



Cornell University
University Assembly

Codes and Judicial Committee
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To: University Assembly
From: Codes and Judicial Committee
Subject: Report on the Campus Code of Conduct
Date: March 6, 2007

I. Introduction

The Cornell University Assembly (UA) gave the task of reviewing the present Campus Code of Conduct (the Code) to the Codes and Judicial Committee (CJC). In reviewing the Code, the CJC was asked to take into consideration the revisions proposed by Barbara Krause (the Krause Report). The CJC, supported by personal e-mails from the president, solicited community comment on these three areas of concern as well as the Krause Report and the Code in general. The Cornell community responded by communicating their opinions and concerns via emails, web blogs, personal contact, and at the open forums that were held on 29 November 2006 and 5 February 2007. The CJC has read and assimilated these responses. We are confident that the following report is supported by this extensive community discussion and commentary. (See the addendum to this report for an outline of the history of this process and for the URL of the website where community comments and documents can be found.)

In our deliberations the CJC decided that, given the timeframe and the scope of the task, we would focus on three main areas of concern that, in the committee's informed opinion, were fundamental and needed to be addressed before any other work could begin. Put in the form of questions, these three areas are: Who is responsible for the Code? Should the Office of the Judicial Administrator (OJA) remain independent? What are the parameters of the code (should it include all community members of Cornell University and should it cover only activity within the campus geographic boundaries)?

In answer to these three questions, we conclude:

1. the UA should retain oversight over the Code;
2. the OJA should remain independent;
3.
 - (a) a uniform judicial process should be retained for campus judicial proceedings; and
 - (b) the geographic parameters of the Code need further exploration.

II. Responsibility for the Code

Currently, the UA and the CJC are responsible for oversight of the Code. Through both groups, each constituency (faculty, students, and staff) of the university is represented and actively involved in discussing the code that governs acceptable conduct in the Cornell community. As repeatedly expressed in community comments, the Cornell community values the independence of the CJC and the UA in the context of their work with the Code and judicial system. An overwhelming majority of the community expressed a desire to retain the present structure. The community supports the Code because the community creates the codes.

A well-formulated document written by a committee of the Cornell Law School Student Association helps to explain why it is important to retain the community's present authority over our Code. According to this report, "Even if the new process included a mandatory comment period, the ultimate decision to amend the Code would still lie with an administrator who may not appreciate the community's concerns in the same way as an elected, representative assembly."

The democratic imperative for a code that governs us all must require that we all — through the UA — write and revise the Code. Any moves away from a broad and democratic procedure for writing and revising the Code should be opposed. The CJC feels that expediency alone is insufficient reason to eliminate valuable democratic community participation.

III. Independence of OJA

The prime function of the OJA is adjudication. Its independence is paramount in order for adjudicative processes to be fair and unbiased. But the OJA operates in an educational environment and must be aware of the educational mission as it does its work. Administrative oversight of the OJA must function in such a way as to facilitate the educational dimensions of the adjudicative processes. The present JA has created a communication flow through a vigorous liaison with the Office of the Dean of Students (DOS). The independence of the OJA should not hinder the interaction between the two offices, but both should be cautious to avoid any real or perceived conflict of interest. The independence of the OJA is essential in order to maintain fairness when community members are found to be in violation of the Code.

The OJA should remain separate from the central administration of the university. The very idea of a just adjudicative process requires independence. Without an impartial decision-maker, it is difficult to argue that "justice" is done. However, the OJA will remain effective only as long as the university provides the resources necessary to allow the JA to respond dynamically to Cornell's changing disciplinary climate. The CJC has concluded:

- The OJA currently requires more support in order to function effectively in its role. As the number of people referred to the OJA has increased, the resources of the OJA (staff, office space, funding) have not kept pace.
- The JA requires a reporting structure for functional supervision that does not affect his/her independent judgment.

Potential solutions to the lack of resources and supervision include putting the OJA under the

supervision of the ombudsman, another independent entity, or allowing a dotted line of administrative oversight to the office of a senior administrator. It is important that these moves do nothing to diminish the OJA powers for independent investigations and judgments.

IV. Parameters of the Code

Cornell deserves a code that applies equally to all members of the Cornell community: students, faculty, and staff (including administrators). The CJC found widespread community support to retain the current Code as a uniform standard of conduct for all, and to retain the same judicial processes for all members of the community.

In the current judicial system, although the vast majority of violations are by students, faculty and staff are also referred to the OJA for non-work-related violations of the Code. The Krause Report recommends establishing separate processes for adjudicating violations of the Code by students, faculty, and staff: student matters to be handled in the Student Disciplinary System; faculty referred to department head or dean; employees referred to supervisor or Human Resources (HR) representative. Therefore, the Krause Report proposes an unequal adjudication of violations Code for faculty, students, and staff.

Decentralizing disciplinary referrals, either to the DOS, supervisors, or HR administrators causes unwarranted confusion and poses risks to confidentiality. It is doubtful that these many different administrators will have the time, resources, or investigatory ability to address Code infractions properly or promptly.

There are arguments for retaining the Code's current geographical reach, and also for expanding its reach. If it is to be expanded, the various parameters — what and who will be covered, and where — need to be very clearly defined.

The safety of everyone in our community demands the OJA be a singular authority over everyone on our campus. Certain heinous actions need to be subject to application of the Code and judicial processes, whether they occur on or off campus. And the JA needs to be able to consider some kinds of off-campus behavior in the context of evaluating some on-campus violations.

