

### MEETING OF FEBRUARY 6, 2015

President Lee Bollinger called the Senate to order shortly after 1:15 pm in 104 Jerome Greene Hall. Forty-six of 98 senators were present.

**Minutes and agenda.** Hearing no objections to the agenda or to the minutes of December 11, the president declared both approved.

**President's remarks.** The president said Suzanne Goldberg had taken up her position in the newly created role of Executive Vice President for University Life. He said the university is fortunate to have someone from the Law School—and her in particular—working in this role. Prof. Goldberg had been working on sexual assault and gender issues since the previous summer, and had shown that she has a great deal to contribute to the university. He revised the job description to accommodate her unique strengths.

The president repeated a statement he had made before—that Columbia, unlike a number of peers, has had no one in its central administration who focuses on students and university life generally, and he had felt this lack. So the new position is an attempt to have more engagement with the community and students.

One result of filling the new position will be an effort to engage the Columbia community in a broad discussion of race, ethnicity, and discrimination in American society, and of what might be done. This issue has come to the fore because of tragic and controversial recent events, but goes beyond these particular cases. Such a discussion would be particularly appropriate given Columbia's long history of addressing longstanding issues of invidious discrimination. As he had said in a recent statement, he had no particular agenda in starting this conversation, though he had written on certain aspects of this subject.

Another upshot of the appointment of Prof. Goldberg is a new study of various aspects of sexual harassment and related issues on campus, which she will oversee. This effort will supply some of the academic research that is needed to guide thinking about these problems.

Sen. Daniel Savin took up the topic of snow falling off the façade of Columbia buildings, particularly the Northwest Corner. He asked for an update on plans to provide safety measures. After a recent snowstorm, people had to walk in the street on Broadway because the sidewalk was closed off. He noted that scaffolding had recently gone up, but he wondered about a long-term solution.

The president said he had referred this issue to EVP for Facilities Joseph Ienuso after Sen. Savin had raised it in the fall. He asked if Sen. Savin had spoken with Mr. Ienuso. Sen. Savin said he had had an email exchange with one of Mr. Ienuso's aides.

The president said Facilities is actively engaged in addressing problems of snow and ice on the Northwest Corner and other Columbia buildings. He said this has been a problem all over the city, which has been covered in the press. There has been discussion about making a new walkway near the Northwest Corner.

**Executive Committee chair's remarks.** Executive Committee chair Sharyn O'Halloran (Ten., SIPA) said the Presidential Advisory Committee on Sexual Assault, under the leadership of Suzanne Goldberg, was working on several projects, including communicating about the new sexual assault policy and preparing recommendations for the president, as well as its first annual report to the Senate. In addition, as announced in an email from the Provost, a survey on the campus climate for sexual behavior will be going out on April 1, with an end date of May 15. This confidential survey will be undertaken in partnership with many peer institutions—an important collaboration because it will provide a standard instrument to analyze the results and do some benchmarking.

*Advisory Committee on Socially Responsible Investing.* ACSRI is at work. It co-sponsored a well-attended public forum on January 20 on the question of the place of investments in private prisons in Columbia's portfolio. ACSRI has formed two subcommittees in response to petitions, one on private prisons and one on fossil fuels. The full committee would be meeting on February 10. It has also filled the fourth student seat, its last remaining vacancy. ACSRI chair Jeff Gordon will update the Senate for the second time this year on April 2.

*Rules Committee report.* Sen. O'Halloran said the Rules Committee would be reporting later in the meeting in some detail on its review of the Rules of Conduct—an opportunity for senators to familiarize themselves with an issue they will be voting on at the end of the year.

*Discussion.* Sen. Savin said he wanted to follow up on the smoking policy implementation. He said his own informal survey, conducted during a walk around campus, revealed no reduction in the number of smokers or smoking locations. He said he found it difficult even to find the smoking areas designated by the current policy. Are there plans to review the current policy?

Sen. O'Halloran said she would bring that question to Vice President for Campus Services Scott Wright, chair of the Senate's implementation task force on smoking policy the year before, and ask what the criteria for success are for the current program.

*Upcoming meetings.* At the next plenary, on February 27, P&S Dean Lee Goldman will speak to a resolution to establish the Institute of Genomic Medicine. At the same meeting alumni senators Daniel Libby and Kurt Roeloffs will report for Alumni Relations, then introduce EVP for Global Centers Safwan Masri and Vice President for Alumni Relations Donna MacPhee, who will speak about the Global Centers as a platform for alumni engagement.

