ASUCI JUDICIAL BOARD

ASUCI Senate

v.

Randy Yan

Petitioner represented by Ms. Faith Chua, and Mr. Logan Knight.
Defendant represented by Mr. Roy Ho.

Ruling

Dated: May 27, 2020

Synopsis:

On February 27th, the ASUCI President was impeached by the ASUCI Senate on charges of abuse of power, maladministration, and perjury. On March 12th preliminary hearing was held. The Judicial Board ruled there was sufficient evidence to call for a formal hearing. On March 16th, discovery was issued by both parties, with discovery orders modified pursuant to several objections. At this time, the Judicial Board found executive privilege to be a binding procedural concept in discovery disclosures. On April 17 - 18th, the Judicial Board held a formal hearing, hearing evidence from both parties. On a grant of certiorari, and in deliberations on evidence presented at the trial, the Judicial Board held that: (1) the *Safady* precedent, in determining impeach threshold, was to be applied to all questions of fact not disputed; (2) that the *Safady* precedent, herein the *Safady* test, required a showing of three elements by the plaintiff: first, that the Senate must adhere to the governing documents; second, charges must be grounded in the constitution; and finally, third, the Senate must have acted reasonably; (3) that in the case of impeachment, the trier of evidence required for a finding of guilt must be beyond a reasonable doubt; (4) that the defendant is not guilty of abuse of power; (5) that the defendant is not guilty of maladministration; (6) that perjury is defined by action and intent; and finally (7) that the defendant is not guilty of perjury.

Gandall, K., Craw M., Bunda J., Mendez H., and Naqvi K. joined in per curiam. Anayat T., took no part in the consideration or decision of the case.

Per curiam,

On February 25th, 2020 the ASUCI Senate began official hearings on the impeachment of the office of the President, held largely in executive session. On February 27th, the ASUCI Senate (herein, plaintiff) officially impeached ASUCI President Randy Yan (herein, defendant). The plaintiff alleged three charges: abuse of power, maladministration, and perjury. On March 3rd, records of the impeachment, along with evidence of minutes, was sent and verified by this Board.

On March 11th, plaintiff and defendant briefs were sent by the Chief Justice to the Board (Appendix A and B). Preliminary trial was set for March 12th. Prior to hearing, two preliminary motions were filed: first, plaintiff asked to remove media presence from the official preliminary hearing. Motion was rejected unanimously. Second, defense requested that Justice Gandall be forcefully recused from the case on two grounds: first, for a Student Advocate General (SAG) report that alleged Gandall's bias, and second, for his role as Senate Parliamentarian. Motion was rejected unanimously, but Gandall recused himself from proceedings on the charge of perjury.

On March 12th, the official preliminary hearing was held. Both parties concurred to bifurcate the issues of the legislation into the constitutionality of the bill for appointing Rodridgo Quintas as ASUCI Interim President, and the merit of the charges. Constitutionality was ruled to be handled separately, upon petition. The preliminary hearing commenced, and the Judicial Board found sufficient reason to call a formal trial. Chief Justice ordered both sides to provide discovery requests, pursuant to the Judicial Rules.

On March 16th, Chief Justice distributed discovery motions to both plaintiff and defense (Appendix C). Plaintiff, in written objection, argued that the Judicial Board should strike item eleven (11), which consisted of all Senate emails relevant to the President, and fifteen (15), which consisted records from executive session, from the defense discovery request (Appendix C). On the matter of item eleven (11), the Board ordered that the President provide a list of keywords to be analyzed through email, and concurred with the Senate that all emails would be excessive: "This list of words is meant to reduce the burden on the prosecution to find relevant emails. In finding a way to make this fair to both parties, the Judicial Board considered the idea of using two separate lists to find germaine emails." On the matter of item fifteen (15), the Judicial Board ruled the Senate need not disclose confidential records held in the executive session. Next, the defense, in written objection, argued that many of the plaintiff's requests should be struck; more specifically, the defense objected on item fifteen to eighteen, which consisted of wordpress application forms to notices of cabinet meetings, should be struck as such did not exist. Upon confirmation, the Board agreed and struck these requests. Second, the defense objected to item twenty (20) part 1, which requested detailed expenditure reports. Board disagreed with the defendant, and ordered their

production, pursuant to those records held by the ASUCI Accountant, Robert Schumm. Third, defense objected to item twenty (20) part 2, which requested private notes and records, which the plaintiff argued would be persuasive to findings of intent. Defense rebutted contending that those records included private conversations, both with internal staff and with UCI administrators. The Board agreed with defense, and set the standard that matters of executive privilege could not be subpoenaed by the Judicial Board while the President maintained his seat in office. Finally, defense objected to item twenty-one (21) which requested the submission of private conversations with Kaityln Sapida, arguing that such conversations were verbal and not written. Upon confirmation, the Judicial Board agreed and struck the item. All other requests, as outlined in Appendix C, were ordered. Chief Justice Abundis ordered all discovery requests to be due by April 17th, and set standards for appropriate redactions.

Thereafter, the Judicial Board set the trial to be heard on April 17 - 18th. During the trial, several evidentiary objections were made, although only one was relevant to our consideration today. More specifically, plaintiff cross-applied a visual of multiple graphs to his oral arguments. The visual, however, had not been turned over to the defendant prior to the trial. Defendant objected that the material was improperly submitted, and was therefore inadmissible. Chief Justice Abundis concurred, and ordered the information struck. Justice Gandall objected, and by a majority vote, the Board held that the information may be submitted. Defendant then attempted to then display visual data, but the Board held that while visual items may be used during oral arguments, information provided by witnesses must be submitted properly. Thus, the defendant was not permitted to allow witnesses to present further evidence beyond oral testimony.

The case before the Judicial Board today involves the impeachment of the ASUCI President, and among other procedural questions, forces our Board to take the role of both juror and judge. We do so carefully, and acknowledge the massive undertaking of any formal trial. As we explain, we divide the trial into undisputed facts, of which demand interpretation and link to impeachable conduct under the *Safady* test, and those questions which are of disputed fact, which we defer under the standard of evidence for beyond a reasonable doubt. We do so acknowledging that many of these rulings are intrinsically arbitrary; and as such, we temper our conclusions closely to the presumption of innocence demanded by the western canon of law.

Accordingly, as we will explain in depth, a proper application of the rules and facts require we find the defendant not guilty on all charges.

I.

We open our analysis on today's case by reviewing the appropriate rule. As we explain, the *Safady* precedent, while prescriptive to undisputed events, cannot be fully applied to a case involving questions of fact. As we therefore explain, historical knowledge, coupled with binding and suggestive precedent, require we adopt a stringent measure of beyond a reasonable doubt to impeachment cases; as we thus conclude, the engines of government coercion, operating to remove a

lawfully elected official, must be tempered by not only procedural safeguards, but by broader philosophical view of common law that promotes safeguards against government intrusion: "it is better that ten guilty persons escape than that one innocent may suffer." *Blackstone's Formulation*.[1]

More specifically, to accomplish this task we bifurcate our analysis of adjudication in impeachment cases to two different standards: first, in the case where the facts are disputed, we apply the *Safady* test. Second, if the facts are disputed we pivot to the evidence standard of beyond a reasonable doubt, in an effort not only to protect abstract defendant rights, but tailor disciplinary standards to the real world consequences of Judicial Board injunctive power.

A.

In order to properly understand this case, each charge must be bifurcated into questions of fact or law. As we held in *Janani v. Senate* (2020), a factual question "is one that requires the weighing of factual claims under a trier of law, i.e. evidence standards." (*See also*: *Janani* in citing *Steadman v. S. E. C.*, 450 U.S. 91 (1981), at 95, in its analysis that administrative hearings may prescribe standards of evidence where not enumerated by statute: "Where Congress has not prescribed the degree of proof which must be adduced by the proponent of a rule or order to carry its burden of persuasion in an administrative proceeding, this Court has felt at liberty to prescribe the standard, for "[i]t is the kind of question which has traditionally been left to the judiciary to resolve."). In *Janani*, the court further clarified that questions of fact are often not deductively resolved by application of a set of laws, but rather, induced through observation and, in our case, testimony: " In common parlance, a question of fact must be arguable as to its very existence, not merely to the threshold of violating or sufficing a rule." *Janani v. Senate* (2020), at 4. Finally, the context of *Janani* holds relevance in our analysis today; more specifically, in oral and briefed arguments of Janani, a multitude of factual claims were made, but those claims were either not relevant or not disputed. For one claim, that of which involved an investigation of a senator, the court held that an irrelevant fact could not be maintained as grounds for a factual dispute: "During the hearing, it is true that statements of fact were made; indeed, speculations were made by the plaintiff, multiple times, as to motives of the respondent. However, such facts are not in dispute: the SAG did indeed make the report, and correspondingly, the Senate did nothing of it." At 4. We thus hold these factual precedents as binding when analyzing if an issue is of fact or law: first, that if a factual question is present, we apply a tier of evidence to it; second, that factual question are intrinsically inductive, not deductive, in nature; and finally third, that irrelevant or otherwise undisputed facts are not considered grounds for an issue of fact.

