

Annual Report of the Judicial Administrator

2013 - 2014

I. Report

- The Annual Report of the Office of the Judicial Administrator (JA) provides the community information about the JA's Office and the campus disciplinary system as a whole. This particular report details information from July 1, 2013 through June 30, 2014,¹ and includes information from the prior ten years to allow the reader to note trends.

II. Office Personnel

- Mary Beth Grant celebrated her fifteenth year serving as Judicial Administrator in August 2014. Her efforts have shifted to include a larger portion of strategic planning, policy work and training, and away from handling a large number of cases. While in the past few years Mary Beth handled most of the sexual assault investigations, she stepped back from conducting these investigations to training others and supervising this work to create more expertise institutionally.
- Jody Kunk-Czaplicki, Associate Judicial Administrator, marked her sixth year with the JA's Office in August 2014. Jody's continued hard work on Code of Conduct cases was matched by the hard work she contributed for sexual assault investigations. This author has been impressed with the quality of Jody's investigations on these challenging cases.
- Clint Dupew celebrated his second year with the JAO in July 2014. Clint also serves as an Associate Judicial Administrator. This author has appreciated Clint's dedication to the students and his commitment to helping them learn and grow through his combination of kindness and setting high standards.
- Janey Bosch continued her work as the Office Manager, celebrating her ninth year with the office in February 2014. This author remains impressed with Janey's ability to be organized and process a large volume of work, even if there is chaos due to the workload and pace of the office.
- Steven Morey continued as the Administrative Assistant, marking his eighth anniversary with the JA's Office in February 2014. One of Steve's

¹ This time period is known as Academic Year 2013 in the JA's Office, although it would be considered Fiscal Year 2014 elsewhere in the university.

accomplishments in the past few years has been his effective juggling of multiple calendars, whether for part-time staff or for volunteer assistant investigators. His patience, attention to details and, ultimately, caring of the students is much appreciated.

- Starting in fall 2012, the office added one or two residence hall directors for an afternoon or two each week throughout the year. This has been a critical piece to help us keep up with cases. In 2013 - 2014, Lindsay Hansen served in this role. This has been considered a “stretch” opportunity, added on to Lindsay’s fulltime role as a residence hall director. Lindsay’s work was outstanding and very much appreciated.
- With the changes to the way sexual assault cases were handled starting in 2013 (as discussed in detail below), the JA’s Office recruited about a dozen colleagues from around campus to serve as assistant investigators for these challenging cases. In addition to the benefits to our office to have another set of ears and eyes analyzing facts and help documenting interviews, we heard from these colleagues that they benefited by achieving a greater understanding of the new process and sexual assault work in general. The volunteers, whose work was greatly appreciated, were: Eric Acree, Imani Allen, Rose Braman, Janna Bugliosi, Michael Espisito, Curtis Ferguson, Amy Foster, Jeannine Hagadorn, Lindsay Jones-Hansen, Sly Matta, Kara Miller, Brandee Nicholson, Laurel Parker, Amy Stewart, and Jill Tubbs.
- Additionally, several graduate students assisted the office by recording hearings and completing clerical work: Stephanie Meyers and Alex Cordova. These students provided essential back up to the fulltime administrative staff.
- This writer would like to thank all the members of the office -- and our campus partners who chipped in -- for their work the past year. It was a challenging year, each with a high number of referrals, a new process for sexual assault cases and a number of very intense cases in addition to the sexual assaults, but each member of the office worked hard, kept a positive attitude and served the community well.

III. Change to the Process for Sexual Assault and Sexual Harassment Cases

- The biggest change the campus disciplinary system experienced in many, many years occurred this year: a new process was adopted to handle sexual assault and sexual harassment cases. The reader may recall from last year’s report that the discussions about how to address sexual assault and sexual harassment cases started in the spring 2011, when the federal Department of Education’s Office of Civil Rights issued a guidance letter to institutions nationally, which indicated that institutions of higher education were not addressing appropriately matters related to Title IX, particularly sexual assault cases. At Cornell, after a year of debate and a year of drafting, all matters related to sexual assault and sexual harassment were shifted to the processes articulated in Cornell University Policy 6.4. Please see the attached flow chart, which demonstrates how this process works.