*Further discussion.* Allen Hyman, an emeritus professor and longtime member of the Senate but not currently a senator, asked permission to speak. On behalf of the Senate, President Bollinger gave him permission.

Prof. Hyman noted that alumni are represented in the Senate, but not emeritus professors. He said emeritus professors and retirees were informed the day before that as of March 1, they will no longer have Columbia email accounts. He reminded senators that emeriti continue to contribute to the university in many ways, including research and teaching. He said losing their Columbia.edu accounts will be not only inconvenient, but also disruptive for many emeriti.

Sen. O'Halloran said the Senate Structure and Operations Committee was now considering proposals to enable the emeriti to participate in the Senate. She was eager to discuss these issues, and encourage the Senate to take action on them.

Sen. Jeanine D'Armiento asked why the emeriti won't have email anymore. The president said he didn't know.

Sen. O'Halloran said she was already working on addressing this problem. She expressed appreciation that it was brought up at a plenary.

#### **New business.**

*Resolution to Approve the Master of Science in Enterprise Risk Management* (School of Continuing Education). Sen. Letty Moss-Salentijn asked Sen. Arthur Langer (NT, SCE) to present the resolution. He said risk management is now expanding throughout organizations in a number of different areas—strategic, operational, financial, insurance, and regulatory. The proposed program is designed for working professionals who are responsible for integrating these risks across their organizations, especially for governing boards. He said the program has been developed in consultation with the Business and Engineering schools.

The Senate voted unanimously to approve the program.

*Resolution to Approve the Combined M.S./Ph.D. in Applied Mathematics* (SEAS). Education co-chair James Applegate (Ten., A&S/Natural Sciences) said the two programs in applied math already exist, but as tracks in the applied physics programs. The resolution would give the two applied physics degree programs more of an independent existence.

The Senate unanimously voted to approve the resolution.

#### **Committee reports.**

*Rules of Conduct.* Sen. O'Halloran introduced Sens. Angela Nelson (Researchers) and Jared Odessky (Stu., CC), who were standing in for their Rules Committee co-chairs Christopher Riano (Nonsen., NT, SCE) and Sen. Zila Acosta (Stu., Law).

Sen. Odessky reminded senators that the Rules of University Conduct provide special disciplinary rules, applicable to “demonstrations, rallies, picketing, and the circulation of petitions” on Columbia's campus. They are designed to protect the rights of free expression through peaceful demonstration, while, at the same time, assuring the proper functioning of the university, and the protection of the rights of those who may be affected by such demonstrations. The rules have been in place since the post-1968 period, but they're under review now because

the current Rules Administrator is retiring at the end of this academic year, and the university has decided, along with the Senate, that this is an appropriate time for review.

Sen. Odessky said the committee has been meeting since February of 2014. In the fall of 2014 it hosted three town halls, two on Morningside and one at CUMC. He said the Rules are in three substantive sections: violations, event management, and disciplinary procedure.

Sen. Odessky said the committee would now split into three working groups, to begin drafting revised versions of each of the three main sections. The group had also set a new timeline, including a public draft proposal of revised Rules by spring break, followed by public discussion at an open forum on March 27 and at the Senate plenary on April 2, and then, the committee hopes, a Senate vote on May 1. Sen. Odessky acknowledged that the timeline was tight, but said this was the only way to have a working system in place by next fall, when a new Rules Administrator must be in place.

Sen. Odessky appealed to senators to start discussing the Rules now, to help the committee produce a new code acceptable to students, faculty, and staff, for Trustee approval in June.

Sen. Odessky outlined the first two main sections of the Rules, on violations and sanctions, and on event management. He said there are two kinds of violations: simple and serious. Reading from the Rules, he gave a few examples of each.

As for event management, Sen. Odessky said authority over the Rules resides in the Rules Administrator, who has the power to deputize other administrators across the university, to monitor events. If people are violating the Rules violation, those deputies, called Presidential Delegates, try to persuade them to stop. If this effort is unsuccessful, they can then report to the Rules Administrators and file a charge (though any member of the university community can also file charges).