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[1] Justice Gandall, in deliberations, had argued that the Safady standard may have reflected the idea that there was a shift in the burden of proof unto the defendant. While we acknowledge that contention in part, and outline that preference in the first prong. This effectively allows the court reconcile the constitutional prerogative of preference to the Senate determining impeachable conduct, while protecting the due process right of the defendant.

B.

To understand how to adjudicate cases of fact for impeachment, the Judicial Board references our precedent held under the *Safady* test. More specifically, in *ASUCI Senate v. Safady*, the Court considered the impeachment of Senator Safady on the grounds of her inability to effectively function as a Senator due to passing satirical legislation the Senate deemed as offensive: "Senator Safady introduced Senate Resolution R53-39 in which funds were satirically requested from the EVP office to host makeup tutorials/ workshops for black officers to appear white to the student body of the University. This led the Senate to issue an impeachment regarding her capabilities as a representative for her constituents." *ASUCI Senate v. Safady* (2018), at 1. During oral arguments, the Senate prosecutor argued that the legislation written by the Senator, being satirical in nature, was not meant to be implemented, and was thus ineffective at serving the student welfare: "They claimed that, because R53-39 was intended to be satirical, according to both the defendant and plaintiff, and sought to act only as an inflammatory statement rather than to achieve any actual legal effect, the legislation's effectiveness must be called into question." *Safady* (2018), at 5. Instead of arguing against such a point, the Senator conceded to this fact and instead conveyed that the question should be upon her free speech rights: "issue of freedom of speech, and that impeachment on such a basis violates her right to speak freely." At 5. The Court, rejecting the defense's argument, instead agreed with the Senate that the impeachment was both sound and constitutional: "Upon deciding that the Senate's reasoning is legally sound and neither violates the ASUCI Constitution nor the By-Laws, the Judicial Board has determined that the impeachment shall go through." At 5. The Court further divided the second prong, constitutionality, as a function of reference to a specific rule in the governing document, as well as grounds in the constitution: "Constitutionality of impeachment justification is gauged on general adherence to the governing documents and is grounded in the Constitution." At 3. And finally third, the Court reviews the event in question actually occurred. For the Court in Safady, no such analysis was needed, as both the plaintiff and defendant agreed the alleged behavior that violated the rule, namely the satirical legislation, did indeed occur and was authored by Senator Safady.

For this reason, the *Safad*y test demands that three prongs be met: first, that the impeachment must adhere to the governing documents. Adherence must effectively meet two criteria: first, explicit enumeration in the code. This is required because of the general demand of parliamentary law that when a specific class of items are referenced, new arbitrary inferences cannot be made without a revision of the governing document: "If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited." RONR (11th ed.), p. 589, ll. 33 - 4. *See also*: "the parliamentary authority prohibits inventing rules not explicitly enumerated when other accordingly exist." *Wolfe v. Sparks* (2020), at 3. In our context, there are explicit rules, both as to Executive duties and to the Code of

Ethics.[2] For this reason, we require an enumerated violation of the rules. Second, adherence is determined by factual connection of allegation to violation. This factual connection, when not contested, is assumed present by the deference to the Senate in drafting legislation and conducting an investigation. Overall, the Raj Court offered great deference to the Senate in applying these rules, entrusting the procedural threshold of a supermajority necessary for impeachment to guard against frivolous attempts by the legislature to remove popular, elected officials: "The Supermajority and procedural protections exist to preserve the results of the democratic elections that gave Senators their seats in the first place." *ASUCI Senate v. Safady* (2018), at 2. We maintain this deference as consistent with Judicial Board precedent to allow the Senate to internally operate and define its own procedures and conclusions as a function of legislative autonomy (*see, e.g.* *Justice* Disney writing that the Senate has the right to define ex-officio seats without greater administrative authorization: "The Senate previously expressed concerns that, in order to create an ex-officio seat to represent a previously established group, the permission of this group was required. In this case, the Senate believed they must consult the Division of Continuing Education (DCE) in order to grant extension students ex-officio status. To address this concern, ex-officio observer seats can be created without any required request or consent from the organization or body that they are representing at the Senate's discretion. This extends to any major organization or entity whose members request such ex-officio status in the Senate, and any further addition of this nature is up to the Senate's discretion." *JUDICIAL RULING ON R53-25: Creation of a Representative Seat for Extension Students* (2018), at 2). As such, unlike the third prong, which will demand a factual inference as to the actual occurrence of the event, we provide broad deference to the Senate to establish the link between the alleged action and the correspondingly codified infraction. Taken together, we therefore consider a charge has 'adhered to the governing documents' if the alleged offense is both codified and the link to the offense is not strongly disputed.

Second, *Safady* demands an analysis as to the constitutionality of an impeachment. We find this has two functional implications: first, that protected enumerated and natural rights under article 3 and of the properly adopted parliamentary manual were not abridged. This first requirement of constitutionality is purely adjective, and as we mentioned for prong one, largely internal to the Senate's chosen functionality. Second, that the given charge must relate to "neglect of duty, malfeasance, or misconduct" and cannot exceed these constitutional boundaries. *ASUCI Constitution*, Art. 6 §2(o). To do so, as heavily referenced in *Janani v. ASUCI Senate (2020)*, would violate the maxim of ejusdem generis: "the maxim ejusdem generis, the statutory canon that "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), at 1308 - 9; "A general statement or rule is always of less authority than a

[2] As the Safady case explicitly references, these duties can also fall under general UCI campus policies.

specific statement or rule and yields to it. It is not practical to state a rule in its full detail every time it is referred to. General statements of rules are seldom strictly correct in every possible application… No one has a right to quote a general statement as of authority. against a specific statement." RONR (11th ed.), p. 589, ll. 17 - 32. *See also:* "The rule of ejusdem generis, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty. Ordinarily, it limits general terms which follow specific ones to matters similar to those specified." *Gooch v. U.S.*, 297 U.S. 124 (1936), at 128; "...ejusdem generis, counsels: "[W] here general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Yates v. US*, 574 U.S. 528 (2015), at 545." Thus, as we did in *Janani*, at 7, we must extend the cannon of ejusdem generis to encompass boundaries for impeachable behavior; as such, we require all charges fall under, in some manner, "neglect of duty, malfeasance, or misconduct." Of course, while the Senate may "determine what constitutes an impeachable offense," such a determination must be connected to the three potentially impeachable offenses: neglect, malfeasance, or misconduct.

Having determined any procedural or adjective behaviors, we now turn to the final and third prong of *Safady*: that is, to determine if the Senate acted reasonably in describing the event that took place. In the case of *Safady,* the event of offensive legislation is not under dispute, only the implication of such (*see, e.g.* the Court explaining that, during oral arguments, neither side actually disputed the satirical legislation existed, and instead argued about its specific contents: "Many of the arguments raised by both sides during the hearing were ethical in nature. These particular arguments focused primarily on the contents of Senator Safady's legislation (R53-39). The impression that the defendant conveyed was that this was in part an issue of freedom of speech, and that impeachment on such a basis violates her right to speak freely." *ASUCI Senate v. Safady* (2018), at 5). For the purposes of this case, we extend this standard. Thus, to meet the requirement of reasonably describing the action, the Senate must meet three criteria: first, the alleged conduct by the defendant does not violate an explicitly required behavior, or in the case of negligence, prohibited: "When the meaning is clear, however, the society, even by a unanimous vote, cannot change that meaning except by amending the bylaws." RONR (11th ed.), p. 588, ll. 26 - 8; *see also*: "A provision granting certain privileges carries with it a right to a part of the privileges, but prohibits a greater privilege." RONR (11th ed.), p. 590, ll. 9 - 11; "A prohibition or limitation prohibits everything greater than what is prohibited, or that goes beyond the limitation; but it permits what is less than the limitation and also permits things of the same class that are not mentioned in the prohibition or limitation and that are evidently not improper." RONR (11th ed.), p. 590, ll. 17 - 22. Second, that described event does not yield to any absurdities in describing the hypothetical application of the rule to the holistic set of governing documents, or that of practical reality: "When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning." RONR (11th ed.), p. 589, ll.

