

August 20, 1969

REPORT OF THE AD HOC JUDICIARY COMMITTEE -

I. Background

The establishment of this Ad Hoc Committee in the late summer of '69 stemmed from a number of concerns. One arose from doubt of the continuing applicability of the student adjudicatory procedures as they had existed during the year '68-'69. These procedures had been developed in response to a number of recommendations from the Sindler and Jensen Committees and seemed on the whole to be forward looking and appropriate procedures for Cornell. In many ways they still look so. A principal problem, however, had been that 1968-69 was the first year of their existence. Some "start-up" difficulties were to be expected, as were some indications of the need for still further modification. The trouble in the spring with six black students who did not accept the applicability of the procedures to their cases and especially the faculty vote in late April rescinding the penalties which had eventually been given to the six students left many members of the Cornell community with considerable uncertainty as to whether the system was still viable and useful.

An additional complication arose in the late spring of '69 with the establishment of a new section of the New York State

Education Law, herein called the Henderson Law, which requires colleges and universities to have explicit procedures filed with the State showing how they will deal with students, faculty and others involved in any disruptive activities on their campuses. Cornell developed a set of proposed procedures and filed them just prior to the deadline date of July 20, but necessarily did so with little faculty and with negligible student participation in their preparation. Hence the adjudicatory procedures now listed in response to this law are anything but a community recommendation and therefore a cause of concern.

A third aspect of the problem is that the late spring of 1969 saw the establishment of a Constituent Assembly which plans to consider a number of aspects of restructuring of the University, including a restructuring of the adjudicatory procedures. A research group of this Assembly has been at work during the summer of 1969 but the actual consideration of adjudicatory and other procedures must wait until the full student body is back in the fall. In view of the existence of the Constituent Assembly, a committee looking at judicial or other procedures during this summer must necessarily consider itself as involved in an interim operation.

It was with all these points in mind that the Ad Hoc Judiciary Committee was organized and set to work. In his charge to the committee, Provost Corson referred to three specific points. The first was to request the committee to do what could be

done to insure that a student code was available for fall of 1969. A second charge was to make recommendations on what adjudicatory procedures should be in operation for the fall semester. The third point was that in making these recommendations the committee should give explicit consideration to the implications of the new Henderson Law, keeping in mind that the Henderson Law applied to all segments of the campus, i.e. to students, faculty, other employees and even to visitors.

The Ad Hoc Judiciary Committee has accepted these charges but with one or two qualifications. The most significant qualification is that the Committee considers itself as having only a limited tenure to terminate as early in the fall as will permit it to transmit its analyses and recommendations over to the appropriate student, faculty and administrative bodies. As a corollary to this, the Committee believes that it is inappropriate for the Committee to recommend major innovative policies or procedures. Really new ideas, no matter how potentially useful, will necessarily need careful analysis and acceptance by all parts of the community and this takes time.

II. The Cornell Student Code

By 1968 it was clear that the available student code, which had been first promulgated in 1962, was outmoded and inappropriate for the new philosophies of student conduct that were

illustrated, for example, by the Sindler Report. During '68-'69 work went ahead on the development of a revised code and this was in an almost final state by spring of '69 but had not been finally accepted by the body with jurisdiction, the Faculty Committee on Student Conduct. However, FCSA met in late July of 1969 and finally adopted the revised code thus making it available to the Dean of Students Office for publication this fall.

The Ad Hoc Committee is pleased that this more explicit and more appropriate code is available. At the same time it agrees with FCSA that this new code should be thought of as subject to further study and probable amendment. A general reason is that this is appropriate for any new code. A specific reason is that this new code does not contain policies and regulations which respond directly to the new Henderson Law and the Committee believes that any published set of policies and regulations should include all relevant material.

The Committee spent some time on the Henderson Law problem and persuaded itself that it would not be difficult to modify the present code to include policies for this law. A first attempt at this is appended to this report as Appendix A. However, the committee does not recommend immediate modification of the code to include this material. Instead, it believes that full community analysis and acceptance is a necessary preliminary. Even with the present new code the committee urges

full community consideration of it and recommends that an explicit educational program to explain it be developed for the early fall.

