



Cornell University University Assembly

109 Day Hall
Ithaca, NY 14853
p. 607.255.3175
f. 607.255.2182
e. assembly@cornell.edu
w. <http://assembly.cornell.edu>

Minutes

Codes and Judicial Committee
University Assembly
November 11th, 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 1:11pm.
- b. Roll Call
 - i. *Present:* J. Anderson, R. Bensel, L. Kenney, R. Lieberwitz, G. Martin, J. Michael, L. Taylor
 - ii. *Absent:* J. Bogdanowicz, K. Wondimu
 - iii. *Others Present:* M. Horvath, E. Kim, M. Lee, T. Reuning

II. Approval of Minutes

- a. October 28, 2019
 - i. R. Bensel moved to approve the minutes.
 1. Minutes **approved** by a vote of 5-0-2.

III. Business of the Day

- a. Updates from the November 5, 2019 University Assembly (UA) meeting
 - i. L. Kenney said that the Committee's proposed resolution passed at the November 5 UA meeting. She said that once the Codes and Judicial Committee (CJC) sends them, the UA will be able to vote via email on the draft Code revisions as well as the candidates for University Hearing and Review Boards (UHRB) vacancies. She also said that the Committee hopes to submit both of these items prior to the next UA meeting.
- b. Campus Code of Conduct – Continuation of Draft Revisions
 - i. R. Lieberwitz thanked R. Bensel for his work on the section on prohibited conduct.
 - ii. R. Bensel said that he incorporated most of R. Lieberwitz's recommendations into the document.
 - iii. L. Kenney thanked the entire Committee for its active participation and

attendance, and especially R. Lieberwitz and R. Bensel for all of their additional work outside of the meetings.

- c. University Hearing and Review Boards – Subcommittee Updates
 - i. L. Kenney said that the Committee created a subcommittee, which consists of L. Taylor and G. Martin, to evaluate UHRB candidates to potentially fill current vacancies.
 - ii. G. Martin said that the subcommittee is waiting to receive the list of candidates from the Office of the Assemblies.
 - iii. L. Kenney said that the Committee can look into the bylaws to see whether other members of the community can be solicited if the subcommittee does not feel comfortable moving forward with the existing candidates.
 - iv. G. Martin moved that the Committee vote on the UHRB vacant positions via email before sending them to the UA.
 - 1. Motion **passed** by unanimous consent.
- d. Campus Code of Conduct – Continuation of Draft Revisions
 - i. The Committee began discussing the portion of the working draft that relates to the role of the Judicial Administrator (JA).
 - ii. R. Bensel proposed to substitute the existing Code language for this section, instead of what is currently in the working draft as written by the University Counsel.
 - iii. J. Anderson objected and said that the current Code institutionally isolates the JA position from student and campus life, where most issues arise. He said that the current proposed language would benefit both the JA and students, while having an independent JA makes it difficult to build trust with students.
 - iv. R. Bensel said that while he understands that, the language in the section is too vague. He asked that the Committee discuss what problems it is trying to address.
 - v. L. Taylor said that rewording the beginning of the paragraph to “authority over procedures” would make more sense.
 - vi. R. Bensel said that “authority over the Code” appears as if the Code could be changed at will. He said that this is a powerful paragraph that is written ambiguously.
 - vii. M. Horvath said that she agrees that this paragraph needs to be examined further. She said that the Code is currently the authority of the Board of Trustees as delegated to the UA and CJC while the procedures are within the Code, but this proposal suggests that the Code and the procedures would be under the Vice President of Student and Campus Life. She said that the framing of the conversation should be based on how much flexibility should be within the procedures.
 - viii. R. Lieberwitz said that substantive and procedural issues are related, as the

procedures is how the substantive prohibitions and rights will be implemented. She said she would prefer not to separate the two issues. She also said that the current language of the paragraph such as “authority and administration of the Code and Procedures” is vague and it is difficult to understand where the Dean of Students fits in relation to the Code.

- ix. J. Anderson said that his understanding is that there will be a new Office of Student Conduct which shifts the existing structure of the JA’s Office.
- x. J. Michael said that she met with R. Lombardi to fully understand the history, in which she was able to better understand the process and his thoughts. She said that she fully supports the change as is written, which allows students to grow and learn from their mistakes.
- xi. R. Bensel suggested sending the paragraph to R. Lombardi to ask what this should mean and, in the meantime, figure out within the Committee how to perfect the paragraph to address the concerns with the existing arrangements.
- xii. M. Horvath suggested amending “authority and administration” to “responsible office” for the Code and Procedures.
- xiii. L. Kenney and L. Taylor agreed.
- xiv. R. Bensel moved that the Committee send the document as is currently worded for comments and explanations, and then amend based on suggestions.
 1. There was no second to the motion.
- xv. R. Lieberwitz said that the current Code states that the JA should be solely responsible for the Office of the JA, which is very different from the proposed amendment by the University Counsel. She asked if “oversee” means that the Vice President for Student and Campus Life has the power to override the JA’s decision by coercing them to bring a charge against an individual even if they don’t wish to.
- xvi. L. Taylor said that that would be the point, so that the JA would not be fully independent. She said that the JA would still retain independence, since they can disregard their supervisor’s order. She said that this would be the way to go, even if the Committee chooses not to use the word authority.
- xvii. M. Horvath agreed and said that she has actually felt more constrained without university support. She said that a reasonable JA would know that there are remedies outside of the system if there were to be a case of wrongful termination. She also said that she believes independence of thought is different from independence of authority.
- xviii. R. Bensel proposed to eliminate “vested with”.
- xix. R. Bensel said that as currently written, the UA is secondary to the VP of Student and Campus Life. He suggested adding the word “close” or “direct” to “consultation”. He also said that this paragraph will change the CJC’s relationship to the Code, and that the CJC should have more of a role.