4 - 7. Such could emerge, for instance, if two conflicting statutes, one of which is not more specific or under the *Janani* exception standard, made it impossible for the specific behavior to comply. Alternatively, this rule also prevents action which would be impossible to prove or disprove, such as arguing that "misconduct" involves vague or unprovable standards that would put a defendant in a legal 'catch-22'. And finally third, the behavior that resulted in impeachment cannot be an extension or base of that behavior which was either already punished, or in which codified penalties were already created: "The imposition of a definite penalty for a particular action prohibits the increase or diminution of the penalty." RONR (11th ed.), p. 591, ll. 1 - 2.

Thus, taken together, the Senate must meet a three prong standard, as described in *Safady*, in order for the Judicial Board to remove the defendant: first, the Senate must adhere to the governing documents; second, charges must be grounded in the constitution; and finally, third, the Senate must have acted reasonably.

C.

Next, we determine the appropriate trier of evidence necessary in the case of disputed fact. As we explain, the history of ASUCI impeachment cases provide ample ground to base a rule on undisputed facts, but almost never disputed arguments. We establish, therefore, a precedent for the use of the evidence standard beyond a reasonable doubt in cases of impeachment. As we further explain, such a rule is supported by the applicable history, governing documents, and jurisdiction of ASUCI.

i.

As we noted before, the Safady case relies on the presumption of factual truth; that is, that neither party disputes something happened, and instead argues legal questions of interpretation. Thus, because the Safady case is insufficient to properly describe a rule for questions of disputed fact, we review the method in which prior Courts decided such issues. Our first case, emerging out of a 1990s dispute of disputed events involving due process, is *Rodriguez et al v. ASUCI Senate* (1993). More specifically, petitioner argued that the Senate, which had removed Executive officers for absences, failed to provide specific elements of due process. While the ASUCI constitution in the 1990s allowed the legislative to remove Executive officers, the Court nonetheless held that members held a natural right to due process, even if such was not enumerated in the ASUCI constitution: "Third, the manner in which the council members were removed was a blatant violation of the *V, V*I, and XI*V* Amendments the US Constitution and Article XII, Section *A,* Part 10. The Legislative Council removed the Council members, thus seizing their property without granting them the ability to present a defense, provide witnesses, to a trial, or anything remotely resembling due process." *Rodriguez et al v. ASUCI Senate* (1993), at 2. Similar to the *Rodriguez* ruling, the Court would further clarify that ASUCI was subject to interpretations and rules by higher governing bodies, including federal and state actors: "While University policies primarily govern

system wide policies, UCI's office of the Chancellor is charged with developing campus specific policies… pursuant to Section 61.00, the UC authorizes that the Associated Students (AS) of their respective campuses, has the ability to advocate on behalf of the students. To reiterate the hierarchy for clarification: Federal Law → State Law → the Regents Policies → Presidential Orders → UCI's Chancellor's Policies → ASUCI governing documents."[3] *Khorsandi v. ASUCI Elections Commission* (2011), at 1. The Court in *Rodriguez* and *Khorsandi*, much as we do today, thereby held closely the necessity of due process in adjudicating these disputes. But moreso, the precedent of Rodriguez requires some acknowledgement of legal common law sources informing our decisions.[4]To further specify, case law may be suggestive, and even convincing, but it is never binding. Only cases officially adjudicated by this Board can accomplish such a feat as to join the hall of ASUCI jurisprudence, and therefore be subject to the conditions and protections of *stare decisis*.

Second, we review cases in which reasonable doubt was used. In *Klauschi v. ASUCI Elections Commission* (2011), petitioner came to the Judicial Board alleging the Elections Commission erred in disqualifying her election campaign on grounds of using university equipment, which would have violated Art. XX §G of the Elections Code. After reviewing the evidence and hearing testimony, the Board agreed with the Commission and found her in violation of the code; for this reason, we upheld her disbarment. Relevant to today's case, our standard of evidence to convict Klauschie was not preponderance of the evidence, but beyond a reasonable doubt: "After carefully reviewing all the submitted evidence and the testimony in the case, the Board has found that the Commission has done due diligence to prove beyond reasonable doubt that Ms. Klauschie violated Article XX, Section G of the Elections Code." *Klauschi v. ASUCI Elections Commission* (2011), at 1. While the ASUCI of 2011 was under a different constitution, the Judicial Board derived this standard from the necessity of deriving standards, short of a defined statute, on the context: "Each case requires a different evaluation of what counts as reasonable proof." At 1. For the 2011 Kunitskiy court, the Judicial Board operated as a " jury of

[3] As a note, the '-->' indicate passing to a lower governing document. Thus, ASUCI law is the lowest tier of the law.

[4] Menter's dissent in *JUDICIAL DISSENT ON R52-85* (2017) would take a further dive into the realm of this Board's jurisdiction, arguing that higher governing documents are not only suggestive, but mandatory, even in cases they are not explicitly described to ASUCI: "At the threshold is the question of whether this Board's subject-matter jurisdiction extends to UCI's Policy on Nondiscrimination in the first instance… It is impossible to decide whether a statute is consistent with this provision of the Constitution without first deciding whether the statute is consistent with the Policy. Interpreting this provision of the Constitution therefore necessarily involves an interpretation of the Policy on Nondiscrimination. Our power to interpret and apply the Policy flows inexorably from our general constitutional jurisdiction." We, however, in part disagree with Menter; indeed, while it follows we may utilize these higher governing documents, we are never inclined to always follow such. In Menter's case, the applicability of nondiscrimination principles could not follow into the realm of the Judicial Board rulings not only because his opinion lacked sufficient contextual standing, but because doing such would conjoin our judicial philosophy purely to the realm of abstract federal case law.

peers" which while operating as "reasonable observers" were capable of factual inference. At 2, this standard, moreover, was not a constitutional prerogative, but in the very nature of the Judicial Board operating as a judicial body.

In contrast to the precedent set in *Klauschi,* which dealt almost solely with an individual transgression, the board has applied preponderance of the evidence in cases of contract law. In *Klauschie v. The Green Initiative Fund* (2012), the court deliberated whether petitioner Kamrin Klauschi of TEDxUCIrvine, a UCI Registered Campus Organization (RCO), violated her contract with TGIF because the TGIF logo did not appear on any marketing materials from the event. The Board found in favor of Klauschi, and ordered TGIF to fund TEDxUCIrvine. In doing so, the Board adopted a standard which equally weighed the petitioner and respondent's evidence before drawing a conclusion: "In this case, the Board weighed the different aspects of this violation in regards to contract law." Of course,the case here involves a number of predominantly legal questions, but, unlike the case before Klauschi with the Elections Commission, the court makes no reference to standards of 'reasonable doubt.'

Taken together, we understand that the first case, *Klauschi v. ASUCI Elections Commission* (2011), demands that when faced with an individual confronted with disciplinary action, we take the standard beyond a reasonable doubt. In contrast, as we saw in *Klauschie v. The Green Initiative Fund (TGIF)* (2012), when faced with institutional or contractual questions, we pivot to preponderance of the evidence. These historical cases, while not binding on our jurisprudence, inform us of the rich history of debate and distinction in regards to evidentiary standards for discipline within ASUCI.

ii.

Based on our review of case precedence, we now explain our reasoning for adopting such a standard of beyond a reasonable doubt in context. To do so, we first provide a brief history into the canon of western law for government discipline against individual bodies. Such a canon largely originates in Blackstone's *Commentaries on the Laws of England* and provides what has become known as "Blackstone's formulation." This formulation, in Blackstone's own words, argues that, "It is better that ten guilty persons escape than that one suffer." In a less abstract meaning, Blackstone is arguing not that it is good for the guilty to escape justice, but that we must value protecting the innocent over prosecuting the evil. This idea, otherwise known as Blackstone's ratio, bases itself on the natural law precept that God provides inalienable rights, ones that not even the King or Government can take away. A truly just form of human law, to Blackstone, must therefore not conflict with a commandment by God: "Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these." At 43, most relevant to our case today, Blackstone believes that there are two, fundamental and natural laws, that exist even beyond anything man can dictate in code: life and liberty.