III. Recommended Adjudicatory Procedures for Fall 1969

For most cases of student misconduct, the existing judicial system is efficient, provides for substantial student participation and meets modern due process requirements. Moreover, in the absence of time and a mechanism for adequate student and faculty consideration, it seems desirable to utilize as many of the current adjudicatory procedures as possible. Nevertheless, three factors have influenced this committee to recommend some changes in the existing judicial structure. First; the events of April 1969 culminating with faculty nullification of penalties given to black students, have created in the minds of many the belief that new procedures may be desirable in the adjudication of politically motivated campus disruption. Secondly; the Henderson Law, by implication, has created a separate categorization of offenses; namely, misconduct sufficiently serious to constitute a threat to the maintenance of public order. Thirdly; the Henderson Law specifically requires that regulations shall govern the conduct of faculty and other staff as well as students.

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Accordingly, the committee recommends implementation of the following procedures which constitute a workable system for use this fall and yet preserve maximum flexibility and freedom of choice for the Constituent Assembly in its future efforts. Except as hereinafter specifically modified, the 1968-1969 adjudicatory procedures should continue to be used in fall 1969.

1. The Judicial Administrator

Code administration and the responsibility for investigating and processing complaints of student misconduct presently resides in the Office of the Dean of Students.

Experience indicates that the Code Administrator and the representatives of the Office of the Dean of Students cannot be comfortable with this function. The role of the members of the Dean of Students Office as counselors and advisors to students is important and should not be prejudiced by a requirement to act as prosecutors or enforcers of the Student Code. The discretion to cite or not cite a student defendant is a powerful weapon which ideally should be in the hands of a trained senior person who, in exercising this discretionary function, is not handicapped by ambivalence concerning his major responsibility.

The functions of Code Administrator would be absorbed by a newly created "Judicial Administrator" who would not be connected with the Office of the Dean of Students. We envision the judicial administrator as a highly qualified person with a clear commitment to

preserving the integrity of the judicial process. Ideally he would be capable, during times of criticism or crisis to publicly debate and defend the process and his decisions. The Judicial Administrator should be responsible to the President and would receive guidance from the University Conduct Conference.

2. The Student Faculty Board on Student Conduct and the Student Faculty Appellate Board

The SFBSC and SFAB which form a part of the existing judicial system should continue in operation to adjudicate alleged student code misconduct which neither constitutes a violation of the Regulations for the Maintenance of Public Order nor is an offense likely to lead to serious disruption of public order. The SFBSC and SFAB should continue to have jurisdiction only over students.

Vacancies in these boards should be filled no later than September 15 by presidential appointments.

3. University Hearing and Review Boards

There should be created a University Hearing Board to hear all cases of alleged violations of the Regulations for Maintenance of Public Order by any member of the Cornell Community. The UHB shall be composed of 11 members [4 faculty; 4 students, at least one of whom shall be a graduate student; one member of the University Administration (whether or not he is also a

member of the University faculty), one member from the academic staff, who should be neither a student nor a University faculty member (e.g., a research associate, postdoctoral fellow or librarian), and one member of the non-academic staff.]

There should also be established a University Review Board to hear appeals by the charged defendant. The URB shall be composed of five members: 2 from the University faculty, 2 from the student body, and one from the University Administration. The URB shall have power to reverse a decision and to reduce or modify a penalty, but not to increase it.

Each board should select its own chairman from its membership who shall not vote except to break a tie.

Members of the UHB and URB should be selected by the appropriate constituencies from which they are drawn. Pending establishment of selection machinery, members should be appointed by the President in consultation, as appropriate, with available representatives of the various constituencies.

The decision as to whether an alleged offense constitutes a danger to the maintenance of Public Order appropriate for referral to the UHB shall initially be made by the Judicial Administrator. This determination may be reversed by the tribunal whose jurisdiction has been first invoked by the Judicial Administrator.