Sen. Nelson then summarized the disciplinary procedures in the current Rules. She said the Rules Administrator, having received a complaint, investigates and may interview anyone, including a prospective respondent. The Rules Administrator has the discretion to dismiss the complaint, or attempt an informal settlement, and may impose a sanction if the individual admits guilt.

Or the Rules Administrator may prepare a charge, Sen. Nelson said. For a simple violation by a student, the case is referred to the office of the dean of the school in which the student is enrolled, and the case is heard under dean's discipline. In what is called an interview, the dean's designee presents the evidence against the respondent, who has the opportunity to make a defense before the dean's designee reaches a verdict. A simple violation is sanctioned by disciplinary warning or censure, although the sanction may be more serious if the individual has had repeated simple violations.

Respondents charged with a serious violation may choose between dean's discipline and a more formal and legalistic hearing, presided over by a lawyer from outside the university. A pool of these hearing officers is updated each year by the Senate Executive Committee. At the hearing the Rules Administrator, assisted by an attorney, presents the case to the hearing officer, and the

respondent may also be represented by an attorney. The hearing officer has broad discretion in conducting the hearing, though the Rules affirm the respondent's right to a speedy and fair hearing. The proceeding is open to the Columbia community, unless the respondent requests a closed hearing, but in either case there is a public record.

The hearing officer issues a written decision, stating the reasons for the verdict. With a finding of guilt, the officer imposes one of two sanctions, either suspension or dismissal (if the respondent charged with a serious violation had chosen dean's discipline, the range of available sanctions would have been broader, including the option of censure). From a guilty verdict in the hearing process, either side may appeal to the University Judicial Board, which is also appointed by the Senate Executive Committee. It consists of five members including at least one student, at least one faculty member, and at least one noninstructional officer. The UJB may affirm or reverse the decision, but it cannot change the sanctions. From their decision (and, in some instances, verdicts on simple violations), a final appeal may be made to the president.

As for next steps, Sen. Nelson said, the committee had reviewed the feedback from the town halls, and was discussing various options for going forward, one of which might be an internal panel or system, where all charges—simple and serious—could be heard.

Sen. Greg Freyer (NT, Public Health) asked where the boundary is between violations to be adjudicated on campus and those to be prosecuted as criminal acts.

Sen. Nelson said violations adjudicated under the Rules are not treated as criminal acts. If the violations are deemed serious the student chooses between the special hearing procedure and dean's discipline.

Sen. Freyer, thinking Sen. Nelson meant that the student chooses between a Columbia proceeding and a criminal proceeding, was puzzled. He said he was comparing the Rules to the disciplinary system for sexual assault, in which some of the violations are clearly criminal acts.

Sen. Freyer then understood that the Rules Administrator determines whether violations are simple or serious by considering the definitions under the Rules. If the Rules Administrator determines that the violations are serious under the Rules, the defendant can choose between the two disciplinary processes. A defendant charged with a simple violation can only go through dean's discipline.

The president said the Rules were set up at a time when the university was convulsed by protests, and relationships between students and the administration were terrible. He added, to laughter, that those relationships are now perfect. He said the present time was a different world altogether, and there is an important question whether this forty-plus-year-old arrangement still makes sense. He asked how many cases had been tried using the external hearing process.

Someone said the last case was in 1993.

The president noted that in his 13 years at Columbia, there hadn't been a single use of the external procedure. He said he did not want to present his views at the present meeting, but he identified a central question: What kind of process does the university want?

The president identified a second important question: Are Columbia's rules of freedom of expression the right ones? Do they adequately protect the vital freedoms? He noted that the University of Chicago had recently revisited their principles, and issued a statement about freedom of speech on that campus. Is the committee considering that statement?

Sen. Nelson said the committee has been learning about policies at other schools.

The president said that he had great confidence in the group working on this issue at Chicago, and that this statement might be a good reference point for Columbia's efforts.

Howard Jacobson, the parliamentarian, offered some historical perspective. He said the Rules go back to the late 1960s and early '70s, when demonstrations were common. He recalled a few occasions when the external hearing process was used, including demonstrations in the 1980s over Columbia's investments in companies with operations in South Africa and, in 1992, over the Audubon research park. Mr. Jacobson recalled one other use of the external hearing process. At some point, he said, the Rules were amended to encourage people to choose dean's discipline instead of the long hearing process.