> *Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are…* At 54.

To Blackstone, we ought not need to codify that man should be free to live, nor that he should be privy to molestation by government agents to his personal and private liberties. Blackstone artfully summarizes these ideas in establishing the teloes of a human society; that is, that our institutions work to protect the absolute rights of men: "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature…" At 121.

Amongst these absolute rights, as reiterated by Blackstone, is our liberties, of which are derived not as arbitrary, but by God.[5] To understand our thesis as to the importance of respecting these liberties therefore equally relies on one making the valid connection between God's commandments and our liberties. For this reason, Blackstone argues that it is important, through our application of the highest evidence standards, to only punish those who truly committed the crime. This methodology, as such, portends to uphold the rights offered by God over the dogma demanded by more contemporary atheist utilitarians.

This covenant is not merely an abstraction of Christian religious sentiments echoed from 18th century England. Indeed, American constitutional law has time and time again reaffirmed that the idea that we ought to protect the liberty of the innocent, over the utility of punishing the guilty: "Due process commands that no man shall lose his liberty unless the Government has borne the burden of convincing the factfinder of his guilt.' More specifically, under *In re Winship*, 397 U.S. 358 (1970), the court held that proof beyond a reasonable doubt is not only historically grounded, but a safeguard against tyranny: "that 'guilty [sic] must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.'" At 360.

To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.'" *In re Winship*, 397 U.S. 358 (1970), at 364. *See also*: "Denial of the right to a jury verdict of guilt beyond a reasonable doubt is certainly an error of the former sort, the jury guarantee being a "basic protectio[n]" whose precise effects are unmeasurable, but without which a criminal trial cannot reliably serve its function… The deprivation of that right, with consequences that are necessarily

[5] As was discussed in deliberation, we understand these are various interpretations of 'natural law.' For our purposes here, we ascribe natural law philosophy to the narrowly tailored ideas relevant to the common law, and moreso, the idea that guilt can only be established beyond a reasonable doubt. Our opinions are meant to convey the foundations of legal concepts, not to provide the philosophical conjectures by members of the Court.

unquantifiable and indeterminate, unquestionably qualifies as "structural error." *Sullivan v. Louisiana*, 508 U.S. 275 (1993), at 281. Furthermore, precedence has often been noted in asides by Justices that this standard is intentionally inefficient, as a mechanism to prevent unjust convictions. Justice Scalia, perhaps, phrases it best in his concurrence in *Apprendi v. New Jersey*, 530 U.S. 466 (2000):

> *the founders of the American Republic were not prepared to leave it to the State, which is why the jury-trial guarantee was one of the least controversial provisions of the Bill of Rights. It has never been efficient; but it has always been free…*
>
> *In Justice BREYER's bureaucratic realm of perfect equity, by contrast, the facts that determine the length of sentence to which the defendant is exposed will be determined to exist (on a more-likely-than-not basis) by a single employee of the State… What ultimately demolishes the case for the dissenters is that they are unable to say what the right to trial by jury does guarantee if, as they assert, it does not guarantee-what it has been assumed to guarantee throughout our history-the right to have a jury determine those facts that determine the maximum sentence the law allows. They provide no coherent alternative.*

The *Apprendi* precedent, while primarily about the right to a jury, premises itself on the idea that the jury functions to fact find by the standard of beyond a reasonable doubt: ""[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt." *Apprendi*, at 490, in citing *Jones v. US*, 526 U.S. 227 (1999). In the context of ASUCI, there is no such juror selection, and instead, as we stated in *Klauschi*, we must step in, "to act as a jury of peers." *Klauschie v. ASUCI Elections Commission* (2011), at 2. We, the Judicial Board, being both Judge and Juror, must therefore carefully craft our evidentiary standard to meet this firm criteria.

Moreover, the power of our decision today can influence administrative decisions, whose power is extremely broad and, in some cases, life changing. Indeed, student conduct can suspend, or even dismiss, an accused individual from UCI: "Sanctions recommended by the Student Conduct Board may include but are not limited to restitution, warning, probation, loss of privileges, exclusion from activities, suspension, or dismissal." UCI Policy, §100. And worse yet, in the case of suspension or dismissal, a student is essentially branded for life: "The only sanctions that appear on transcripts are Suspensions and Dismissal. Disciplinary probation, educational sanctions and other outcomes do not appear. Although these sanctions do not appear on your transcript, they will be noted in your educational record." *UCI Office of Academic Integrity and Student Conduct*, Frequently Asked Questions.

But yet again, it may be that these actions are too abstract for most. Indeed, the Judicial Board is not Student Conduct, and therefore, cannot directly impose sanctions. Such individuals err, however, in facing the practical reality of our system; indeed, as our ruling in *Flores v. Fund the Clubs* (2020) recounts, in the case of *Damavandi v. ASUCI Elections Commission* (2019), a student was prosecuted before the Judicial Board on the grounds of plagiarizing a facebook post. This accusation resulted in the Elections Commission suspending the Damavandi campaign, and declaring he had been "found guilty of violating UCI's Academic Integrity Policies, Article XI, Section C, Subsection 1." While the Elections Commissioner would drop the case as a result of a Judicial Board injunction against suspension, the office of Student Conduct, based on the proceedings from the Judicial Board, took up the case. During the trial, three convincing facts emerged that influenced the eventual decision of acquittal by Student Conduct (Appendix D). First, Student Conduct reviewed testimony involving political motivation of bias by the Elections Commission, evident as a result of the Judicial Board dismissal and reasoning for the order: "You also allege that professional staff had overstepped their jurisdiction and acted with bias in determining what to investigate. You shared that ultimately, when this was brought to the attention of the judicial board they dismissed the case." Student Conduct Ruling, at 1. Second, ASUCI Executive Director Stephanie Van Ginkel, called forth as a result of reference from the Judicial Board and allegations to questions of fact within the institution of ASUCI, testified as the homogenization of language within ASUCI: "I interviewed Executive Director of Student Government and Student Media, Stephanie van Ginkel to capture additional context with regard to the culture of the campaign process for candidates seeking election for the Associated Student of UC Irvine. She shared that it was not uncommon for candidates to use similar language and structure for posts and shared that the post in question was not an uncommon occurrence." Student Conduct Ruling, at 1 - 2. Third, as referenced by the Student Conduct adjudicator, Damanvadi's submission of the Judicial Board brief, followed by his reference to the judicial procedure, provided firm grounds for the adjudicator in student conduct to corroborate the defense's argument that facebook posts were neither similar nor anti-normative given the culture of ASUCI. Taken together, these facts, conjoined with this Board's initial suspicion of the case as evident by our injunction, resulted in finding Mr. Damavandi not guilty: "Based on our administrative meeting on May 16, 2019, evidence submitted, and the interview with Ms. van Ginkle, I find insufficient evidence of plagiarism and dishonesty." Student Conduct Ruling, at 3. From the case of *Damavandi,* we can infer that our ruling here has real and tangible impact on both student conduct and other administrative hearings, all of which can potentially brand a student for life.

For *Damavandi*, a finding of guilt for a mere facebook post could have resulted in serious consequences as a student. As his trial has further indicated, administration has taken this board's opinion and deference seriously. Thus, while we may not be able to jail a man behind bars, we can effectively imprison his career,

education, and future.[6] For this reason, premised on the moral prerogative to defend the natural rights of students guaranteed by God and nature, we apply the evidence standard of beyond a reasonable doubt to those cases which involve disciplinary action.

iii.

