



# Cornell University University Assembly

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## Minutes

Codes and Judicial Committee

University Assembly

October 10th, 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 4:55pm.
- b. Roll Call
  - i. *Present:* D. Barbaria, K. Kebbeh, R. Lieberwitz, A. Viswanathan, S. Vura, K. Zoner
  - ii. *Absent:* K. Ashford, L. Kenney, T. Onabajo
  - iii. *Others Present:* J. Anderson, M. Battaglia, M. Horvath, M. Lee

### II. Approval of Minutes

- a. September 12, 2018
  - i. Minutes **approved** by unanimous consent.
- b. September 26, 2018
  - i. M. Battaglia moved to table the minutes.
    1. Minutes **tabled** by unanimous consent.

### III. Business of the Day

- a. 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's Final Report is structured by proposals, language from the Campus Code of Conduct (meant to aid readers), and recommended changes (to be considered by the Committee). She said that the report contains a general narrative of what is recommended to be changed, mainly in consideration with the language of the Code.
  - ii. R. Lieberwitz provided an overview of the Final Report in detail. In reference to page 25 of the document, she said that the Working Group proposed changes outside the scope of the Code, which may include a systemic analysis based on open forums. She also said that the report

outlines areas in which there are agreements with the Presidential Task Force on Campus Climate.

- iii. R. Lieberwitz noted that recommendations were based on campus-wide discussion and broad community engagement. In reference to page 5 of the document, she said that the proposals reflect a consensus among Working Group members as well as those from the greater university community.
- iv. R. Lieberwitz referred members to pages 10 through 15 of the document, which concern issues of harassment, stalking, and assault. She said that there are some areas in which proposals overlap but are not necessarily the same as those provided by the Presidential Task Force. She said that the Working Group recommended making changes that draw on Policy 6.4 to Title Three Article II. A. 1. She said that these proposed changes are very important and are reflected in the suggested Code language changes. She added that the Group recommends that the Codes and Judicial Committee (CJC) creates a guidance document on harassment and hostile environment – as an appendix to the Code to aid interpretation. She said that a separate appendix or guidance document would be better than overloading the Code with information.
- v. R. Lieberwitz referred members to page 16 of the document. She said that members of the public have raised concerns on how Policy 6.4 on harassment is so distant from the Code.
- vi. R. Lieberwitz said that the document has not yet been distributed publicly and that the Committee should consider when and how to distribute more broadly, including to members of the administration. She added that it is important to publicize what has been done to continue with community engagement and ensure accessibility.
- vii. M. Battaglia thanked R. Lieberwitz for her efforts as Chair of the Working Group. He said that he has talked with the Office of the Assemblies about placing the Group's prior work into an archive and then focusing on publicizing the report itself. He added that President Pollack will speak to the University Assembly (UA) on October 16 and asked if R. Lieberwitz would be interested in speaking to the Assembly about the Report on that day.
  - 1. R. Lieberwitz said that she will be able to attend the UA meeting on October 16.
- viii. D. Barbaria asked if it would be possible to amend the report before the UA meeting on October 16.
  - 1. R. Lieberwitz said that it could make more sense to maintain the report within the Committee instead since October 16 is approaching soon. She recommended publicizing the report at the UA meeting on the 16<sup>th</sup> while noting that the CJC will be reviewing the document.
  - 2. M. Battaglia agreed with R. Lieberwitz. He said that the report

- should be presented as a product of the Working Group's efforts, which the CJC could later amend.
3. R. Lieberwitz said that the Committee is free to amend the report as it wishes, but this is where the report is at now.
- ix. J. Anderson asked how Policy 6.4 could be brought closer to the Code, and whether this would be a formalization inside the Code.
1. R. Lieberwitz said that to some extent, the recommendations do bring the language from Policy 6.4 closer to the Code. She said, however, that the Group was not in a position to make a definitive recommendation on that matter because it concerns a much larger question. She said that the Group felt there was enough dissatisfaction and confusion that this was an appropriate moment for the CJC and others to consider more of a seamless approach of integrating Policy 6.4 and the Code.
- x. J. Anderson asked if bringing Policy 6.4 closer to Code would also concern quantum of proof.
1. R. Lieberwitz said that this would require further discussion as there will certainly be much debate on the issue.
- xi. M. Horvath said that the community seems to want greater accountability. She asked if there was any discussion on how having a higher standard of proof would ensure greater accountability.
1. R. Lieberwitz said that she did not recall any discussion about lowering the standard of proof. She said members of the community requested more clarity and understanding on what the penalties would be, and how sentencing would be carried out.
- xii. M. Battaglia said that there was a little discussion on bringing Greek organizations back under the Code, in reference to page 17 of the report. He said that he personally agrees that accountability and quantum of proof are not necessarily linked. He added that the intention is to bring Policy 6.4 and the Code closer together, while the UA wanted to keep quantum of proof where it was.
1. D. Barbaria asked if such an intention is noted anywhere.
- a. M. Battaglia said that it is in the appendix of the Code.
- xiii. J. Anderson said that there are many discussions in progress regarding Greek organizations and their relationship to the Code. He said that the Greek organizations have a lower standard of proof than the Code and this has garnered criticism. He added that such larger conversations would be valuable.
- xiv. M. Horvath said that she supports utilizing alternative dispute resolution for non-Code violations. She added that the Code currently lacks a non-compliance enforcement mechanism except for Title 4.

