendment.
 - xii. R. Lieberwitz and J. Bogdanowicz proposed friendly amendments for grammatical accuracy.
 - xiii. L. Kenney said that with that, she agrees with the Committee in that the resolution equips the CJC and reaffirms its goals.
 - xiv. R. Bensel called the question to vote on the motion.
 1. Motion to pass the resolution as amended – approved by a vote of 5-0-2.
- b. Campus Code of Conduct – Continuation of Recommendations
- i. L. Kenney said that she was told that she would be receiving the procedural portion of the University Counsel's draft Code, but she has yet to receive it.
 - ii. R. Lieberwitz said that it feels that the administration is trying to separate the procedures from the substance of the Code.

- iii. L. Kenney suggested discussing questions to ask the President while the Committee waits for the Google Doc on recommendations to the Code to be projected on the board.
- iv. M. Hatch said that the University Counsel's draft has been presented to the Committee as a Student Code of Conduct, but the Committee has decided not to have a separate Student Code of Conduct.
- v. L. Kenney said that the Committee has voted to work from the University Counsel's draft as a template and has decided to focus on the student portion of the Code for now.
- vi. M. Hatch moved to discuss working on the Campus Code of Conduct instead of the student portion of the Code of Conduct.
 1. R. Lieberwitz seconded.
- vii. M. Hatch said that in passing the amendment to the resolution to remove the language on a Student Code of Conduct, the Committee affirmed that it will consider recommendations through the Campus Code of Conduct. He said, however, that is not what the Committee is currently doing as it amends the University Counsel's draft.
- viii. R. Lieberwitz suggested to decide whether to flag the idea of a Student Code of Conduct with an understanding that the Committee will revisit it or decide now whether the Code would apply to everyone.
- ix. K. Clermont said that the alternative would be to work on the draft on the University Counsel's website, which deals with a Campus Code of Conduct without mention of a Student Code of Conduct.
- x. J. Anderson said that he believes it makes sense for the Committee to continue working on the current Google Doc version. He said that this is the most simplified version and it would be appropriate to flag the idea of a Student Code of Conduct for now.
- xi. L. Kenney said that she believes the Committee should continue working off of this draft with an understanding that some violations are more pertinent to students and that this would not necessarily be a Student Code of Conduct. She also said that many of these definitions apply to the community, and it would be a mistake to look at the current document as just tailored to students.
- xii. R. Lieberwitz said that it appears that there is a general agreement on the notion that principles and values should apply to everybody.
- xiii. M. Hatch said that even if the word student is removed, the document makes it appear as if there is a broader implication that the Office of the Judicial Administrator (JA) would move to be understood within the realm of student affairs. He said that assumes that everything adjudicated under the Code of Conduct would be adjudicated such that the JA would be a JA for students, which undermines the sense that this is a Campus Code.
- xiv. L. Kenney said that the Committee should wait to discuss procedures until it

- receives the procedural portion from the Counsel.
- xv. R. Bensel said that considerations on the Office of the JA should be discussed later in the draft when the Committee reaches that point.
 - xvi. K. Clermont said that the principles and values section in the Google Doc draft seems more compact than what is currently in the Campus Code. He asked if anyone has gone through the current Code to consider whether anything important has been left out.
 - xvii. R. Lieberwitz said that what is currently in the document is what has been recommended by Committee members. She said that the Committee should make progress on items that it agrees on first.
 - xviii. L. Kenney said that the Committee agreed to use the draft as a loose template, and it is not necessarily what will be sent to the UA. She said that the Committee does need to address whether the document will no longer be called a Cornell Student Code of Conduct.
 - xix. R. Lieberwitz moved to amend the document as a part of a greater Campus Code of Conduct for the time being instead of naming it a Student Code of Conduct.
 1. M. Hatch suggested to defeat the motion and said that he strongly urges the Committee to abandon the draft as it has been presented to the Committee.
 2. L. Kenney said that the Committee is voting solely on whether to not commit to a student portion of the Code for the time being, until the Committee receives the specific language tasked by the President.
 3. L. Kenney called the question to change the name of the working draft from a Student Code of Conduct to a Campus Code of Conduct.
 4. Motion approved by a vote of 4-2-1.
 - xx. M. Hatch moved to table the current draft version and first seek clarification from the President regarding what is necessary to amend within the current Campus Code.
 - xxi. R. Lieberwitz seconded and said that if the Committee goes back to a Campus Code, this may create even more friction than already exists. She said that the Committee should instead go through what the administration has provided first and incorporate suggestions.
 - xxii. R. Bensel said that he agrees and that the Committee should consider the Counsel's proposals first before outright rejecting them.
 - xxiii. M. Hatch said that he accepts the viewpoints of other members of the Committee. He suggested, however, that the Committee also remains cautious about the implications within the draft. He said that the Code is meant to be a Campus Code and not a Student Code.
 - xxiv. J. Michael said that as a new member, she is unaware of the context and

history of the Code. She asked what the major concerns are and what the Committee has been charged to do.