Finally, in applying both historical precedence and common legal maxims inherent to the western canon of law, we describe the specific method of application for the evidence standard of beyond a reasonable doubt. Traditionally, the Court has been hesitant to apply a precise definition for reasonable doubt, in fear of legal manipulation that would undermine the judgement call role of a jury. As such, for the Court normally, the abstract idea of reasonable doubt as 'high standard' functioned to "'impress[sic] on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.'" *In re Winship*, 397 U.S. 358 (1970), at 364. The Court, as such, has usually prohibited concise or narrow definitions, in favor of providing broad deference to a jury of randomly selected peers, who were controlled for bias by juror selection. Unfortunately, since the ASUCI Constitution requires we, the Court, to act as both judge and juror, and as such we are forced to adopt some sort of consistent test or instruction. Paradoxically, our 'objective' standard must, by the nature of 'judgement calls', be tailored to 'subjective' premises. Moreover, the prosecution need not prove beyond a reasonable doubt that any affirmative defense is untrue: " Proof of the nonexistence of all affirmative defenses has never been constitutionally required; and we perceive no reason to fashion such a rule in this case and apply it to the statutory defense at issue here." *Patterson v. New York,* 432 U.S. 197 (1977). Taken together, this means we must craft a test of adjudicating inherently subjective judgement calls, while tempering such using objective principles.[7]

Finally, we look to bridge the gap that is evident in the context beyond a reasonable doubt is normally applied in. Normally, reasonable doubt is used almost solely in criminal prosecutions. In contrast, most cases at the university apply the standard of preponderance of the evidence; this rather vague standard is often utilized by university administration, and credits truth on which side can provide more convincing evidence, otherwise coined the '50:50' standard. In the case of student conduct, for instance, a formal hearing only determines fact on the trier of preponderance of the evidence: "an expeditious written decision based upon the preponderance of evidence." UCI Policy, §100.(*See also*: *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California,* 508 U.S. 602 (1993) for a discussion on the application of such a standard in civil law: "the burden of showing something by a "**preponderance** of the **evidence**," the

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[6] *See also:* In *In re Winship*, 397 U.S. 358 (1970), one of the Court's primary reasons for such a high standard of proof was the knowledge that being found guilty would create "the certainty that he would be stigmatized by the conviction." At 363. In the context of our reasoning today, this is especially convincing.

[7] As we explain, this general presumption must be nuanced to the facts. Indeed, a factual affirmative alibi that renders a conclusion mutually exclusive is cause for reasonable doubt.

most common standard in the civil law, "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence'"). This rather minimalistic standard of evidence maximizes the universities ability to prosecute those they deem guilty, rather than defend the rights of the accused. In understanding both the traditional administrative definition, and that echoed in *Concrete Pipe,* the difference between preponderance and reasonable doubt can be summarized as such: for the former, the side that provides evidence that suggests the fact is more true than not shall prevail. In contrast, for the latter, he must show the evidence was not only suggestive, but proved beyond any semblance of hesitation. It is, as many legal practitioners have colloquially put it: the 'you better be damned sure' standard.

II.

The first charge brought against the defendant is abuse of power. Plaintiff divides this charge into four specific contentions: first, the failure to implement the law in general, "including" B55-04. Second, for firing a staff member with no recourse and for no sufficient reason. Third, for engaging in cronyism. And fourth, for refusing to disclose meeting times of vital importance to the Senate President. As we will explain, the first contention puts the President at odds with his constitutional authority as enumerated. The second and third contentions do not sufficiently meet our evidentiary standard of beyond a reasonable standard. And the final contention, that of disclosing meeting times of vital importance, while valid and evidently true, fails to meet the statute of limitations enumerated in the parliamentary code.

A.

The first charge brought against the defendant involves the abuse of power as a result of refusing to implement the law. Plaintiff, more specifically, contends that the defendant abused his power by intentionally withholding the delivery of veto of B55-04, which in effect prevented the Senate from immediately acting on it. Defendant does not dispute whether the legislation was actually withheld, and instead argues on legal grounds that he is not responsible for the legislation, nor is he responsible for its not providing veto at the Senate's specified time.

To adjudicate this matter, we first decide whether the facts are disputed. To do so, we apply the *Janani* rule. More specifically, *Janani* asks we examine, "In common parlance, [if] a question of fact must be arguable as to its very existence, not merely to the threshold of violating or sufficing a rule." In this case, they are not, as the defense concedes the veto was indeed delivered late. Having confirmed that the facts are not in dispute, we apply the *Safady* test.

The first prong of *Safady* demands we investigate adherence to the governing documents. To do so, the first element of adherence requires explicit enumeration in the code. We concur with the plaintiff that the President's action, if true, can be found under ASUCI Ethics Code, §IV(6): "No officer of ASUCI shall knowingly

perform or refuse to perform any act to deliberately obstruct the execution of ASUCI policy, rules or regulations, or the achievement of official ASUCI programs." We further agree with the plaintiff that they are provided broad deference in determining the factual link behind the alleged action and the code. No argument is made by either the plaintiff or defense on these points. Instead, argument grew out of prong two of the *Safady* test, namely, if the instance of the charge is constitutional within itself. The defendant, however, mistakes the plaintiff's argument, instead contending that 'failure to implement the law' suffices to prove the law was not physically implemented (which is under the realm of professional staff). The plaintiff, however, under the right of the Senate to define the charge, argued that the behavior of not delivering the veto on time sufficed to obstruct policy, and uses the Senate's meeting time as circumstantial evidence of such. However, we still reject the plaintiff's argument because the time in which a veto must be delivered as a procedural requirement of the veto would create an unconstitutional barrier to veto consideration. Indeed, the constitution provides the President "five academic days" when making such decisions. Our ruling *Janani*, furthermore, compels us to favor the specific enumeration in the constitution over the Senate's more general and vague interpretation: "it is a general rule of common law, ejusdem generis, and of parliamentary procedure, 'principle of interpretation (3)', that general or ambiguous rules hold less authority and yield to more specific ones." *Janani v. ASUCI Senate* (2020), at 6. Because the constitution creates an explicit threshold as to the time permitted, we refuse to allow the Senate to ground the constitutionality of time permitted in a different standard.

Even if this was not true, we decline to permit this argument grounds as no rights were sufficiently violated. Indeed, if the actual violation is not the veto itself, but rather delivery of the veto, then the plaintiff's interpretation of action and impeachable conduct conflicts with the parliamentary authority. More specifically, the secretary of the Executive Board holds the requirement to "to make minutes and records available to members upon request." RONR (11th ed.), p. 459, ll. 4 - 5. The President, however, is not the secretary, and such a duty is enumerated to a separate official. Of course, it is possible that the Executive Cabinet has no official secretary, and if one was to then assume the link between the President and the Secretary, he would still be exempt as no evidence was presented to indicate that the minutes regarding the veto had been "requested."[8]

For both of these reasons, we do not find the President guilty of refusing to implement the law.

B.

The second contention the plaintiff makes is for firing a staff member with no recourse and for no sufficient reason. This question of fact is disputed and therefore requires analysis. The plaintiff's narrative involves a lengthy investigation, first started by Senate President Rodrigo Quintas in November of 2019 and then tasked

[8] While not directly relevant to this impeachment, we would note the Senate may have justification in arguing to the Court that a right was violated by unreasonable hiding the veto. We do not handle this possibility in this case.

to Senate President Faith Chua in Winter and Spring 2019 - 20. Over the course of these two quarters, numerous witnesses were allegedly interviewed by the Senate that implicated the defendant in aggressively sexist commentary, as well treating staff poorly. Most specifically, these comments grew to represent the firing of defendant's previous Chief of Staff, Kaitlyn Sapida.

In trial, the plaintiff's witnesses for this contention largely narrowed down to Nikita Patel, the Higher Education Equity Commissioner, and Kaitlyn Sapida, the defendant's former Chief of Staff.

Miss Patel testified first. Witness alleges that during her time as Commissioner, she was often accused of gossip for espousing dissenting views. The defense, in rebuttal, argued this was pure speculation. Witness more specifically testifies that during the Executive Retreat, the President would refuse to communicate with his chief of staff, along with a myriad of 'microaggressions' that disrupted the Chief of Staff's relationship with the President. Witness further recounts a meeting of the week of October 30th, in which the President harbored 'anger', before firing Miss Sapida. Witness finally explains that the defendant misled the New University in explaining his process of firing Miss Sapida. More specifically, the witness alleged that Miss Sapida indeed worked well with the ASUCI Art Lab, and did everything in her power to put on a good event. This was in contrast to the President's alleged quote in the New U.

Miss Sapida testified second. Witness defended her credibility to know the defendant, by characterizing their relationship as existing for two years, which consisted of the defendant's rise from a Senator to President of ASUCI. Witness further testified that she had worked with the defendant on numerous projects, including the Basic Needs Coalition. Witness testified that her view of ASUCI had radically changed since her first year, growing into a "toxic environment that didn't take criticism and was more invested in its own image." Witness went further, explaining that while she assisted the defendant as Chief of Staff, she was unable to get a hold of the President and work within the office during the fall quarter. Moreover, Witness recounted her firing on October 29th during a meeting with the President, which occurred as a result of the President's belief of her poor behavior. Witness notes this behavior was particularly odd for the President, as the Executive offices held a 'two-strike' system, which required any staffer to be notified twice of wrongdoing before being fired. Witness finally argued that the President, having authored R54-59,[9] which prohibited staff from being fired without cause, was acting outside of his normative capacity, and therefore harbored bias against him.