- The three major differences between the Policy 6.4 procedures compared to those of the Campus Code of Conduct are: the parties never see each other and never directly cross-examine each other; while the investigation is in person with the investigators from the JA's Office, only written communication is permitted from the parties to the faculty review panel that reviews the investigation and to the vice president of student and academic services who hears appeals; and the standard of proof is lower for Policy 6.4 compared to the Code.
- While the differences have positive and negative impacts on both parties, several advocates for respondents have raised concerns that these procedures have a negative impact on their clients. To minimize any negative impact on either party, the JA's Office has taken several measures to address the concerns, even beyond what is required by the policy. For example, as noted above, campus partners have volunteered to serve as assistant investigators so the members of the JA's Office can double check their impressions. Additionally, while the parties are not permitted to cross examine each other, the investigators ask questions that challenge the facts presented by each party. And, rather than reaching settlements with the JA's Office, all sexual assault matters are being reviewed by the review panel, in order to avoid any appearance that the JA's Office is mediating a result or coercing either party to a particular resolution and to provide a check on the investigation.
- The first year of using Policy 6.4 was a learning experience, and further changes are being implemented in 2014. Overall, though, the most positive aspect for both parties has been the reduction of drama associated with live hearings. Both parties have the ability to share their perspective in a small setting without a lot of people. The most challenging aspect has been the timing: allowing adequate opportunity for the parties to participate and comment on evidence, preparing an articulate, sensitive and clear investigative report, and allowing review panels enough time to consider carefully all the information and ask further questions as needed takes much longer than preparing for and conducting a hearing.
- There were also some surprises in implementing the new policy. A positive surprise has been that the JA's Office learned about more potential complainants, and provided support to them even if they choose not to proceed with a formal complaint. A challenging surprise has been the number of cases that fit both in the Code and in Policy 6.4; running an investigation that fairly implements two sets of procedures can sometimes be difficult.
- The faculty members who served as members of the review panels were: Dorothy Ainsworth, Charles Aquadro, Dan Brown, Brian Chabot, Shelley Feldman, William Fry, Steve Garvey, Tove Hammer, Richard Harrison, Barbara Holden-Smith, Antonia Jamesson Jordan, Irby Lovette, Jane Mt.Pleasant, Debra Perosio, and Martha Stipanuk. This author thanks these individuals for donating their time to the Cornell University community on these important and difficult cases.

- Overall, this author believes using the procedures of Policy 6.4 is a benefit to complainants, respondents and the community. The current staffing of the JA’s Office is inadequate, however, to maintain the increase in work.

IV. Educational Outreach

- The JA’s Office continued with its educational efforts to raise awareness of the work of the disciplinary system. The number of requests this year increased.

Number of Presentations by JAO Staff in Past 10 Years

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Presentations	7	17	12	17	16	16	19	12	24	30

- While a few presentations were to explain the Code (for example, during orientation and to train hearing and review boards), the most common training for the past three years has been to help campus partners better understand obligations under Title IX and to provide information about the new policy to adjudicate sexual assault and sexual harassment cases (see above).
- Additionally, the JA’s Office provided information as needed to the *Sun*, Uncle Ezra, and peers or students in other educational institutions contemplating changes to their policies. Similarly, several Cornell students chose Title IX and sexual assault policies as topics for their research, and the JAO provided many interviews to these students to assist them.

V. Strategic Planning Efforts

- The JA’s Office continued to participate in a variety of long-term planning efforts to improve policies and practices in the university. This work falls mostly to Mary Beth Grant in the office’s division of labor. This work has increased in the past few years, allowing more opportunities for the JA’s Office to provide its perspective on broader institutional issues.
- The JA’s Office was represented on the following groups:
 - Codes and Judicial Committee, which works to make sure the Campus Code of Conduct works in a balanced and fair manner for accused individuals, complainants and the Cornell University community;
 - Alert Team, which attempts to identify emerging concerns for individual students and any gaps in policies and practices at Cornell;
 - Alcohol and drug case discussion group;
 - Behavioral Health Oversight Team (“BHOT”), which coordinates a strategic plan for the Alert Team and several other groups;

- President's Council on Alcohol and Other Drugs, which provides input on AOD work conducted across the institution;

- Council on Mental Health and Welfare, which provides input on mental health work conducted across the institution;

- Council on Hazing Prevention, which has working groups to do anti-hazing work (this was added in spring 2014); and

- Council on Sexual Violence Prevention, which has working groups to do anti-sexual violence work (this was added in fall 2013).

