



Cornell University

David J. Skorton
President

February 4, 2008

Rodney Orme
Employee Member
University Assembly Executive Committee
B07 Day Hall

RE: Campus Code of Conduct

Dear Rodney:

I am pleased that the comprehensive review of the Campus Code of Conduct is completed, and I am prepared to present my judgment concerning necessary revisions.

I greatly appreciate the contributions the University Assembly, and in particular, its Codes and Judicial Committee (CJC), has made toward this concerted effort, which commenced when President Rawlings commissioned a thorough review of the Campus Code in 2005. The effort was advanced by Barbara Krause's thoughtful report and recommendations in 2006, and completed by the University Assembly's helpful interim and final reports in 2007.

Conduct codes are invariably concerned with the process accorded those accused of violations, and reviews often focus on this admittedly important aspect. But there are other critical individual and institutional interests at stake that sometimes are not sufficiently acknowledged or accommodated. I refer to the interests of victims of misbehavior, whose well-being and personal safety conduct codes are designed to protect. Victims must have confidence that they have ready recourse to the disciplinary system and that individuals who have placed them or their property at risk will be held to account for conduct that violates the norms of the campus community. Codes that are unduly complex or overly encumbered with criminal-like protections for the accused do not sufficiently accommodate these interests of personal safety and individual accountability. I believe this is the case with the current Cornell Campus Code and some of the recommendations.

Another vitally important interest that is often overlooked in the design and review of campus conduct codes -- also the case here -- is the risk to the university that results from misconduct of its members. Indeed, as recent widely publicized episodes elsewhere make clear, behavior that ranges from the injudicious (Duke lacrosse) to the criminally violent (Virginia Tech mass shootings) can have incalculable consequences for a university. Impact on a university's operations and reputation affects all members of its community: students, faculty, staff and alumni.

Campus conduct codes that not only recognize but also balance the interests of all three parties -- the victim, the accused, and the university -- work wisely and well. Those that do not need to be recalibrated.

These are the considerations that have informed my review of the current Campus Code, the Krause Report, and the CJC Report. I have attached a memorandum that summarizes the salient features of each document and sets forth my judgment concerning related recommendations. I find many CJC recommendations acceptable as presented, some acceptable with modification, and some that require further review and revision. Regarding the last category, I am asking Dean of Faculty Charles Walcott, Vice Presidents Thomas Bruce, Susan Murphy and Mary Opperman, and University Counsel and Corporate Secretary James Mingle to meet and work with a representative group of the leadership of the University Assembly to formulate those changes that "require review, revision." I am asking Jim Mingle to take the lead in gathering the group and guiding the task, and for Judicial Administrator Mary Beth Grant to participate as a key advisor. Finally, I ask that this task be completed by April 15th so that all appropriate revisions to the Campus Code can be presented to the Board of Trustees for review and adoption at its May 23rd meeting.

Thank you and all your colleagues once again for the extensive time and effort devoted to this extremely important university policy document.

Best regards,



David J. Skorton
President

Enclosure

cc: Charles Walcott
Thomas Bruce
James J. Mingle
Susan H. Murphy
Mary G. Opperman
Mary Beth Grant

1. Unnecessary Complexity

Structure/Location of Disciplinary Function

Existing Code: The existence of an "independent" Judicial Administrators Office has been a feature of Cornell's campus judicial system since the major revision that was enacted in the early 1970s. (p. 37)

Krause Report: Locate the Office of Student Conduct within the Dean of Students Office. Accordingly, responsibility for the student discipline function would fall within the administrative responsibility of the Vice President for Student and Academic Services. (p. 13)

CJC Report: Office of the Judicial Administrator remains independent (p. 12); UA retains oversight over the Code. (p. 12)

President's Judgment: The CJC's recommendations regarding the Judicial Administrator's current organizational role and the University Assembly's continuing oversight role are acceptable.

Combining Title Two (RMPO and Title Three (RMEE)

Existing Code: Two separate Titles / separate procedures (Title Two starts on p. 13; Title Three starts on p. 21)

Krause Report: "I have conferred with University Counsels Office and believe that my proposed revision satisfies the requirements of the Henderson Act.' Counsels Office, of course, should opine on the legal sufficiency of this and any other proposed revision before final adoption." (p. 17)

CJC Report: It merges the Regulations for Maintenance of Public Order with the Regulations for Maintenance of Educational Environment to the extent it believes legally possible. Substitutes president for JA in RMEE cases. (p. 4)

President's Judgment: The CJC's recommended approach is acceptable.

