

**To:** Codes and Judicial Committee of the University Assembly  
President David J. Skorton  
Dean Stewart Schwab  
**From:** Cornell Law Student Body  
**Date:** October 15, 2007  
**RE:** Response to the Proposed Campus Code of Conduct

On behalf of the law school's student body, the Cornell Law Student Association has commissioned a committee to draft a response to the *Proposed Campus Code of Conduct*, drafted on 17 September 2007 ("Proposed Code"). This letter addresses the concerns law student community has raised concerning the proposed changes, which will be discussed in the following order:

- Proposed Expansion of Jurisdiction
- Proposed Waiver of Jurisdictional Challenges

Among the proposed revisions, we feel that these two changes require the most scrutiny. Overall, we have found that the proposed revisions are reasonable. Generally, the Revised Code is easier to read, nicely condensed, and flows in a logical manner. We are, however, concerned that expanding the University's jurisdiction while at the same time placing a time limit on jurisdictional challenges may threaten the fairness and accuracy of the adjudicative process.

### **Proposed Expansion of Jurisdiction**

Under the current Code, the President may authorize off-campus jurisdiction in cases of "[e]xceptionally grave misconduct."<sup>1</sup> The proposed revision would expand jurisdiction over "serious" "conduct elsewhere" that "poses a substantial threat to the University's educational mission or property or to the health or safety of University community members."<sup>2</sup>

While we agree that the current Code's language may be construed as placing too much constraint upon the President, we believe that the proposed language is vague and overbroad. What constitutes a "substantial threat to the University's educational mission" is, in fact, so unclear that the language "educational mission or" should be struck from the proposed revision.<sup>3</sup>

Similarly, the words "conduct elsewhere" gives no indication of whether the Code governs students, faculty members or employees of the school while studying or working in another county, state, or even outside of the United States.<sup>4</sup> The Code should explicitly state whether its jurisdiction has some geographic restriction.

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<sup>1</sup> *Cornell University Code of Conduct*, Tit. 1, II(A)(3) (June 2004).

<sup>2</sup> *Proposed Code*, Tit. 3, I.

<sup>3</sup> We fully understand the difficulty and the damage that may follow if the Codes and Judicial Committee of the University Assembly ("Committee") attempts to enumerate the offenses that would exemplify the kinds of conduct governed by the Code. Nevertheless, danger also lies in making the Code's language so broad that the Cornell community has no notice as to what actions are permissible or impermissible.

<sup>4</sup> We feel that it is appropriate for the school to exercise jurisdiction where a student engages in extreme or threatening behavior while abroad. Nevertheless, we fully expect that if the Committee further defines the scope of the University's off-campus jurisdiction, notice and an opportunity to comment will be made available to the Cornell community.

We support the addition of a process by which the Judicial Administrator (“JA”) works with the President or the President’s appointee in selecting which off-campus events to pursue. Nevertheless, the President’s approval should never be considered a rubber stamp for the JA.

We trust that the Committee will be vigilant in monitoring how this expanded jurisdiction is exercised to ensure that only egregious off-campus activities are pursued. In the event that the broadened scope of jurisdiction is used to pursue every open container, or similar minor offenses,<sup>5</sup> off-campus, the Codes and Judicial Committee should consider revising this provision.

### **Proposed Waiver of Jurisdictional Challenge**

The current Code is silent on whether jurisdiction can be waived. Therefore, under the current Code, students may challenge the University’s jurisdiction at any time during the adjudicative process, including on appeal.<sup>6</sup> In contrast, the Proposed Code states, “Any defense of lack of jurisdiction, or other inapplicability of this Code, shall be deemed waived if not raised by the accused promptly at the outset of the hearing before the University Hearing Board or earlier.”<sup>7</sup>

We agree that the Code of Conduct should be explicit as to whether the accused can or cannot waive jurisdiction. Nevertheless, we feel that this is too drastic a change from the existing Code. Although the proposed revision is more like how personal jurisdiction is treated in civil cases, we believe that it does not take adequate consideration of the accused’s state of mind, opportunity to grasp the gravity of the situation, and obtain advice of the Judicial Codes Counselor (“JCC”) or privately retained legal counsel.

Moreover, we are concerned that simultaneously broadening the scope of the University’s jurisdiction and forcing students to waive challenges to jurisdiction if not raised immediately will make the adjudicative process unfair. We respectfully submit that the Committee should not adopt both of these revisions at the same time and review the possibility of waiver at a later date.

If the Committee fears that the appellate process will be flooded with bad faith jurisdictional challenges, we understand why it would find waiver appropriate for students who retained private legal counsel or who had an advisor, including the JCC. However, we advise against creating a time limit for jurisdictional challenges because then the Committee might very likely face appeals alleging the ineffective assistance of counsel based on counsel’s failure to object to jurisdiction. These kinds of appeals are very time-consuming and complex, and they would also hinder the efficient administration of these cases.

Yet if the Committee still believes that waiver is necessary at the very least the Hearing Board should retain the power to review such waivers when in the interest of justice. As President Skorton has stated, the Cornell University community is to be an extended family. Although members of the community should undoubtedly be held responsible for their actions, the adjudicative process should not be a mirror image of the criminal justice system. Students do not receive all the benefits that defendants do. One of the most important rights of criminal defendants who cannot afford their own attorneys is court-appointed counsel. Though the school provides trained JCCs, there are only three JCCs available to all the students who face prosecution by the JA and not all students have the financial capacity or understanding of the situation to retain private counsel. In light of these differences and the University’s aim, the Committee should value fairness rather than efficiency in deciding the issue of waiver.

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<sup>5</sup> We mention open containers and minor offenses of a similar nature to memorialize the legislative intent of the Committee as expressed during the open forum held on 2 October 2007.

<sup>6</sup> *Memorandum to the Cornell Community from the Codes and Judicial Committee of the University Assembly*, 17 Sept. 2007, p. 2.

<sup>7</sup> *Proposed Code*, Tit. 2, I(A).

## **Conclusion**

The Code of Conduct not only protects the Cornell community from offenders but also provides procedural protections for the accused. The Code should aim to teach the Cornell community accountability, respect, and responsibility through a quasi-judicial system that is both fair and efficient.

Although the Code in many ways uses the criminal justice system as a model, the Cornell community has the unique opportunity to tailor its rules to its students, faculty, and employees. Moreover, since the University is not bound by all the constitutional mandates that govern the criminal justice system, the University must be vigilant in balancing an individual's rights whether that individual is a victim, a suspect, or a perpetrator. Therefore, in revising the Code, the Committee should strive to value fair procedures over efficient administration.

Cornell Law Student Association

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