VI. Professional Development

- There are three annual conferences that this author finds directly benefit the work of the JAO: Association of Student Conduct Administration (ASCA), the Ivy Plus Sexual Assault Awareness Roundtable, and the COHFE Judicial Affairs. Additionally, there are often conferences, such as the Vermont Legal Institute, NASPA or others, that may have sessions that are valuable or that are designed for a specific purpose or subject matter. Due to budgetary constraints, the JAO cannot afford participation in all of these conferences by all case handlers, but tries to apportion attendance fairly and to the benefit of the individuals and the office. In 2013 - 14 there were several additional conferences on the topic of sexual assault, given the national attention. In 2013 - 14, Mary Beth and Jody went to an Office of Civil Rights training; Jody went to ASCA; Mary Beth went to COFHE, and to Title IX conferences at University of Rochester, UVA, Dartmouth and Indiana University of Pennsylvania. At the latter, Mary Beth presented on the topic of "Impact of Sexual Assault on Complainants."
- While the JAO's participation in conferences will continue to be more limited than in the past due to the budget, the conferences are valuable and necessary to individual professional development, keeping the office current on national trends, and connecting with peers at other institutions. It is expected, therefore, that at least two members of the office will attend at least one conference each year in the future.
- The entire office participated in the Towards New Destinations program to increase and understand diversity. In particular, the entire office participated in watching and discussing a three-part documentary on racial issues impacting society.

VII. Code of Conduct

- The Codes and Judicial Committee (CJC) is a committee of the University Assembly (UA). The CJC recommends to the UA any suggested improvements to the Code of Conduct. If the UA agrees, the suggestions are forwarded to the president for final approval.

- In 2013, the CJC completed its work regarding allowing group misconduct to be publicized, providing notice to institutional complainants, and free speech issues, all of which were started the prior year.
- The Code gives the hearing and review boards the opportunity to write procedures that supplement those found in the Code. In fall of 2013, the hearing and review board members approved updated procedures for cases heard by the hearing board. It is anticipated that they will take up updated procedures for the review boards in 2014 - 15.

VIII. Cases

Overall Referrals

- The total number of referrals to the campus disciplinary system remained high in 2013, with 862 referred either under the Campus Code of Conduct or under University Policy 6.4.

Table 1: Number of Accused Persons Referred to the JA's Office from Academic Years 2003 - 2012

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Cases Referred	812	806	1200	1139	974	871	832	949	725	862

- It is unclear why there was a bit of a jump in referrals in 2011 or a bit of a dip in 2012. It is clear that digital copyright cases accounted for the major increase in 2006 and 2007. Both because Cornell has changed its practice (now only a third-time allegation is considered under the Code; other allegations are resolved administratively by CIT) and because the entertainment industry does not refer as many allegations in the past, this number has appropriately decreased and stabilized.
- The JA's Office has worked to focus resources on the most serious cases. Since it is still important to address lower-level misconduct (both for the well-being of the community and to provide appropriate behavioral standards for our community members), the JA's Office has addressed less serious misconduct in the following ways: adjudicating alcohol and first-time marijuana cases through letters rather than meetings; asking some departments to refrain from referring first, and sometimes second, low-level acts as Code violations but to address them educationally in their own departments (e.g., parking, dining, copyright, bike-dismounts); and using residence hall directors to adjudicate some lower-level cases.

Referrals Reflecting Serious and Time-consuming Matters

- The quantitative analysis does not reflect the qualitative difficulty of cases. Tables 2, 3, 4 and 5 reflect the increase in serious, time-consuming cases by a few different measures: referrals for sexual assaults and other serious physical violence; sanctions that include separations; cases that go to hearing; and sexual assault referrals that are formally investigated, go before a panel (or in the past, to the University Hearing Board) and are appealed (in the past, to the Review Board, now to the VPSAS). There is some, but not complete, overlap in these tables. Therefore, the information must be analyzed independently, not cross-referenced between tables.

Table 2: Number of Serious, Physical Complaints by Academic Year of Referral

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Sexual Assault²	7	2	5	3	8	7	7	12	23	14
Weapon, Strangulation or Injury³ Involved	6	3	5	8	4	10	8 ⁴	4	4	5
Total	13	5	10	11	12	17	15	16	27	19

- While not all complainants choose to go forward with an investigation for serious cases (particularly for sexual assault cases), these serious, physical cases receive the highest priority in the JAO and require the most skill and time by the casehandler to investigate and adjudicate. This is particularly true for sexual assault cases, given that the new procedures are more time consuming, as discussed above.
- Other important cases from 2013 that are not reflected in the chart because they are not physical in nature include harassment, breaking into residences of women and entering the bedrooms, drug dealing, possession of dangerous instruments (machete), starting fires, fireworks, major theft, credit card fraud, and financial aid fraud.

² In the fall of 2000 this author examined JAO statistics and learned that the average number of sexual assault complaints from 1990 - 2003 was 3 per year. The information included in this category includes complainants who never spoke to the JA, but about whom the JA learned and attempted to provide information to one or both parties, directly or indirectly.

