

Cornell University University Assembly

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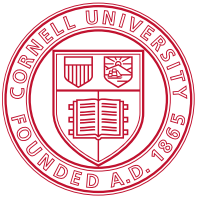
Minutes of the May 5, 2020 Meeting

4:32 PM – 6:00 PM

Zoom Meeting

- I. Call to Order
 - a. Call to Order
 - i. R. Howarth called the meeting to order at 4:32pm
 - b. Roll Call
 - i. *Present:* J. Anderson, A. Barrientos-Gómez, K. Barth, R. Bensel, U. Chukwukere, C. Duell, D. Hiner, R. Howarth, L. Kenney, C. Levine, G. Martin, R. Mensah, D. Nyakaru, J. Pea, P. Thompson, C. Van Loan
 - ii. *Members not Present:* B. Fortenberry, A. Hong

- II. Call for Late Additions to the Agenda
 - a. Discussion related to UA R4: Support of the development and implementation of a Cornell Campus Circulator System
 - i. K. Barth reminded the assembly members about the premise of the resolution which would support the idea of on campus TCAT. The resolution was created in part by both the University Assembly Campus Planning Committee and the Campus Infrastructure Committee.
 - ii. K. Barth indicated that he offered an amendment to the resolution in light of the COVID-19 pandemic and conferred with Vice President Malina who reaffirmed that this is an important time for the Assemblies to be providing feedback and that the University business is still going forward.
 - iii. K. Barth stated that the resolution has support in the other assemblies as the Student Assembly passed their version of the resolution in February, it is currently on the floor in the Graduate and Professional Student Assembly and it is scheduled to be voted on at the next Employee Assembly meeting on Wednesday, May 6, 2020.
 - iv. K. Barth indicated that he has changed the original abstract of the resolution and has amended the “Be it therefore resolved” clause to read as follows “that the Cornell Campus Circulator System should be included in the Cornell University long term strategic plan, post the COVID19 crisis and related financial issues; it is a general priority and represents what the campus wants and will need in the future,” which replaces the timeline and shows that this is important for when campus does get back to business.



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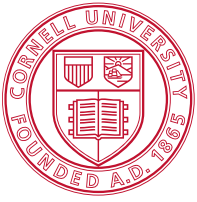
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- v. K. Barth finally stated that if this resolution does not get voted on during this term, that it will expire so he would like the assembly members to review it so they can vote on it at the May 12, 2020 University Assembly meeting.
- vi. A. Barrientos-Gómez provided an update that the Graduate and Professional Student Assembly was able to vote on this resolution electronically; however, it did not contain the amended abstract or the last resolved clause.
- vii. R. Howarth mentioned that this resolution may go to an electronic vote based on time to focus on the Campus Code discussion.

III. Business of the Day

a. Revision of Campus Code

- i. R. Howarth stated that he forwarded President Pollack's message to all assembly members related to the indication that several assembly members would like an extension. The bottom line is that the University Assembly will need to take a vote on this at their next meeting on May 12, 2020 so it can get to the Board of Trustees to vote on over the spring and/or summer
- ii. J. Anderson informed the assembly and the Codes and Judicial Committee met on Friday, May 1 and they made two large changes related to key sticking points for the committee.
 - 1. The first change was to implement a bifurcation of standard of evidence dependent on which procedure a student was going through. If a student was going in front of the administrative panel, the standard of evidence would be a preponderance of evidence; however, if a student was in front of the hearing panel, clear and convincing evidence would be used as the standard of evidence. In addition, the appeals process would also be bifurcated.
 - 2. The second change allowed for exceptions to have public hearings in that if there was a large campus community discussion that could be educational in nature, the hearing could be made public only if both parties were in agreement.
- iii. J. Anderson indicated that public comments on the code revisions has been extended until Friday, May 8, 2020. He stated that most of the comments should be directed to assembly members and encouraged them to review them.
- iv. J. Anderson also informed the assembly that there will be a public forum on the code revisions to be held on Thursday, May 7, 2020 from 3:00 PM –

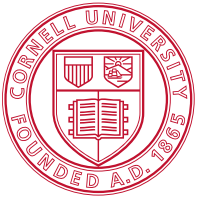


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4:00 PM (EST). The forum will be to present key changes as well as get feedback from the community.