Penalties which may be imposed upon defendants adjudged to have violated the Regulations for the Maintenance of Public Order shall be as follows:*

a) Faculty. Faculty members adjudged to have violated the Regulations shall be subject to the following penalties:

- i) Dismissal; dismissal shall mean permanent severance of the faculty member from the University and termination of any contract or tenured position.
- ii) Suspension; suspension shall mean loss of salary for a period of not to exceed one month, without loss of other rights and benefits.
- iii) Censure; censure shall mean a public reprimand for violation of the University's Regulations on Public Order.
- iv) Reprimand; reprimand shall mean a written reprimand for a violation of the regulations.

b) Students. In the case of students adjudged to have violated the Regulations, the following penalties, as defined in the Student Code, may be imposed: (i) Expulsion; (ii) Suspension; (iii) Disciplinary Probation and (iv) Reprimand.

*The Committee has assumed the following definitions for the categories involved: students are all individuals registered as full or part-time students at the Ithaca campus; faculty are all members of the instructional staff at the Ithaca campus with rank of Assistant Professor, Associate Professor and Professor; other employees are all Cornell employees at Ithaca not covered by the two definitions above.

c) Employees. Other employees adjudged to have violated the Regulations shall, subject to any applicable Grievance Procedure, be subject to the following penalties:

- i) Dismissal; dismissal shall mean permanent severance of the individual from the employ of the University.
- ii) Disciplinary Layoff; disciplinary layoff shall mean loss of employment and rights and responsibilities, with loss of salary but not other benefits, for a period not to exceed one month.
- iii) Censure; censure shall mean a public reprimand for violation of the University's Regulations on Public Order.
- iv) Reprimand; reprimand shall mean a written reprimand for violation of the Regulations.

All decisions where the penalties of suspension or expulsion are imposed shall always be shown on any transcript or employment record furnished by the University.

In the event of an unfilled vacancy, the President shall appoint an individual to fill such vacancy. All such appointments shall be consistent with the composition of the Boards.

Because of the special problems of academic tenure, in the case of a faculty member for whom the penalty of dismissal has been voted by the UHB, such faculty member may within 10 days

of such determination elect, in lieu of an appeal to the URB, to have a review in accordance with existing Faculty Dismissal Procedures.

4. The University Conduct Conference

The existing University Student Conduct Conference (USCC) shall be renamed "University Conduct Conference". Its function shall be to facilitate an exchange of views on current and emerging problems of community conduct and discipline including the several functions delineated for the USCC in the relevant faculty legislation. The members of the Conference shall be the Vice President for Student Affairs; the Personnel Director; all members of the UHB, URB, SFBSC and SFAB; the Judicial Administrator, a representative of the Office of the Dean of Students; a representative of FCSA; and a representative appointed annually by the Faculty Council, who shall serve as chairman. In view of the size of this new body it may be desirable for it to establish an executive committee.

IV. Related Issues

It is a truism that any judicial procedure operates better in an atmosphere of mutual respect and cooperation. Thus the effectiveness of the procedures recommended in the previous sections will be greatly influenced by the overall Cornell atmosphere in the fall of 1969 and by the various procedures available to hear and respond to protests, to settle disputes, and in other ways to work toward a peaceful, educationally

oriented campus. This section deals with a number of specifics in this broad area.

1. The Establishment of a Cornell Ombudsman

It is good to know that the establishment of an ombudsman is being studied by a committee under Dean Kahn and we hope his group will make specific recommendations which will shortly lead to the presence of a Cornell ombudsman. Assistance in understanding and penetrating the Cornell bureaucracy will be welcomed by all parts of the Cornell community. This Committee urges prompt establishment of an ombudsman.