- xx. L. Kenney said that based on the bylaws, the CJC is tasked with the Code.
- xxi. M. Horvath said that the role of the CJC would not fundamentally change. She said that the CJC would be in a more proactive rather than reactive position, which is a positive change for the community.
- xxii. R. Bensel said that he agrees that the change will need to be spelled out in the bylaws. He moved to add “and Codes and Judicial Committee”.
 - 1. L. Kenney suggested to refrain from motions and instead bring issues to the table if someone adamantly disagrees.
 - 2. R. Bensel withdrew his motion. He suggested the language instead.
- xxiii. J. Michael said that the Committee may be adding language that occupies space from doing good. She said that she believes that consultation with the UA and CJC should be made for major changes, but this should not put roadblocks in front of progress. She said that the Committee should be supportive of administrators fulfilling their role of doing what is best for students.
- xxiv. R. Lieberwitz said that the Dean of Students’ interests may vary depending on who takes on the role. She said that the ambiguity still includes the possibility that the VP of Student and Campus Life could consult with the UA and then go ahead and make a change. She also said that it should be clearly written who is responsible for and who has the ability to amend the Code.
- xxv. M. Horvath said that her understanding of what is written is that the VP of Student and Campus Life would propose changes to the Code and consult with the UA. She also said that in the 3.5 years she has been in the role, there has not been a single change to benefit students. She said that she believes checks and balances are important, but the Committee should refrain from continuing to add procedures that prevent positive change.
- xxvi. R. Bensel agreed with R. Lieberwitz and said that language should be added so that amendments to code originate within the CJC, then to the UA, and then to the President’s Office.
- xxvii. M. Horvath **called the question** for the Committee to consider the paragraph as is currently written.
- xxviii. R. Lieberwitz said that the Committee is looking through the entire draft as a whole rather than voting on sections.
 - 1. M. Horvath **withdrew** her motion.
- xxix. L. Taylor said that she doesn’t know how the Committee would be able to make timely changes when it doesn’t work with the Code every day. She said that the Committee should make the Code as good as possible and leave changes to the administration of the Code with the administrators.
- xxx. L. Kenney reminded the Committee that a complete redraft will not be done anytime soon.

- xxxi. R. Lieberwitz said that the language of the current Code allows for amendments by the UA. She said that since the CJC is delegated by the UA, it would not be necessary to include the CJC separately.
- xxxii. R. Bensel said that there should be a separate body that proposes and suggests amendments to the Code.
- xxxiii. L. Taylor proposed to include the following sentence from the current Code in the working draft: “All Titles of this Code and Procedures may be amended by the University Assembly, subject to the approval of the President”.
- xxxiv. J. Anderson said that the Committee should place trust in the Office of Student and Campus Life which exists for students. He said that while balancing rights is important, the Committee also needs to consider pragmatic changes.
- xxxv. M. Horvath said that adding in the sentence from the current Code strips the Board of Trustees of their authority.
- xxxvi. E. Kim said that from the perspective of a Judicial Codes Counselor who advises students going through disciplinary processes, this is an adversarial process that requires protections. She said that the Committee should acknowledge that this is an adversarial system where there is a lot at stake for students involved. She added that there need to be safeguards that protect the well-being of individual students.
- xxxvii. J. Anderson said that while he appreciates that, the rewrite is meant to remove aspects of an adversarial nature. He said that the process should be more focused on restorative justice that makes the Code more educational and informative. He added that the Committee should consider how to simplify the Code and make it educational for students.
- xxxviii. R. Bensel agreed with E. Kim and said that the Code should be designed to anticipate different situations that could arise.
- xxxix. E. Kim said that in the abstract, restorative justice appears to be straightforward when it is difficult to put into practice. She said that rights should not be taken away in a fundamentally adversarial process in the name of restorative justice.
- xl. R. Lieberwitz said that, going back to M. Horvath’s point, the language does not remove the role of the Board of Trustees, as they have the supreme authority. She also agreed with E. Kim that amendments should be viewed from the perspective of those who will actually be charged with a violation. She said that the Code and procedures should be put together.
- xli. L. Taylor asked if the Committee could vote on the paragraph as it is a proposal that will be reviewed again.
- xlii. R. Lieberwitz moved that the Committee meet on Monday the 18th from 1pm to 2:30pm to solidify discussions from this meeting.
 - 1. **Approved** by unanimous consent

- xliii. R. Bensel requested that members of the Committee individually go through the document and note places where there are objections. He said that he will work on the paragraph to consider further changes.
- xliv. L. Taylor suggested that the Committee avoid this particular paragraph that discusses the role of the JA and instead go through the rest of document at the next meeting.
- xlv. J. Michael said that she has a question about the jurisdiction of the Code over academic departments and where behavior that takes places outside of academic integrity would fall under.
- xlvi. L. Kenney requested that J. Michael send an email outlining her questions and concerns to be addressed at the next meeting.

IV. Adjournment

- a. Adjournment
 - i. The meeting was adjourned at 2:26pm.

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