Jurisdiction over persons

Existing Code: The current Campus Code of Conduct covers student misconduct (except for academic integrity matters); it also applies to faculty and staff with respect to non work-related misconduct. Work related misconduct is currently referred to a department head or dean, in the case of a faculty member; or to a supervisor or human resources representative, in the case of a non-academic staff person. (pp. 9-12)

Krause Report: The Conduct Code should set forth standards of behavior that apply to all community members but that all cases of faculty or staff misconduct (whether work related or not) be referred to the department head, dean, supervisor, or other human resources representative as appropriate. (pp. 15-16)

CJC Report: A uniform judicial process should be retained for campus judicial proceedings against students, faculty, and other employees. Slightly refines definition of student. (p. 13)

President's Judgment: Continuing with the existing Code provision remains, for the time being, acceptable.

Title Five (Responsible Speech and Expression)

Existing Code: separate Title Five regarding responsible speech and expression (pp. 59-66)

Krause Report: The major substantive concepts of Title Five are included in the proposed Conduct Code. (p. 26)

CJC Report: The proposal folds old Title Five on free speech into Title One on principles and policies. (pp. 1-9)

President's Judgment: The CJC's recommended approach is acceptable.

2. Procedural issues

Right to Remain Silent

Existing Code: Accused has the right to remain silent (Additional rights under RMEE: p. 53)

Krause Report: University should have the clear right to go forward with a case even if the accused individual refuses to speak. The decision maker, under such circumstances, should decide the case based on the evidence available. All community members have a duty to cooperate with the Office of Student Conduct. (p. 22)

CJC Report: Accused has the right to remain silent. (p. 27)

President's Judgment: The retention of the accused's right to remain silent is acceptable with modification, namely, the clarifications set forth in the Krause Report (and summarized here).

Role of Advisor / Attorney

Existing Code: Accused may have an attorney or any other adviser present at any stage of campus disciplinary proceedings. The attorney or other adviser may participate actively e.g., an attorney may question witnesses, advocate on behalf of the accused, etc. (p. 30)

Krause Report: Allows an adviser at any stage of campus disciplinary proceedings but requires that the adviser be a member of the campus community, and limits the role of the adviser so that it is primarily the responding student who must answer for her or his behavior. If a student were arrested for the same incident that is the subject of campus proceedings, the student could have any attorney as an adviser, but the attorneys role would be limited in the same way that other advisers roles are limited. (p.18)

CJC Report: Accused has right to attorney or any other adviser. Attorney/advisor may participate fully. (p. 38)

President's Judgment: The recommendations of the CJC are not accepted. The existing Code provisions and the CJC's related recommendation require modification to ensure consistency between the Campus Code and the Code of Academic Integrity and other university policies governing internal proceedings which allow for an advisor but not an attorney.

Sufficiency of Evidence

Existing Code: The standard set forth in the current Campus Code of Conduct is "clear and convincing" evidence. (p. 30)

Krause Report: The basic goal of promoting the community's educational mission would be best advanced by the preponderance standard, because it represents a more equal balancing of the rights of the accused, the rights of the complainant or victim, and most importantly, the rights of the educational community as a whole. (p. 23)

CJC Report: The standard of proof as clear and convincing evidence remains unchanged. (p. 28)

President's Judgment: The CJC's recommendation requires further review. It will be crucial to define a standard of proof that can equitably accommodate the risks to the accused, to the victim, and to the institution.

Authority to Suspend or Dismiss if Student Agrees

Existing Code: JA does not have the authority to suspend or dismiss a student even if a student were willing to agree to those sanctions. Rather, only the University Hearing Board and the University Review Board may impose a suspension or dismissal.

Krause Report: Office of Student Conduct and the accused student may enter into voluntary agreement to include sanctions of suspension or dismissal. (p. 24)

CJC Report: Allows the JA and the accused to agree to any authorized penalty or remedy, but provides for oversight of the JA in case of an agreed suspension or dismissal. (p. 21)

President's Judgment: The CJC's recommendation is acceptable, with the modification that the oversight by the University Hearing Board is not needed.

Interim Suspension

Existing Code: JA has authority to impose a temporary suspension (i.e., a suspension pending resolution of charges) under exceptional circumstances. The University Hearing Board, conducting what is called a "show cause" hearing, must review the JA's decision within five calendar days. (p. 15)

Krause Report: Clearly there should be a mechanism to review interim suspensions. A single senior University officer should be responsible for that review. Under the structure I propose, I believe this authority should rest with the Vice President for Student and

Academic Affairs, who has general administrative responsibility for student discipline. (p. 14)

CJC Report: In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or designee. (p. 20)

President's Judgment: The CJC recommendation is acceptable with modification, namely, the extraordinary circumstances shall include "or seriously disrupts the educational environment."