2. Assistance in the Settling of Disputes

In Cornell's recent past the spectacle of a minor dispute eventually becoming serious due to confusion and delay in its resolution has been a too frequent occurrence. This Committee has no specific new mechanism to propose but it does urge all parts of the community to be sensitive to this problem and to try in every possible way to provide prompt and effective ways to hear and settle disputes which arise in their area. A particular problem which merits serious attention is the settling of disputes among groups or between groups and the University administration or faculty.

3. Clarification of the Functions of the Cornell Division of Safety and Security

The uniformed Cornell Campus Patrolmen are an ubiquitous feature of Cornell life and it is vital that their role,

responsibility and functions be made crystal clear. The fact that Mr. Lowell George, Supervisor of Public Safety, was once Proctor of the University makes it especially important that his current role be fully explained to the campus. Cornell has been fortunate in having a responsive patrol force with good community relations. It is important that this state of affairs continue.

4. Maximum Feasible Understanding

A serious drawback to some of the otherwise desirable recent developments in the Cornell judicial system is that, being new, they have not been well understood. Since still further changes are in the offing, there must be explicit efforts to develop broad community understanding. Basically, this means a community educational program. Many groups have roles to play: The Cornell Sun, the News Bureau, the Constituent Assembly, the college and university faculties, many different student groups. The Committee hopes that this need for better community understanding is taken seriously by all of these groups and specifically recommends that the Cornell Public Information Office be charged to work in this area starting immediately and continuing into the fall semester.

The Committee

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*Absent after August 10 and not involved in preparation of final report.

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DRAFT

August 18, 1969

APPENDIX A

DRAFT PROPOSAL FOR INTEGRATION OF
The "Cornell University Regulations for the Maintenance of Public Order"
Into the "Policies and Regulations on Student Conduct."

The recommended changes below are for modification of the 1/10/69 mimeographed copy of "Policies and Regulations on Student Conduct."

1. Page 1, Introduction, Subparagraph 2: Add

"and the Cornell University Regulations for the Maintenance of Public Order adopted by the Executive Committee, Board of Trustees on July 15, 1969 in response to the requirements of Section 6450 of the Education Law of the State of New York."

2. Page 9, 1st paragraph headed Violations: Insert after subparagraph 4 the following new paragraph 5:

" 5. The possession, carrying, or use of firearms, including rifles and shotguns, ammunition, explosives, or other dangerous weapons, instruments, or substances in or upon University premises, except by law enforcement officers or except as specifically authorized by the University.*"

3. Page 9, 1st paragraph headed Violations: Change "5. Disorderly Conduct" to read "6. Disorderly Conduct."

4. Page 9, 2nd paragraph headed "C. Misconduct which impairs the effective functioning and operation of the University as an institution. Violations": Delete "5. Direct interference with or disruption of the orderly conduct of the operations of the University"

and Insert

"5. Conduct which disrupts or obstructs University operations or functions or infringes upon or interferes with the lawful exercise of the rights and freedoms of others*

- a) No person shall disrupt or obstruct or attempt to disrupt or obstruct any instructional, research, service, or other University operations or functions, or interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other rights of individuals, by
 - i) Using or threatening physical force or violence to harass, abuse, intimidate, coerce or injure another, or to cause damage to or loss of property; or
 - ii) Using language or actions likely to incite the use of physical force or violence by others; or
 - iii) Persistently making or causing to be made unreasonable, excessive, or tumultuous noise; or
 - iv) Obstructing or causing to be obstructed the lawful use of, access to, or egress from University premises or portions thereof, or unlawfully entering or remaining in or on the same; or
 - v) Obstructing or restraining the lawful movement of another or obstructing or restraining his lawful participation in authorized activities and events, including, without limitation, regular and special curricular activities, extracurricular

activities, and employment interviews.*

5. At the conclusion of Section 2 of the Policies and Regulations on Student Conduct, add this footnote -

"*In accordance with N. Y. Education Law Section 6450, these sections comprise part of the "Cornell University Regulations for the Maintenance of Public Order" and may be amended or deleted only upon action by the Cornell University Board of Trustees.