In response, the defense brought forward a number of witnesses. One of the witnesses, Isabelle Lee, a current Mental Health Commissioner, alleged that a five page memo had been sent out to maintain coherence in the office of the President. This memo, witness argued, provided an exact list of duties for the Chief of Staff, including the planning of events. Miss Lee provided two instances in which she felt justified Miss Sapida's firing: first, during an event, Miss Sapida allegedly felt uncomfortable with the amount of food ordered, and thereby had Executives go pick

[9] Both sides concurred this statute was not still applicable. More specifically, the Bylaws were revised and thus, R54-59 is no longer binding.

up more pizzas. This, according to Miss Lee's testimony, resulted in wasted money and an 'uneasy' environment. This concern of the general environment was further supported by a second cited event in which a Kahoot response, as organized by Miss Sapida, included the answer "Can I unsubscribe to ASUCI?" Overall, the witness thus testified that Miss Sapida's actions created an uncertain and unstable environment.

While more testimony was provided, we were more certain that the evidence provided was not going to surpass the evidence threshold beyond a reasonable doubt. Indeed, what Miss Sapida said may have been true. It may have been further true, as the plaintiff would later argue, that these events were grossly mischaracterized by Miss Lee. But again, neither of these would surpass evidence beyond a reasonable doubt, as one could conceive of a reasonable event in which a normal President could have observed flaw with Miss Sapida. Finally, plaintiff's arguments were generally organized to undermine the defendant's credibility, rather than support the Chief of Staff; indeed, it may be both possible that the defendant didn't communicate with Miss Sapida and Miss Sapida made mistakes.[10] Thus, because the Senate could not specifically articulate why Miss Sapidas was fired beyond a reasonable doubt, we find the defendant not guilty of firing a staff without sufficient reason.

C.

The third alleged contention against the defendant was for engaging in cronyism. This fact is disputed and therefore requires analysis. More specifically, plaintiff witness Sapida testified that the defendant never opened an application for Chief of Staff. Miss Sapida, indisputably, also testifies that her replacement was already appointed prior to her firing. The plaintiff further substantiated this argument, through the testimony of Senate President Faith Chua, that there was never a WordPress application for interim Chief of Staff. Because the defendant never published an application, plaintiff alleges that this indicates there was cronyism. Defense Counsel responded to judicial questioning, arguing that the President needed to quickly fill the position, and therefore did not have time to publish such an application.

We concur with defense counsel, and while ASUCI norms demand an application for any staff, any such application would defeat the purpose of an interim Chief of Staff. The President, therefore, may have had reasonable cause to hire an interim without an application. Furthermore, because no other facts were presented that adequately linked the President's interim Chief of Staff to a position that would constitute cronyism, we have reasonable doubt as to his guilt. Thus, while it may be suspicious that testimony links the President's new interim Chief of Staff to an unusually friendly appointment, one that indisputably occurred even before the official firing of Miss Sapida, there is no factual evidence that

[10] As we specified in the rule of beyond a reasonable, the plaintiff does not need to show that there is no evidence for an affirmative defense. The plaintiff must show, however, that there is evidence of the alleged charge.

necessitates this being the only, or most probable reason that would suffice to be beyond a reasonable doubt. Therefore, we find the President not guilty of cronyism.

D.

Finally, the defendant is alleged to have failed to disclose meeting times. More specifically, the defendant failed to disclose the time of meeting to Senate President Faith Chua. Both sides agree that such occurred, although the defense contended, under numerous Executive testimonies, including Internal Vice President Daniela Romero, that it is anti-normative for non-voting members to be invited.

To adjudicate this matter, we then apply the *Safady* test. We first examine adherence to the governing documents. The binding case precedent to the rights of members to a deliberative body exists in *Knight v. Elections Commission* (2020), in which we ruled that we distinguish a committee and deliberative bodies, with committees holding the necessary condition of procedural dependence: "Thus, while it is not sufficient for the mere existence of independence to constitute a deliberative assembly, it is necessary that a committee be dependent." At 5. The Executive Cabinet, as the constitution dictates, is not dependent on any higher body for immediate authority. (*See, e.g.*, ASUCI Constitution, Art. 7 §2(a) for enumerated powers). Therefore, pursuant to *Knight*, we must hold the Executive Cabinet as a deliberative body. *Knight* further commands that all members of a deliberative body, voting or not, have a fundamental right to notice: "boards, or "deliberative assemblies" can only "transact business… in a regular or properly called meeting of which every board member has been notified." *Knight v. Elections Commission* (2020), at 5. *See also:* RONR (11th ed.), p. 486, ll. 29 - 34. Ergo, because the Senate President, pursuant ASUCI Constitution, Art. 7 §1(c), is a non-voting member, she has a right to notification.

Normally, we would then conclude this case here, and find in favor of the plaintiff. However, the *Safady* test requires we take a step further and analyze if the Senate followed the proper procedural steps in arguing for a technical violation. In summary, the standard of ruling in *Knight* was sufficiently lower than in *Safady* because we were ruling on a case of legal right over disciplinary action. RONR, however, demands that prior to an appeal to our board, a point of order must be drafted to the proper deliberative body. Such a point of order must be "raised promptly at the time the breach occurs." RONR (11th ed.), p. 250, ll. 18 - 9.The *Safady* test always refers to the rule; and in this case, the rule demands a statute of limitations for procedural protest: "After debate on such a motion has begun - no matter how clearly out of debate the motion may be - a point of order is too late." RONR (11th ed.), p. 250, ll. 23 - 5. Furthermore, while the parliamentary rules provide leniency of the statute of limitations in the case of absentees, the Senate President never attempted to make such a point of order: "[for] any action [that] has been taken in violation of a rule protecting absentees… it is never too late to raise a point of order." RONR (11th ed.), p. 251, ll. 20 - 5. Thus, because the Senate President never made a valid point of order, we cannot rule on its nonexistent appeal. Even if the Senate President went back and did such, it would mean little,

as the overturning of the veto de facto voids the case of any grounds to offer a point of order: "... it is undesirable to raise points of order on minor irregularities of a purely technical character, if it is clear that no one's rights are being infringed upon and no real harm is benign done…" RONR (11th ed.), p. 250, ll. 10 - 4.

For this reason, the allegation fails the first prong of the *Safady* test. We therefore find the defendant not guilty.

III.

The second charge brought against the defendant is maladministration. That is the plaintiff contends the President has done a poor job at being President, and therefore, should be removed from office. Plaintiff's counsel provides empirical evidence to substantiate this point, showing that the President has indeed spent almost none of the resources appropriated to his department. Defendant provides almost ten witnesses, ranging from commissioners to executives, testifying to the opposite.

Before delving into a full analysis, which is necessitated by the *Janani* definition of a factual issue, we bifurcate two separate and distinct arguments made by the plaintiff. The first argument is efficiency; this argument we find constitutionally justifiable, as referenced both the ASUCI Constitution and the *Safady* precedent: "for neglect of duty, malfeasance, or misconduct" ASUCI Constitution, Art. 6 §2(o); "In the case of *ASUCI Senate v. Safady*, the legislation in question (R53-39) did not meet the Senate's expectation for effective and serious legislation, and, in the Senate's judgment, failed to serve in the best interest of the Senate and the constituency of Senator Safady." For this first argument, we will apply our factual analysis. The second argument, that the President's conduct was politically unacceptable, is not permissible. More specifically, the plaintiff alleged the defendant, in general, failed to address basic needs and accountability. Functionally, this suffices as a political argument, as efficiency must be measured and quantitative. Political argumentation, meanwhile, deals with those matters that do not meet the threshold of "neglect of duty, malfeasance, or misconduct" but instead, offer that a moral argument. Disagreement on the latter never suffices to "neglect of duty, malfeasance, or misconduct."

Having determined the first efficiency argument is the proper factual question, we pivot to examine the record. Plaintiff's brief and testimony offer several, undisputed facts:

1. Almost all funds went towards staff development, and not directly to students.
2. Certain Commissioners, such as the Housing Security Commission, were appropriated $2500 but had only spent $472.
3. Several Commissions spent nothing.