³ "Injury" does not include minor injuries such as a black eye or minor bruising, so there are fights or use of physical force that are not reflected in this chart.

⁴ Includes 6 cases of people accused in hazing death.

Table 3: Number of Temporary Suspensions, Suspensions on the Merits and Expulsions⁵

	2004	2005	2006	2007	2008	2009	2010	2011 ⁶	2012	2013
Temp. Suspensions	2	3	1	1	6	4	7 ⁷	4	4	9
Suspensions on merits	3	2	5	3	10	12	10	13	6	13
Expulsions	1	1	1	2	0	2	1	1	6	7

- The numbers of cases that have received either a temporary suspension, a suspension on the merits, or an expulsion have increased since 2008, but then have remained steady until 2013. In 2013, many of the suspensions and expulsions were for sexual assault, but they also included several fights with weapons or serious injury, one case of entering multiple homes in the middle of the night and entering bedrooms and a serious theft case. In general, there are more separations because more serious cases were referred. For resolutions on the merits, other reasons for more serious sanctions include changes to the Code in 2008 that emphasize the need for serious responses to serious misconduct. Additionally, more serious property cases have been referred, which would not result in a temporary suspension but could result in a suspension on the merits. Similarly, but to a lesser degree, some students repeatedly referred for alcohol-and-other-drug-related offenses are now suspended.⁸

Table 4: Number of Hearings by Academic Year

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of Hearings	6	12	8	11	19	19	16 ⁹	8	13	8

- The number of cases that went before the Hearing or Review Boards or the President in 2013 was lower than the few years before. But, as discussed below, a large number of cases went to review panels for sexual assault and sexual harassment.

⁵ Some of these cases are also reflected in Tables 2 and 4, but not all serious cases resulted in suspensions or expulsions, and not all suspensions were the type of serious misconduct reflected in Table 2. If a case received both a temporary suspension and a suspension or expulsion on the merits, it would be counted twice because it reflects the work for the initial temporary suspension and the work for the adjudication on the merits. Unfortunately, the JAO does not have statistics on the number of cases for which suspension was considered and rejected, either by the JAO or by the boards.

⁶ Starting in 2011, these figures also include separations that were called “negotiated leaves” or “negotiated withdrawals,” which are tantamount to suspension or expulsion.

⁷ Includes 6 cases of people accused in hazing death.

⁸ Between 2008 - 2012, six students were suspended for three or more alcohol-and-other drug violations in a short period of time.

⁹ This reflects one hearing that was carried over from May 2009. It is counted a second time because it involved rescheduling with some new board members.

**Table 5: Number Of Sexual Assault Referrals, Formal Investigations, Hearings And Appeals
2007 - Present¹⁰**

	2007	2008	2009	2010	2011	2012	2013
Sexual Assault Referrals	3	8	7	7	12	23	14
Investigations	3	3	6	5	9	11	8
Sent to UHB or Review Panel	0	1	2	0	0	1	8
Appealed to Review Board or VPSAS	0	1	1	0	0	0	4¹¹

- All sexual assault cases that are referred to the JA’s Office receive some attention, but not all are formally investigated. For example, if a campus partner such as a residence hall director or a faculty member learns of a student who was assaulted, s/he must let a Title IX coordinator know of the incident. The survivor of the assault may or may not wish to proceed. If the survivor chooses not to file a formal complaint, the JA (as a Deputy Title IX coordinator) checks in to make sure s/he is aware of all resources (e.g., counseling, victims advocate, police), to learn if there are any special needs (e.g., no contact order, housing or academic accommodations) and to remind the survivor that s/he may decide to come forward with a complaint at a later date even if that is not his/her choice now. If the JA had a concern about community safety and knows the identity of the respondent, she could decide to go forward without the complainant; this is rare.
- The table above compares the number of referrals of sexual assault cases to the number of investigations. Note that the uptick of sexual assault referrals in 2012 coincided with the increased publicity on campus and nationally about these important issues, but the number of investigations did not go up as much.
- Initially, the JA’s Office was also sending sexual harassment cases to the review panels, but determined that this expenditure of resources was only necessary when the parties disagreed with the investigative report. The three 2013 sexual harassment cases that went to review are not reflected in the table above.

¹⁰ The fact of the referral to a board or panel or appealed is reflected by case year, not necessarily the year in which the work was completed.

¹¹ Given the timing of the adjudication of some of the 2013 cases, more may be appealed in 2014 - 15.