Sen. Odessky offered two clarifications:

- 1) Despite their names (internal and external), both dean's discipline and the hearing process are internal to Columbia. Neither is a criminal proceeding. It would be the decision of the university, outside of the context of the Rules, to file a criminal charge against a member of the university community for something done during a demonstration.
- 2) One reason the hearing process has been inactive is that the range of sanctions for serious violations was restricted, under amendments to the Rules approved during the late '80s, to suspension and expulsion. In dean's discipline, by contrast, a full range of sanctions is available. These amendments created a strong incentive for respondents charged with serious violations to choose dean's discipline.

Sen. Lisa Northrop (NT, Barnard) asked if the committee heard a rationale at the town halls for a preference for solely internal panels.

Sen. Odessky said the town hall transcripts are publicly available, so anybody can look through them. But what the Rules Committee heard from students there was a lot of concern over the idea of moving away from an external process. On the other hand, not everyone was at the town halls. He asked to hear the opinions of senators.

Sen. Nelson briefly made a case for a single internal process for everyone, making clear that she was speaking for herself, not the committee. She said procedures for cases adjudicated through dean's discipline are different in every school. Her preference was a more consistent process, where everyone is judged by the same panel.

Sen. Applegate agreed with the president's earlier point—that ideas about freedom of expression are absolutely central to what universities do. He said it would be a missed opportunity if the Rules Committee focused entirely on disciplinary procedures, and missed a chance to affirm the importance of the right to express one's ideas, but also the responsibility to allow others to express their ideas, particularly those with which one might vehemently disagree. These rights are crucial for universities, and this is an occasion to affirm them in a powerful way.

Sen. Eli Noam (Ten., Bus.) said he understood the confusion in the previous discussion between Columbia's processes and criminal proceedings. But he said the two processes sometimes overlap. For example, the procedures protecting due process in the university proceedings—protection against self-incrimination, the right to cross-examine witnesses, documents, presentations—can they be used in criminal proceedings?

The president said this question is very important, and the answer is very simple: anything that is said inside this university, in any procedure, can be used in a criminal process. So nothing is protected, except for private lawyer-client conversations. He said the same considerations apply to proceedings under rules for sexual misconduct.

Sen. Noam said that if a defendant relies on a fellow student or a faculty member for advice instead of on a lawyer, would conversations with the advisor not be privileged?

The president said they would not. He added that lawyer-client privilege itself actually covers a narrower range of communications than people think. So he would not claim that conversations with any advisor in a university process, including a lawyer, are fully protected. He added that he did not have the complete answer to this question. But he was confident that all other communications are subject to being used in a criminal process.

Sen. Noam asked how the university would address the problem of a student who recognizes the need for a lawyer rather than an informal advisor, but cannot afford a lawyer.

The president said this was another important question. He assumed the committee was discussing these questions. In the case of the disciplinary proceeding for sexual assault, which Columbia revised during the previous summer, the university followed recommendations of the White House and the Office of Civil Rights that a student has a right to an advisor, who may be a lawyer. The university has tried to provide free legal counsel to students involved in sexual assault cases by relying on law students as volunteers. So the analogous question for the Rules of Conduct is, What is the role of counsel, and what obligations should the university assume to provide it? If law students don't want to volunteer, then Columbia has to hire lawyers, and that gets expensive quickly.

The president reiterated that the procedures the Rules Committee was considering are not criminal procedures, though they are related.

Sen. Hyunwoo Paco Kang (Stu., P&S) asked if the violations and sanctions that had been passed out were the current ones. Sen. Odessky said they were.

Sen. Ramis Wadood (Stu., CC) asked if the committee had a model in mind for a new disciplinary process.

Sen. Nelson said there are some options. One is to use an existing panel that is appointed and maintained by the Senate Executive Committee. This panel would hear all charges. Appeals could go to the existing University Judicial Board mentioned earlier. The idea is to use resources that are already in place at the university, but that would be neutral.

Sen. Wadood asked if there would be student representation in any of the disciplinary panels that the committee was considering.

Sen. Nelson said the five-member UJB has at least one faculty member, at least one student, and at least one non-instructional officer.

Sen. Wadood said that as a student senator, he wanted to ensure that student voices are considered in the creation of any new internal process the committee chooses. Sen. Nelson said they would be.

Sen. Moss-Salentijn expressed discomfort with the current provision in dean's discipline for appeals of verdicts to the dean. She said that if the dean is not sufficiently sequestered from the earlier disciplinary proceedings, there might have a significant conflict. She was concerned about having the same person who found the student guilty also judging the student's appeal.