Plaintiff testimony, corroborated by plaintiff witnesses Patel and Sapida, thus argued that the defendant's lack of oversight led to these conclusions, and he should therefore be removed.[11]

[11] A number of examples were made. For instance, witness Patel testified that the President had not replied to any email to contact a speaker for a number of months, one which the President later

In contrast, the defense's fact pattern argued the actual cost of events was not related to the efficiency of the events. More specifically, three witnesses provided three different arguments as to the efficiency of the President's office. Witness Lee, the Mental Health Commissioner contended that the graphics used by the Prosecution was misleading, as the metrics for each commission were different. Witness Constance Lin, the Campus Climate Commissioner, testified that the President had hosted a number of low-budget but successful events, including the 'Transfer Success' event and the panel for first-year students. Finally, defense witness Jennifer Nguyen, the Housing Security Commissioner, testified that the defendant and his team actively worked to assist the office with logistical problems for events. More specifically, this emerged from a testimonial program called 'Anteater Anonymous'. Finally the witness testified that the defendant would actively meet with administration and host negotiations on problems.

The record as a whole is extremely long in this manner, with both the defense and plaintiff offering different evidence with different standards. The factual record ultimately reveals there is a disconnection of methodology in the plaintiff and defendant's measurement of efficiency. While the plaintiff's analysis is doubtlessly more specific and has greater empirical application, defense witnesses nevertheless provide a semblance of doubt if appropriations translate to efficiency. More specifically, while the plaintiff may be right that the Housing Commission only spent $472 of the $2500 appropriated, the Housing Commissioner persuaded us in arguing that policy alternatives, such as negotiations with administrators, were vital components of the efficiency calculus. Additional testimony made the same arguments, which we found similarly persuasive. In reviewing the almost three and a half hours of evidence, we are forced to make a judgement call, one of which left us with some doubt that the President was necessarily inefficient. For this reason, we decline to find the President guilty of maladministration.

IV.

The third charge brought against the defendant is perjury. This charge can be divided into two parts—a matter of fact and a matter of law. Firstly, it is up to this Judicial Board to determine whether President Yan's sworn testimony to the Senate was untrue. The statement in question is in regards to the timeline of the executive veto of B55-04. The Senate heard conflicting testimonies from President Yan and External Vice President Dashay Richmond. The Senate conducted a metadata analysis of the signed veto which corresponded to EVP Richmond's testimony. While the Judicial Board itself does not have metadata analysis expertise, the Senate provided more than one metadata analysis programs that yielded similar timestamps. Moreover, during neither the preliminary nor the formal hearing did the defense itself rule out the possibility that President Yan misspoke or misunderstood the timeline of the executive veto. Thus, the matter of

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allegedly lied that he did. Again, as we explain, this information alone cannot account for the actions of various commissions. It is the burden of the prosecution to empirically link this fault unto all connected commissions, beyond a reasonable doubt.

fact of whether President Yan's statement to the Senate was not accurate is not hotly contested. It was, in fact, inaccurate.

The component of this perjury charge that is contested is the matter of law. Does President Yan making a statement that may not be true meet the standards of perjury? The defense has argued that intent must be a requisite for perjury while the Senate argued it must be given broad deference in regard to what is impeachable. It has contended that since the Senate consciously chose not to include intent as an element of perjury in R55-47, the Judicial Board must not apply this intent standard to President Yan's impeachment. While Article 6, Section 2, Sub-section (r) of the Constitution does give the Senate the power "to determine what constitutes an impeachable offense," the Constitution also codifies a process whereby the impeachment must go through the Judicial Board as a check on and balance to the Senate's power. The Senate cannot unilaterally impeach ASUCI officers. Not only does the Judicial Board have the authority to conduct impeachment hearings but also the authority to remove impeached officers and bar them from holding office (Article 8, Section 2, Sub-sections l-m). To assume that not only can the Senate decide what offenses are impeachable but how the Judicial Board is to evaluate these charges and what legal standards it may use renders the Judicial Board's role as nothing more than rubber-stamping the charges the Senate chooses to bring forth and undermines its ability to function as a fair and impartial adjudicator. As far as the matter of law is concerned, the Judicial Board rejects the argument that it cannot consider intent in the perjury charge simply because the Senate did not include it in the impeachment legislation.

This means that the Judicial Board must decide on how it will define perjury and must then determine whether President Yan is guilty of it. For this, we embrace stare decisis and turn to Judicial Board precedent. In the 2017 case *Petrosyan v. Elections Commission ex rel. Natoolo*, the Judicial Board had to similarly consider whether perjury had been committed. The Judicial Board standard of perjury that was established in that case—and that this current Judicial Board upholds—included a requirement that the defendant must have had the intent to provide untrue testimony. “The controlling precedent on this subject is *United States v. Dunnigan*, 507 U.S. 87 (1993), which lays out the elements of perjury. Under *Dunnigan*, a person only commits perjury 'if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory'” (*Petrosyan v. Elections Commission ex rel. Natoolo*).

In neither the preliminary nor the formal hearing did the Senate contend that President Yan intentionally gave false testimony; neither did they dispute the possibility brought up by the defense that inaccuracies in President Yan's statements might be attributed to confusion, mistake or faulty memory. Since the Senate did not engage with the intent requirement of the perjury charge, it was not able to prove that President Yan intentionally made false statements while giving testimony. For this reason, the Judicial Board does not find that President Yan met the intent requirement for perjury. Thus, President Yan is found not guilty of the third charge of R55-47.

* * *

In several prior cases we have attempted to paint the law in the same manner of abstract romanticism as early jurists; in *Knight v. Elections Commissioner* (2020), we cited the struggle between the zealous Roper and the scholarly More, who quarrelled over the rule of law. Roper, righteously angry, announced that he would "cut down every law in England [to get to the devil.]" More, in response, retorts "And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat?" In *Knight*, we cited such because we wished to prevent either "the angry and passionate voice of the mob" or worse, "tyrannical rule of one." We did so, moreover, because we acknowledged that "the rule of law is not only sacred, but fundamental to our free and open society - even when the implications can be shocking and unfortunate." And we do so again now because we cannot continue to watch our peers engage in the systemic routing of due process by mere suspicion.

Furthermore, this case is sufficiently different in implications; indeed, in *Knight*, we dealt with abstractions of harm, premised on vague constitutional ideas. In *Knight*, we never acted as jurors, and could thus excuse ourselves from the contentious process of fact finding. But here, we, a panel of unelected judges, are now constitutionally compelled to rule on a case with political, social, and even economic consequences. As the plaintiff's brief and testimony has so exhaustingly argued, people, regardless of who may have been at fault, have been hurt. As the defendant has equally contended, the liberty and honor of an elected official - and moreso, administration - is at stake. In dealing with these often emotional issues, one ought to be reminded of the lessons for any juror poetically illustrated in Harper Lee's "*To Kill a Mockingbird*." As Lee novelized, a black man is put to trial for allegedly raping a white woman. In the context of the 1930s South, such a case attracts great attention, and the jury quickly finds him guilty, despite obvious flaws in the prosecution, including lack of any physical evidence. In commenting on such, Robinson's defense lawyer, Atticus, remarks:

> *In the absence of eye-witnesses there's always a doubt, sometimes only a shadow of a doubt. The law says 'reasonable doubt,' but I think a defendant's entitled to the shadow of a doubt. There's always the possibility, no matter how improbable, that he's innocent.*

In our society today, physical evidence is tantamount to judicial proceedings, and it is doubtless that both the plaintiff and defendant provided such in our oral hearing. Atticus, however, is providing commentary on a broader theme: that everyone should be given the benefit of the doubt, as the racism and prejudice of our own 'social circles' cloud our judgement. We too hold to this principle as an important idea in our adjudication. We conclusively hold these values of innocence, until proven beyond a reasonable doubt, as fundamental to our just society.

Often in life, we are passengers in a car to the driver of fear. Naturally, when fear meets anger, chaos ensues. In reaction to this collision of an immovable object and unstoppable force, we polarize our division, seeing the world as black and white. Society deprives individuals of their due process, with each tweet making anyone judge, juror, and executioner. We, this court, only fear that the day is not far that these same individuals will become victims to the very ideas they espouse; and in doing so, see the world as Tom Robinson did.

We are not convinced beyond a reasonable doubt that the defendant is guilty. Thus, the impeachment ruling by the Senate is hereby vacated, and President Randy Yan is found not guilty of all charges.

It is so ordered.