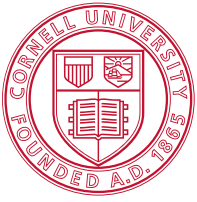
- v. J. Anderson shared with the assembly a set of procedures created by the Office of the Student Advocate. These alternative procedures have been approved by the Student Assembly and felt that the University Assembly should review these procedures and allow the Office of the Student Advocate to present their highlights.

- b. Presentation by the Office of the Student Advocate
 - i. R. Howarth gave the floor to Liel Sterling from the Office of the Student Advocate for a short presentation on their suggested procedures.
 - 1. R. Bensel had a question as to how other Codes and Judicial Committee members would be able to participate in the meeting if called upon.
 - 2. J. Anderson replied that he would yield to them.
 - 3. R. Howarth indicated that the Assembly use the procedure that has been used in previous meetings that they hear from those who have previously asked to speak, with giving preference to assembly members, then accommodate other speakers.
 - ii. L. Sterling provided a brief presentation on the Office of the Student Advocate Observations and Recommendations on Community Standards.
 - 1. This has been passed as a resolution within the Student Assembly.
- c. Discussion by UA member on Code revisions
 - i. Following the presentation by L. Sterling, R. Howarth opened up the floor for questions both for L. Sterling and J. Anderson.
 - ii. L. Kenney stated that the proposed new Executive Rule is a proposal and has not yet been put into effect. She then stated that she would like to yield her time to James Pinchak of the Judicial Code Counselor office as she felt that the assembly should also hear from the Judicial Code Counselors as they have already listened to the Office of the Student Advocate.
 - iii. R. Howarth affirmed that as chair of the assembly, he alone will recognize speakers and not to yield time to non-assembly members and ruled that as out of order for L. Kenney to yield her time. He further indicated that he would like to start with questions for J. Anderson and L. Sterling then will open up questions as appropriate.
 - iv. R. Bensel inquired whether this proposal went to the Codes and Judicial Committee and, if so, what was the discussion there. He also inquired about the reasoning if it didn't go to the Codes and Judicial Committee.



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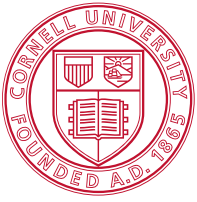
- v. L. Sterling affirmed that this proposal did not go in front of the Codes and Judicial Committee. The reasoning for this was that the intention was to bring a student perspective on a Code of Conduct that will only address students. She also noted that all of the sponsors of the resolution are all the student members of the Codes and Judicial Committee.
- vi. J. Anderson clarified that he was not a sponsor of the resolution.
- vii. K. Barth asked J. Anderson a procedural question with regard to the public comments, the upcoming forum, the Codes and Judicial Committee revisions and the Office of the Student Advocate information. He wanted to know how to work with the information in the Office of the Student Advocate procedures versus the Codes and Judicial Committee revisions.
- viii. J. Anderson affirmed that there are substantial differences and there needs to be weight upon the substantive comments that directly implicate language placed as well as giving deference to constituent groups who are currently on campus (i.e. undergraduate and graduate students, employees and faculty). He recognized that there are a fair amount of comments posted by alumni and his personal opinion is that he feels that alumni have other means of engaging with university governance. He went on to state that some of the alumni comments did play into Greek life that do deserve consideration. In the multiple roles that he holds, J. Anderson stated that he is trying to remain as neutral and impartial as possible.
- ix. C. Van Loan inquired about the standards of evidence of the schools provided in the Office of the Student Advocate presentation and whether they were the same as the proposal or different.
- x. L. Sterling replied that they didn't actually check for standards of evidence; rather they researched diversity and inclusion procedures, restorative justice measures and student involvement as advisors. The reasoning behind this was the evolving changes with the potential new rules and attempt to address the changes preemptively.
- xi. C. Van Loan followed up that just a week prior, there was not a fork in the road and he inquired if this was something new that just happened within the past week.
- xii. J. Anderson affirmed that it happened at the Codes and Judicial Committee on Friday, May 1, 2020.
- xiii. C. Van Loan asked for an explanation as to why the committee felt one standard was higher than the other.
- xiv. J. Anderson replied that hearing panels involve any sanctions that include disciplinary probation, suspension or expulsion and that due to the severity