- xv. M. Horvath said that she was curious to know where concerns about sanctions arose from, in reference to page 19 of the Working Group's report.
- xvi. K. Zoner said that having different levels of discipline offers greater opportunity to address each specific issue, whereas choosing a certain quantum of proof for all cases limits conversations.
- xvii. M. Battaglia said that members of the community have discussed the long-term effect of sanctions, and have largely been in support of alternative dispute resolution (ADR). He added that he personally believed that the past pilot year for ADR has been excellent. He also said that it would be useful to have an educational rather than punitive effect to the Code, and that our system has a strong presumption of innocence and community involvement.
- xviii. R. Lieberwitz said that everyone involved with the Working Group's discussions agreed that bringing Greek organizations back under Code would be a good idea, as this would allow such organizations to be viewed as a part of the community and held accountable under the Code. She said that this would also allow for Greek organizations to be held to the same standard of proof as other community members, while requiring less self-regulation from the organizations themselves. She said, however, that nothing is mutually exclusive by bringing Greek organizations back under the Code as they could choose to have stricter self-regulation.
- xix. R. Lieberwitz said that in terms of guidelines for sentencing, the Working Group recognized that the approaches sometimes seem to be in conflict, in reference to page 19 of the report. She said that the guidelines were not meant to criticize what was being done, but rather to enhance transparency, predictability, openness, community education, and reporting.
- xx. R. Lieberwitz said that many community members supported having an educational realm to address "gray areas" to potential Code violations through ADR. She said that she believes that the Code is punitive in that it has potential penalties, but also has proactive or responsive measures.
- xxi. R. Lieberwitz said that different standards of proof for sexual and racial harassment leave room for interpretation when there is an intersection between the two. She said that there are many strong opinions for keeping the standard of proof high, but that is related to a larger discussion.
- xxii. J. Anderson said that alternative dispute resolution serves in similar but different functional capacities in the Judicial Administrator's office and the Dean of Students' office. He added that it would be interesting to see the effects of a change in standard of proof on Greek organizations.
- xxiii. D. Barbaria said that the Committee shall continue such discussions and possible amendments to the Code in the coming months.
- xxiv. M. Battaglia said that alternative dispute resolution would be most beneficial to the community if it is non-mandatory. He said that he

personally believes that ADR should remain in the Code because it gives parties more control over their outcomes, but only poses a good solution for those who are willing to partake in it.

- xxv. M. Battaglia said that in terms the Code itself, he believes that it should be named “Cornell Code of Conduct” instead of the “Campus Code of Conduct” as this allows the Code to be expanded and applied to the broader community. He added that based on his discussions with the Judicial Codes Counselors, it is his understanding that they seek a higher quantum of proof.
- xxvi. M. Horvath said that the Code of Conduct in itself is an ADR resolution and that no sanction can be compelled by the Judicial Administrator. She said that in terms of transparency, some students choose not to disclose information. She said that as a private institution, Cornell does not follow due process and emphasizes the educational aspect of the Code rather than assessing its members in a criminal setting. She also said that she agrees with many points raised in the Working Group’s final report. She added that identifying core institutional values or grouping protected classes together could be useful for further discussion.
- xxvii. R. Lieberwitz said that the term due process is not merely meant in a constitutional context. She said that due process carries meaning that can be adopted – not as a public institution, but because Cornell embraces those rights. She said that “due process” does not merely concern technical language but is also part of a broader discussion.
- xxviii. K. Zoner said that having a different standard of proof for off-campus matters has made it difficult for those involved in this community to be held to some degree of accountability.
- xxix. D. Barbaria asked what deters from including off-campus matters in the Code.
  - 1. K. Zoner said that language such as “serious violation” in the Code needs to be more clearly defined.
- xxx. M. Battaglia said that he agrees that “due process” is constitutional but is unique within the context of Cornell. He added that he encourages members of the community to stop by the Hearing Boards’ office for a better understanding of processes.
- xxxi. M. Horvath said that the Judicial Administrator’s annual report from last year is now available on the Judicial Administrator’s website.
- xxxii. J. Anderson said that the language in the Code needs to remain consistent once solidified, since various interpretations can arise from different members of the community.
- xxxiii. M. Horvath – point of information on timelines for Code revisions. She said that she is concerned about how little time is left.
  - 1. D. Barbaria said that the Committee had not yet agreed on a timeline because it was awaiting the Working Group’s report. He said that he

is open to any Committee member's recommendations regarding a timeline.

- xxxiv. M. Battaglia said that he would like to formally thank the Working Group once again for its efforts.
- xxxv. D. Barbaria said that the Committee will need to decide the extent to which it will seek community input on possible Code revisions, and where to begin.
- xxxvi. R. Lieberwitz said that next Wednesday could be an appropriate time for informal discussions.

#### **IV. Adjournment**

- a. Adjournment
  - i. The meeting was adjourned at 6:02pm.

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