V. Conclusion

We therefore conclude:

1. that the UA and its CJC should retain oversight over the Code;
2. that the OJA should remain independent; and
3. that uniform judicial process should be retained for campus judicial proceedings.

Further, we recommend that the opening statement in the current Code, called Fundamental Principles, be revised. It should reflect the campus view that there is no tolerance for violence in the Cornell community. Also, the geographic parameters of the Code need further exploration. The purpose of the Code is to keep the Cornell campus safe for faculty, staff, and students. If the Code and judicial system is to apply to off-campus violations, clear parameters are needed. The CJC wishes to make this a central point in our future deliberations.

The CJC also concludes that other important points in the present code and some components of the

Krause Report would benefit from a more thorough examination and review than the present time frame allowed. Everyone agrees that large sections of the Code need to be rewritten and condensed for clarity and brevity. The CJC believes, and this is supported by many comments from the community, that the following issues are very important and need careful consideration before any changes are made:

1. Procedural issues, such as the right to have counsel, sufficiency of evidence, right to remain silent, timeliness of process, appeal process, and emergency hearing boards. An overwhelming majority of community responses to the CJC expressed a fear of losing rights in the first three of these areas. Feedback focused on opposing any reduction of the right to counsel and the right to remain silent, and any reductions of burden of proof.
2. Clear definitions of violations and appropriateness of penalties.
3. Structural changes: The Krause Report recommends that Titles Two and Three can be combined into one section. Although the presence of these two Titles adds to confusion through duplication and contradiction, there are questions of jurisdiction that must first be considered. Currently Title Two is under the jurisdiction of the Board of Trustees and Title Three is under the UA.

The CJC is asking the UA to extend and expand its charge to the CJC, so that we can consider these and several other specific issues brought up during the period of community comment. We wish to review and deliberate on the specifics of these issues as they are structured in both the Code and the Krause Report. We acknowledge the size of the task, but believe that it is the CJC's and the UA's right and responsibility to exercise this important function in campus governance. It will be necessary for the CJC, or a subcommittee of the same, to have a dedicated a period of time to review both the present Code and the proposed changes, taking into account the many well-conceived and articulate responses from members of the Cornell community.

Community involvement and discussion are valuable parts of Cornell's culture. It was inspiring and invigorating to see and hear the community's views and concern about our Code and judicial system.

Thank you for allowing the CJC to review the Code and the Krause Report. We look forward to your response to this report, and we are available to answer any questions from you or the president.

The University Assembly Codes and Judicial Committee:

Manuel Allende, undergraduate
Arthur Andersen, graduate student
Kevin Clermont, faculty
Deborah Streeter, faculty
Kathleen Rourke, staff (co-chair)
Gary Stewart, staff

Louis Alley, undergraduate student
Jeff Purcell, graduate student
Martin Hatch, faculty (co-chair)
Kathy Zoner, staff
Torrey Jacobs, staff

VI. Addendum: History and Documentation

The University Assembly (UA) is the governing body at Cornell University which has “legislative authority for those aspects of the conduct of members of the university now covered by the Campus Code of Conduct and the Statement of Student Rights” (UA Charter, 1.1). The Codes and Judicial Committee (CJC) is a standing committee of the UA, charged to “consider the substantive and procedural rules of the Campus Code of Conduct and the Statement of Student Rights and ...[to make] recommendations concerning changes in these rules to the UA” (UA Charter 8.2.1).

In November of 2005, Interim President Hunter Rawlings asked Barbara Krause to develop a proposal for the modification of the Campus Code of Conduct (the Code) and the administration of the campus judicial system. Her report to the president (Krause Report) was completed in April of 2006 and made generally available to the Cornell community in November of 2006. On November 20, 2006, President David Skorton asked the UA to “gather community input and submit views and recommendations, concerning the April 2006 report, to [his] office by April 1, 2007.” On November 29, 2006, the (UA) delegated “the gathering of said community input, using such methods as it deems appropriate,” to the CJC, and requested that a “final report with summary data and recommendations should be submitted to the UA no later than March 7, 2007” (UA 2006 Resolution 3).

At our first meeting after receiving the UA’s request, the CJC decided that, given the constraints of time presented by the March 7th deadline and the existence of some sections of the Code and the Krause Report that should take priority over others in our considerations, we would focus our work first on three of the major issues and changes discussed and proposed in the Krause report. These issues speak directly to questions of the processes of oversight, applicability, and administration of the present code, and are therefore basic to the very role of the CJC and the UA in all we are doing. The CJC also decided that we would gather opinion and have committee discussion on the other issues raised and changes proposed, to the extent that time allowed for the prudent deliberative process they deserved.

From November 22, 2006 to February 15, 2007, the CJC collected public comments on these and other questions raised in the Krause Report through a website (<http://assembly.cornell.edu/KrauseReportComments/Home>). At the committee’s request, the UA held public forums on November 29, 2006 and February 5, 2007, to gather additional community feedback. Both the website and the forums were widely advertised and documented in the *Cornell Daily Sun*, *Cornell Chronicle*, and *PawPrint*. Student and faculty opinion has been forthcoming in editorials, articles and letters to the *Daily Sun* and in FaceBook sites. (We are grateful to the many members of the community who participated in this process, and to the Office of the University Assemblies for their support and assistance.)

The CJC has held weekly meetings since the middle of January, and has had participation in one or more of our meetings by representatives of the Office of the Dean of Students (ODOS), the Office of Policy Administration, the Office of Human Resources, the Office of the Vice President for Student and Academic Services, and the Dean of the Faculty. This report, then, represents the consensus of community (including administration) feedback expressed to and assimilated by the committee in our deliberations.