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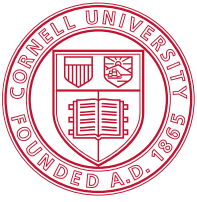
of these sanctions, the committee felt that a higher standard should be utilized in these types of instances.

- xv. C. Van Loan mentioned that having two different standards within the Code itself is confusing and could there be further explanation provided.
- xvi. J. Anderson indicated that it a new proposed change and there haven't been any comments received related to it. He then deferred to Barbara Krause, interim Judicial Administrator, for clarification.
- xvii. R. Howarth recognized B. Krause as the next speaker.
- xviii. B. Krause stated that trying to work through a Code with two different burdens of proof and two different types of setting is complex and potentially confusing than having a single burden of proof. She went on to clarify that the Office of the Judicial Administrator would not consider probation as a sanction that would justify a higher burden of proof.
- xix. L. Kenney pointed out that if the Assembly is going to call upon the Judicial Administrator to speak that they should also give the Judicial Code Counselors an opportunity to speak. She also indicated that she went through all of the public comments and that of the majority of the comments were against the change to the burden of proof. She also mentioned that on social media, there was a post by the Cornell Daily Sun and that a majority of the comments on that post were opposed to the change as well.
- xx. L. Kenney inquired about the public hearings and whether the chair of the hearing panel who has the decision or does the OJA have an opinion. She also voiced an issue about free speech concerns and whether the CJC would address those.
- xxi. J. Anderson replied that free speech was ingrained in the code revisions and edited at the beginning of the semester; however, due to priority on the substantive and procedural portions of the code, those edits weren't able to be finalized. With regard to the public hearing question, the panel chair has the final decision.
- xxii. R. Bensel stated that he does not regard the punishments that the University can inflict on undergraduates as not the severity as criminal cases.
- xxiii. R. Lieberwitz referred to R. Bensel's question regarding whether the Office of the Student Advocate's proposal came to the Codes and Judicial Committee and confirmed that it hadn't. She went on to state that she felt it was inappropriate procedurally and the Office of the Student Advocate could have come to the Codes and Judicial Committee.



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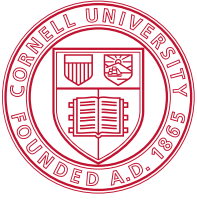
- xxiv. J. Anderson clarified the Student Assembly charter does allow for them to disagree with formalized actions of the assemblies and the Office of the Student Advocate utilized that provision within the Student Assembly charter.
- xxv. R. Howarth indicated that he was not aware of this proposal until the day before this current meeting.
- xxvi. L. Sterling responded that the process was utilized due to cases coming through the Office of the Student Advocate and students expressing their frustration at the current process. It became clear that members of the Codes and Judicial Committee were looking to provide increased student perspective. She also clarified to an earlier question by C. Van Loan that preponderance of evidence is the standard that is used by most university bodies.
- xxvii. J. Pinchak indicated that the Office of the Student Advocate proposal was not shared with the Judicial Code Counselor office either. He agreed that restorative justice measures were important; however, he stated that he didn't agree with the perspective of the Office of the Student Advocate suggestions given that it would give a student two options with completely different outcomes and results.
- xxviii. C. Van Loan deferred to another assembly member.
- xxix. G. Martin stated that he doesn't believe that the Office of the Student Advocate isn't saying that the process isn't currently educational, but rather can it be more educational and informative for a student.
- xxx. U. Chukwukere stated that it is bothersome for someone to speak for communities that they are not a part of. In addition, he stated that the support of the Office of the Student Advocate suggestions is coming from the leaders of the student organizations that are most marginalized on campus.
- xxxi. D. Nyakaru inquired about the sentiment of the new code revisions might be considered an overreach or abuse of power. (1:40)
- xxxii. L. Kenney restated the charge to make a clearer document and get rid of ambiguities resulting in something fundamentally different. She stated that law students are going to go through the appropriate training for these sorts of cases and they care about due process. She indicated her desire to do work on behalf of and speak for individuals without the proper channels to speak including members of marginalized communities and individuals who lack confidence as lowering the standard of proof might lead to wrongful convictions. She further spoke to bias both implicit and explicit and said she