Sen. Nelson replied that if there were a single internal panel serving the entire university, this concern would be eliminated. There would be no deans from the defendant's school hearing cases or appeals.

Sen. Odessky stated a couple of ground rules for the committee's review of the Rules: dean's discipline is not within the committee's purview; it can only change the Rules of Conduct. But it can affect what kinds of cases go to dean's discipline.

Sen. Soulaymane Kachani (NT, SEAS) said that in dean's discipline, usually a board hears the cases. For undergraduates, for example, the Office of Judicial Affairs hears the case and delivers a verdict, and the dean of the school—either Columbia College or the Engineering School—is not involved in that process. Then any appeal goes to the dean of the school.

Sen. Kang (Stu., P&S) asked what the standard of proof is for conviction under either of the current disciplinary processes.

Sen. O'Halloran said one goal might be to make these standards consistent with those in the disciplinary procedures for sexual assault. There's a move toward the "preponderance of the evidence" standard, which is already widely used in different kinds of proceedings across the university. The criminal courts have a different standard. She thought the focus was on trying the options that are available, and trying to be as consistent, as clear, and as simple as possible, so people aren't confused. One of the challenges of the Rules of Conduct is their complexity. She said streamlining them and making them consistent with other processes would be helpful.

Sen. Alice Heicklen (NT, A&S/Natural Sciences) asked how decisions are made about what infractions should be charged as crimes, and if any violations currently deemed serious have to be reported to the police. She said this problem has come up in cases of sexual assault.

The president said this is a complicated question. Reserving the right to change the statement he was about to make, he said that in the case of sexual assault, Columbia leaves it to the person alleging sexual assault to decide whether to press criminal charges. Columbia supports the person in making that decision, and will help contact the criminal authorities. But Columbia will not, on its own, press criminal charges.

An exception to this guideline, which could compel Columbia to press charges on its own, might involve a situation in which the alleged perpetrator clearly poses a serious threat to other people. But in general, he said, Columbia leaves this decision to the person who's alleging assault.

Sen. Heicklen said she understood this answer as it applies to sexual assault. But how would it apply in the case of the Rules of Conduct?

The president imagined a case in which someone destroys university property during a demonstration. The university has a choice. It can make a decision to call the police and prosecuting attorneys and say it has been the victim of a criminal act. In the case of an assault against another person, he assumed that the decision to press charges would be left to the victim.

These issues are complex, the president said, particularly in the case of sexual assault, because of the profound effects on the individual bringing the charges. The university might be less reticent about intervening if it felt a compelling need to report the incident. Another special case involves juveniles: if the university believes a juvenile has been the victim of a crime, it will go to the police. But in the case of a protest where there's damage to some property, the president is likely to decide not to pursue a criminal action. There's discretion in these decisions, depending on the types of cases involved. The president invited the provost to comment—or any other senator.

The provost said the president had stated the issues correctly.

Sen. Noam returned to the question of standards of evidence. In serious cases involving firearms and other dangers, where the consequences of a guilty verdict are serious for defendants, with an impact on their careers and reputations, preponderance of the evidence—the standard of civil law, not of criminal law—is insufficient. He said there is a reason why criminal law uses a higher standard. He said he was prepared to argue—and if necessary move as an amendment—that for truly serious charges the standard of proof has to be higher than preponderance.

The president said this is one of the issues before the committee. He looked forward to having a proposal to consider and debate. His own view was that the standard in a criminal trial—beyond a reasonable doubt—is too high for cases adjudicated within the university. Though the consequences of a guilty verdict can be serious for a defendant, so is it also the case that the alleged violations are very serious, and that the most serious sanction the University has—expulsion—is not as serious as putting someone in jail. So on balance, he would opt for a lower

standard. Whether it ought to be higher than a preponderance of the evidence—somewhere in between that and *beyond a reasonable doubt*—was, he thought, a worthwhile question.

Sen. O'Halloran said the committee would be coming back and presenting a proposal for discussion, both in a public forum devoted entirely to this issue and at a Senate plenary. She said it was vital for all constituencies—faculty, students, staff—to take part in this decision, because it will affect everyone.

The president adjourned the meeting shortly before 2:30 pm.

Respectfully submitted,

Tom Mathewson, Senate staff