Alcohol and Other Drug Cases

- Cornell University has taken a public-health approach to alcohol and drug-related cases. While some of our peer institutions do not enforce underage alcohol laws, Cornell does enforce these laws both as a matter of behavior and as a matter of health. Similarly, while institutions vary considerably regarding tolerance for drugs, even marijuana, Cornell takes an educational, health-oriented approach. Starting in 2013, the sanction for a first-time marijuana case is the same for a first-time underage alcohol case. A single violation of underage drinking or marijuana use results in a minor sanction, but part of the sanction is to participate in an educational program that has been proven to reduce the harms of alcohol. The idea is to reduce harmful effects of alcohol or marijuana for individuals and the entire community through prompt, certain and appropriate sanctions.
- Similarly, since Gannett's statistics suggest that three violations of even minor alcohol or drug regulations in an 18-month period is linked to alcohol or drug dependency, strong sanctions including suspension and alcohol or drug treatment are used in response to multiple violations in a short period of time.
- Addressing alcohol and other-drug issues helps individual students achieve healthier lifestyles, and also helps the community have fewer second-hand impacts of alcohol and other-drug use, such as minor inconveniences like dirty bathrooms or disruptions to sleep, and major problems like acts of violence perpetrated while a student is intoxicated.
- Table 6 is intended to give the reader a sense of trends related to AOD cases. The reader should note that the data collected from 2003 - 2010 was collected differently from the data in 2011 - 2013, due to the change in database, so an absolute comparison is not possible.

Table 6: Percentages of Alcohol- or Drug- Related Cases for the Past 10 Years¹²

	2004	2005	2006 ¹³	2007 ¹²	2008	2009	2010	2011	2012	2013
% Persons w/ Alc Related Cases	61%	56%	46%	40%	54%	55%	59%	47%	54%	45%
% Persons w/ Drug Rel. Allegations	6%	10%	5%	5%	16%	17%	10%	8%	14%	20%
% Persons w/ Alc &/or Drug Rel. Violations	66%	64%	51%	44%	68%	70%	69%	55%	67%	63%

IX. Judicial Boards

- There are three judicial boards: University Hearing Board for Regulations for the Maintenance of the Educational Environment (UHB); University Hearing Board for Regulations for the Maintenance of the Public Order (UHB – RMPO); and the University Review Board.
- The UHB had four chairs to share the responsibilities of overseeing hearings and opining about the appropriateness of suspensions and expulsions in settlements. In 2013, Professors Patsy Brannon, Jane Mt. Pleasant, Paul Soloway and Glenn Galbraith shared this responsibility. Professor Andrea Mooney served as chair for the Review Board in 2013. The JA’s Office thanks the chairs for their willingness to serve in these important roles.
- Cases that went before the boards and the president included: possession of a dangerous weapon (machete); appeal to the president in a violent assault and sexual harassment case; non-compliance with sanctions; petition to remove a temporary suspension; breaking into three female residences and going into bedrooms; and a petition to return from an indefinite leave. For information about the specific cases that were considered by the boards and president, please see the public record, available for review in the JA’s Office by appointment.¹⁴

¹² This table reflects cases in which alcohol or drugs were involved, whether or not it was the primary charge (for example, use of a fake ID or property damage while intoxicated). The data was collected in different ways. For 2003 - 2010, the data includes only cases that have been adjudicated and where the individual was either in violation or received a warning. For 2011 - 2013, the data looks at total number of referrals. This change was made due to the change in the database used by the office, which did not allow for exact duplications of data. While the information is not completely comparable, it gives the reader a sense of the patterns. Finally, if a matter is both alcohol and drug related, it is counted in the total of alcohol and drugs only once; therefore the totals of “alcohol” and “drug” may be less than “alcohol and drug.”

¹³ In 2006 and 2007 a disproportionately high number of digital copyright cases were referred to the JAO, diluting the percentages of AOD cases.

¹⁴ In the past matters were summarized in this report. This author has elected to change this practice.

X. Office of the Judicial Codes Counselor

- Andrew Watts served as the Judicial Codes Counselor in 2013, assisted by Amanda Minicus, David Coriell, Stephanie Williams and Ben Van Horn. All of these colleagues ably represented accused students and the JA's Office thanks them for their work.

XI. Conclusion

- The challenges and accomplishments of the campus disciplinary system and the Office of the Judicial Administrator were significant in 2013. The system works because of the many people involved -- both within the JA's Office and campus partners -- who care deeply about the students involved and the well being of the Cornell University community. We all carry on this work with the values of Cornell, particularly our commitment to freedom with responsibility, foremost in all our minds.

Respectfully submitted,

Mary Beth Grant
Judicial Administrator

January 20, 2015