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would never understand lowering the burden as an educational process as we are moving forward to a more punitive process.

- xxxiii. J. Anderson clarified his positions (as CJC Chair and SA President) were often in conflict but he had striven to lead both bodies in objective and unbiased fashion. He further explained that the proposed Code changes came about in response to a call by over 300 students of color who attended a University Assembly meeting in the fall of 2017, protesting the conditions of black students on campus, which was the impetus for the president to create the Campus Climate Task Force. J. Anderson stated that he had made the motion at that meeting to amend the Campus Code of Conduct in response to the marginalized students.
- xxxiv. R. Howarth asked for decorum and to keep the discussion from getting to personal attacks.
- xxxv. C. Levine, as a new member to the UA, re-stated the debate as two constituencies in opposition on the issue of the burden of proof. The two positions seem unresolvable. There are strong values and positions on both sides.
- xxxvi. C. Van Loan asked for insights as to whether Cornell was ‘special’ as the outlier using the “Clear and Convincing” standard, or whether it was considered a sign of leadership? He also asked for an explanation as to the impact of the need to align with the Federal mandate would/should affect the discussion.
- xxxvii. R. Bensel agreed with C. Levine’s statement in that all have best intentions but almost irreconcilable positions. He gave further examples of the differences between the standards of proof.
- xxxviii. A. Barrientos Gomez alerted the assembly that there was a conflict for the grad and professional student community with regard to the Campus Code Public Forum scheduled at the same time as an Open Forum on the Reopening of Campus.
- xxxix. J. Pinchak clarified that the Campus Code of Conduct would never apply to cases involving sexual assault as they are covered under Policy 6.4.
 - xl. R. Lieberwitz commented that she thought Cornell was a leader regarding due process with its Clear and Convincing standard. She questioned parts of the OSA proposal as being massively different than the proposal put forth by the CJC. She questioned the process by which the OSA proposal was brought forth, “at the eleventh hour”.
 - xli. B. Krause assured the assembly that the members of the OJA are not in their positions to prosecute students. That is not why they do the work of



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the OJA. She gave her opinion that preponderance is the best standard because it best balances the interests of the complainants, respondents and the campus communities. The standard applies across the board.

- xl. L. Kenney asked that no new proposals be brought to the body since the CJC had not had a chance to review.
- xli. J. Anderson explained that his intention was not to slide something in at the end, but to work with each assembly to further their individual interests and conflicting priorities. He further stated that there was so much more discussion to take place on the substantive portions of the Code, beyond the standard of proof, and encouraged the assembly to move forward in the other discussions.
- xlii. R. Howarth stated the meeting time had come to an end. He encouraged assembly members to read through the drafts and comments on the website in advance of the meeting next week.
- xliii. L. Kenney asked for an extension of the meeting by 3 minutes to introduce her "Good Samaritan" amendment.
- xliiii. Extension was approved.
- xlv. L. Kenney gave an overview of her amendment regarding the Good Samaritan Law. She advocated for including a Good Samaritan provision in the Code similar to what had been codified by NYS.
- xlv. R. Howarth called for adjournment.
- xlv. Motion seconded

The meeting was adjourned at 6:03pm.

Respectfully Submitted,
Office of the Assemblies