- xxv. M. Hatch said that multiple events have taken place in the past, such as protests relating to speech, that have prompted a revisit of the Code.
- xxvi. J. Anderson said that from a student perspective, having a process to change the Code is important. He said that over the last couple of years, hate crimes took place across campus, during which black students fundamentally believed that the Code was not protecting students. He also said that over the last couple of years, some recommendations were given but there was little being done. He added that from an undergraduate perspective, amendments to the Code will benefit students and especially protect marginalized students.
- xxvii. J. Michael said that she believes it is important to think about how students advocate for their safety in a system that governs them.
- xxviii. L. Kenney said that she would not typically vote as a Chair, but she did so in the previous motion to ensure that the Committee is aware of potential implications for other members of the community. She asked that the Committee consider how to make the Code more readable first without opening up a discussion on whether there would be a separate Code for faculty and staff.
- xxix. J. Michael asked if there is a separate faculty handbook.
- xxx. R. Lieberwitz said that there are two major lines of concern regarding the Code – the first being a substantive concern on whether it protected students with regard to issues such as harassment, speech and conduct. She said that in regard to this issue, the Working Group on Hate Speech and Harassment produced a report and this issue would continue to be part of a larger discussion. She also said that the other line of concern is broader in that the Code needs to be streamlined as it is currently too long and too difficult to read. She added that the CJC has been committed to a Campus Code, where members of the community share rights. She suggested that the Committee first work on the first portion of the draft and consider what it agrees on.
- xxxi. R. Bensel said the Code is about shared governance. He said that the Office of the JA is a representation of shared governance, as the role is currently suspended between the UA and administration. He also said that some of the concerns raised can be addressed in later discussions.
- xxxii. J. Michael asked who the JA reports to.
- xxxiii. R. Bensel said that the JA reports to the Committee and the Committee can call in the JA for any issue. He also said that the Committee has failed in some ways to exercise that jurisdiction.
- xxxiv. K. Clermont said that the history of amendments to the Code date further back than two years. He also said that streamlining the Code is synonymous to eliminating rights prescribed within the Code, and that the Committee

- should be careful about the motives.
- xxxv. L. Kenney said that the Committee is merely using the language from the University Counsel as a template, and that the Committee has never voted to use the draft for end all means.
 - xxxvi. J. Anderson suggested making progress in the current Google Doc draft and change it as the Committee sees fit.
 - xxxvii. L. Kenney suggested looking at the original Code in conjunction with R. Bensel's proposals from last year for the principles and values section. She said that she has not been provided with the actual language of what the President has tasked the Committee with. She also suggested discussing questions the Committee has for the President for the time being to have a better idea of what the administration hopes for the CJC to accomplish. She said that within the bylaws, the Committee can consider these tasks but is not required to incorporate them.
 - xxxviii. M. Hatch **withdrew** his motion. He also suggested L. Kenney to first ask the President what she wishes to have done with the current Campus Code of Conduct. He said that if the President states that the Code merely needs to be clarified, the Committee could make a statement that it will work on that.
 - xxxix. L. Kenney said that she will ask for the task language directly from the President's Office. She also said that she will try to get the President to meet directly with the CJC.
 - xl. R. Lieberwitz said that asking the President on her general views on the Campus Code and any changes that need to be made would be helpful. She said that the time at the UA meeting gives L. Kenney a chance to reassert the CJC's job and what it is trying to do in terms of coming up with a final recommendation. She suggested conveying that the Committee will consider everyone's views and plans to consult broadly.
 - xli. L. Kenney said that she will reiterate the importance of transparency and that the Committee will seek public comment when ready.
 - xlii. J. Anderson shared the language from the Office of the President's website on Diversity and Inclusion Initiatives dealing with the Campus Code.
 - xliii. L. Kenney said that moving towards a more aspirational and non-punitive tone is important for the Code. She said that she will ask the President whether she envisions a separate Student Code of Conduct, and what that would mean for different members of the community.
 - xliv. M. Hatch said that the language from the President's website states that recommended changes are being reviewed, not necessarily that the Committee will adopt them.
 - xlv. K. Clermont said that the language suggests that faculty and employees are not considered in the Code revisions. He also said that the "educational and aspirational tone" does not suggest a means for restorative justice but rather administrative procedures without rights.

- xlvi. J. Anderson said that he disagrees with this notion.
- xlvii. L. Kenney said that the Committee could choose to read the “aspirational” language as a move towards focusing on restorative justice.
- xlviii. R. Bensel requested L. Kenney to emphasize when the Committee would be receiving the procedural portion of the University Counsel’s draft. He also said that it may not be helpful to have the President attend the meeting as this is too early in the process and she may not be willing to make specific commitments. He further suggested stating to the President that there is a strong predisposition in the CJC to see the Code as a unified document applying to everyone.
- xlix. J. Anderson recommended including questions about the President’s vision for the Office of the Judicial Administrator.
 - 1. R. Lieberwitz said it would be best to keep the questions vague and general instead of making it seem like the Committee is asking for instructions.
 - li. R. Bensel agreed and said that this could be prefaced by expressing that the Committee has not been receiving enough information from the administration.
 - lii. R. Lieberwitz said that the Committee would be reminding the community that it believes in a transparent process and will gather information from all constituents.
 - liii. J. Anderson said that he would like the Committee to keep in mind that the President has the final approval mechanism.
 - liv. R. Bensel asked if the Committee could receive the Counsel’s draft as was provided.
 - lv. L. Kenney said that she will send it again to the Committee after the meeting today.
 - lvi. L. Kenney recommended that the Committee first delve into the Principles and Values section and prepare to discuss that. She also said that the Committee should reiterate its intent to ensure that it is seeking to retain rights across the University.
 - lvii. R. Lieberwitz asked the Committee to take a look at the suggestions she added to the Principles and Values section of the Google Doc draft.
- c. University Hearing and Review Boards (UHRB)
 - ii. L. Kenney said that she does not yet have an update on UHRB vacancies and will check with M. Horvath regarding numbers. She also said that the Committee will need to revisit the process and explore whether it would be possible to reappoint those who have already gone through the training process.
 - iii. L. Kenney said that she will create a Google Doc with a set of questions to ask President Pollack at the UA meeting. She said that she will send out this Google Doc to members of the Committee for suggestions and will then

send it to the President ahead of time.

IV. Adjournment

- a. R. BenseI moved to adjourn the meeting.
 - i. The meeting was adjourned at 2:32 pm.

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