Proceeding While Criminal Charges Pending

Existing Code: General rule is to defer campus proceedings until criminal charges are resolved. As a related but confusing concept, the current Code sets forth the guiding principle of 'avoiding dual punishment for the same act' language that echoes the principle of 'double jeopardy in the criminal law. (p. 9)

Krause Report: University ordinarily will move forward with campus disciplinary proceedings regardless of whether related criminal or other charges are pending. Recognizing the special vulnerability of students who have been charged criminally for the same misconduct, the University should allow the responding student to have an attorney serve as an adviser in such cases if the student wishes. (p. 21)

CJC Report: . . . the JA has discretion to pursue even serious breaches of the law under the Campus Code of Conduct, although he or she should consider withholding the exercise of the University jurisdiction until public officials have disposed of the case by conviction or otherwise. (p. 2)

President's Judgment: The recommendations of the CJC are not acceptable. Timely dealing with alleged misconduct is, initially and ultimately, a vital matter of individual and institutional accountability. The University cannot cede or defer to external agencies or proceedings where its own principles are at stake. Therefore, the approach in the Krause Report is accepted.

3. Appropriateness of penalties

Existing Code: Lists specific violations (RMPO pp. 13-14, RMEE pp. 21-23)

Krause Report: List of sanctions provided. Retain guidance on progressive discipline. Adds provision that certain types of serious offenses (violence, bias motivated offenses, and any other offense that threatens educational mission, health, or safety) ordinarily will result in dismissal or significant suspension. (p. 3)

CJC Report: Rewords the violations, although those listed in 1.1, 3.e, and 3.f are somewhat new. (pp. 16-18).

President's Judgment: The CJC Report on this issue is acceptable with modification: In hearings involving charges of "violence, threats of violence, or serious disruption of the educational environment," the University Hearing Board's or the University Review Board's determination concerning the appropriate sanction will be *advisory* to the President (or his designee). This modification of delegated disciplinary decision-making authority not only addresses the institutional risk, but it also eliminates another anomaly by aligning the Code with other procedures (see, for example, the Faculty Dismissal and Suspension Policy, which provides that the faculty hearing board's report is advisory to the President).

4. Off-campus misconduct

Existing Code: Limited coverage to campus, except for presidential override for "grave misconduct." (Relied on policies of Article II.A of Title I to mesh Cornell and criminal jurisdiction.) (pp. 9-11)

Krause Report: Office of Student Conduct has discretion to consider off campus allegations if misconduct poses a direct and substantial threat to University's mission or to the health, safety, or property of the University or its members. (pp. 16-17)

CJC Report: "Adds to the presidential override (p. 4) by providing a more feasible, but still uncommon, jurisdiction over "serious" violations when "the conduct poses a substantial threat to the University's educational mission or property or to the health or safety of University community members" (p. 16). The idea was to reach the kind of serious violations mentioned on p. 34, but instead of doing the impossible by defining those violations, the new provision on p. 16 relies on the procedural restraint of having the Judicial Administrator obtain the President's approval of the exercise of jurisdiction. This is a significant change, but the thought is that the Code cannot ignore, say, a student committing rape in Collegetown."

President's Judgment: The Krause Report's proposal, and the CJC Report's endorsement of it, are acceptable with two modifications: Specifically, rather than

requiring the President's approval to institute proceedings for off-campus misconduct, other senior executives will be designated: for students, the Dean of Students; for staff members, the Vice President for Human Resources; for faculty members, the Provost. Moreover, given its significance, the term "campus" should be more suitably defined.

5. Other issues

Confidentiality of Proceedings and Records

Existing Code: All individuals who are involved in the complaint reporting, investigation, and adjudication process are obliged to maintain confidentiality of the proceedings. The University will take reasonable measures to ensure the confidentiality of the testimony and records produced in the procedures under this Code; however, the University cannot and does not guarantee that confidentiality can always be maintained. The University may disclose otherwise confidential information when required by law, when necessary to protect the safety or well being of the University community, or to preserve the integrity of proceedings under this Code. (p. 36)

Krause Report: Not mentioned.

CJC: All who are involved in the complaint, investigation, hearing, appeal, and reporting processes are obliged to maintain confidentiality of the proceedings, except as otherwise specifically provided in this Code. They shall protect the confidentiality of all judicial records, except those records specifically referred to in Article II.B. Copies of judicial records shall not be released to outside sources without written consent of the subject of such record, except as may be required bylaw. (p. 31)

The University will take reasonable measures to ensure the confidentiality of the proceedings and records; however, the University cannot and does not guarantee that confidentiality can or will always be maintained. The University may disclose otherwise confidential information when required by law, when necessary o protect the safety or well-being of the University community, or to preserve the integrity of proceedings under this Code. (p.31)

President's Judgment: The CJC's recommended approach is acceptable with this sole modification. Namely, change the last sentence: "The University may disclose otherwise confidential information when authorized by law . . .