Kimo Gandall
Chief Justice

Madison Craw
Vice Chief Justice

Kulsoom Naqvi
Associate Justice

Heriberto Mendez
Associate Justice

Jeremy Bunda
Associate Justice

Justice Craw, writing in concurrence,

In this case before the board I wish to clarify our ruling on charge III, perjury. To more concisely explain the verbose writing about the charge III, the board decided not to use the Senate's definition. More specifically, due to the board being held to a higher standard, and because we are not "nothing more than rubber-stamping the charges the Senate chooses to bring forth", the definition of perjury we used was preferred under our application stare decisis through the 2017 case *Petrosyan v. Elections Commission ex rel. Natoolo*, wherein the Court defined perjury as having ill intent; as, "if [one] gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.'" In our case today, President Yan clearly gave false testimony which can be proved by the metadata, but we do not know the intent. If we were to follow the Senate's definition of perjury, President Yan is then clearly guilty of perjury, but we did not, so he was charged not guilty. Since the Senate did use a different definition of perjury for their argument, there was little evidence for us to judge what President Yan's intent was. As such, due to there being no conclusive evidence that surpassed reasonable doubt, we cannot say President Yan gave false testimony purposefully, as President Yan's false testimony could be due to "confusion, a mistake, or false memory". Even though this may seem contradicting, the matter of fact is there was no arguments or enough evidence to show for ill intent, so we cannot charge President Yan with perjury, leading to a not guilty verdict.

Appendix A

Plaintiff's Brief

1

TABLE OF AUTHORITIES

GOVERNING
DOCUMENTS
ASUCI Constitution, Art. VI, § 2(o) ASUCI
Constitution, Art. VI, § 2(r) ASUCI
Constitution, Art. VII, § 1(c) ASUCI
Constitution, Art. VII, § 2(a)1(G) ASUCI
Constitution, Art. IX, § 3(a) ASUCI Code
of Ethics Art. I ASUCI Code of Ethics Art.
IV, § 3 ASUCI Code of Ethics Art. IV, § 6
ASUCI Code of Ethics Art. IV, § 7 ASUCI
Code of Ethics Art. IV, § 9 ASUCI Code of
Ethics Art. V Senate Testimony Standing
Rules RONR (11th ed.), p. 92, ll. 23 - 26
RONR (11th ed.), p. 122, ll. 1 - 5 RONR
(11th ed.), p. 655, ll. 1 - 5
HISTORICAL RECORDS
ASUCI Senate Minutes, February 14th, 2019
ASUCI Senate Minutes, February 11th, 2020
ASUCI Senate Minutes, February 13th, 2020
2018-2019 Voting Records, "R54-59"
LEGISLATION
R55-47, "Impeachment of the ASUCI President"
(2020)

2

R54-59, " Amendment of the Bylaws to include
Commissioner and Chief of Staff Duties, Hiring and
Dismissal " (2019)
CASES
ASUCI Senate v. Safady (2018)
EVIDENCE
Response to the current ASUCI Climate (March 8th,
2020) Special Cabinet Meeting Minutes, 01/21/2020
Special Cabinet Meeting Minutes, 02/10/2020 Executive
Memo of Veto - 02/10/2020 Delivery of Executive Veto
of B55-04 to Senate President from ASUCI President.
Testimony of ASUCI President under oath Testimony of
ASUCI External Vice President under oath Memo on the

Procedure and Implications of B55-04. Metadata analysis of Executive Memo of Veto - 02/10/2020 Office of President Budget Report, Week 3 Fall quarter Office of President Budget Report, Week 6 Fall quarter Office of President Budget Report, Week 3 Winter quarter Office of President Budget Report, Week 8 Winter quarter

3

ASUCI Wordpress Application Forms Email correspondence between ASUCI President and Kaitlyn Sapida regarding resignation as Chief of Staff Detailed expenditures under Office of President and Executive Cabinet Budget Documentation of ASUCI President communication with Kaitlyn Sapida to give an opportunity for improvement when the initial issue arose PDF Metadata

W ITNESS L IST

Kaitlyn Sapida - Former Chief of Staff to ASUCI President Nikita Patel - Higher Education Equity Commissioner Jo Hannah Faith Castillo Chua - Senate President Dashay Richmond - External Vice President

M EMORANDUM OF F ACTS AND L AW

Authority to Conduct Investigation

The Senate has the authority to impeach Executive Officers and determine what is an impeachable offense. This power is directly enumerated in the ASUCI Constitution under Art VI § 2 (O and R), where it states the Senate has the authority to "To impeach, for neglect of duty, malfeasance, or misconduct, and by a 2⁄3 vote—(1) individual Executive Officers;" and "To determine what constitutes an impeachable offense for officers listed in (o) through (q);" To do so, the Senate investigated allegations of abuse of power, maladministration, and perjury. Conducting an investigation is the right of any deliberative body as specified in RONR (11th ed.), p. 655, ll. 1 - 5. According to the ASUCI Constitution, the Student Advocate General does not have final investigative power, but rather primary investigative power (ASUCI Constitution Art IX § 3 (A)). This thereby does not exclude the Senate from conducting investigations. If the Student Advocate General could only bring forth charges of Impeachment, it would be difficult for the Senate to impeach the Student Advocate General as the

Student Advocate General would have to recommend to impeach themself.

Facts: CHARGES I and II

In November of 2019, Senate President Rodrigo Quintas addressed the ASUCI Senate in executive session regarding a formal complaint brought against a sitting ASUCI Executive. The individual, Kaitlyn Sapida, brought the complaint to the attention of Quintas in light of the complex situation involved. Sapida claimed that their complaint regarding the executive also implicated the office of the Student Advocate General, the normal channel for filing such a complaint. Sapida, seeking a fair chance at remedy, turned to the ASUCI Senate to give testimony. The consensus in the Senate was to hear these complaints and act accordingly based on their content.

During the Senate meeting on February 25th, Senate President Faith Chua arranged to hear the testimony of a source close to Sapida. Nikita Patel gave testimony to the Senate and members of the Judicial Board during executive session. During the following Senate meeting on February 27th, the Senate heard direct testimony from Sapida herself. Both Sapida and Patel could not give their direct testimony during the same Senate meeting date due to class schedule conflicts. The executive in question was the ASUCI President, Randy Yan, who had allegedly abused his power in his treatment of his then Chief of Staff, Kaitlyn Sapida. Sapida was forced to resign from her position as Chief of Staff after President Yan decided she had not been conducting her job to his satisfaction.

According to Legislation R54-59, when a Chief of Staff is asked to remove, “Documentation should be clear as to the need for removal and with appropriate reason, it cannot be illegal.” President Yan voted to approve this same legislation last year during his tenure as a Senator and even seconded the legislation to be passed (2018-2019 Voting Records, “R54-59”, ASUCI Senate Minutes, February 14th, 2020). With the email that President Yan provided as evidence, there was no opportunity for improvement given. President Yan states “After meeting with you this morning and hearing your concerns, I believe that for both of our best interests and wellbeing, it would be the best decision moving forward to have you resign.” President Yan was not able to iterate that an opportunity for improvement was given to Sapida after these issues concerning her behavior

and work ethic arose.

Sapida testified that no formal reason was given to her for her termination. Additionally, R54-49 also requires that "Executive officers should show that they have communicated with the individual to give an opportunity for improvement when an initial issue arose unless the nature of the reason proves otherwise." Sapida testified that she was given no such opportunity for improvement, even after requesting such an opportunity. Additionally, Sapida testified that President Yan never opened an application for the Chief of Staff position and instead chose to fill the position from his own discretion. If seen on the ASUCI WordPress application forms, there is no interim Chief of Staff application form that was made. The Senate can determine that due to this, there was no official interview or appointment process that was made. This constitutes the cronyism Yan is accused of. President Yan's actions and treatment of his former Chief of Staff directly violate R54-59 and the ASUCI Code of Ethics.

President Yan did not follow the protocol established in R54-59 for firing a Chief of Staff, which constitutes item 2 of Charge I, "for firing a staff member, with no recourse and for no sufficient reason."

President Yan's maladministration throughout his tenure as ASUCI President is very evident. He has failed to address basic needs security and increase accountability in the ASUCI administration. His office's quarterly budget reports expose this. President Yan has spent more money on staff development and training for his office and the Executive Cabinet than his commissions have spent on their events combined. As of Week 8 of Winter quarter, President Yan's commissions had spent a total of $3,727.91 on their work. However, by this point President Yan had already spent $6,135.24 on staff retreats and training. There are many instances where there is no spending by commissions between budget reports. President Yan's irresponsible spending on staff retreats and training contributes to Charge II, "for Maladministration," as it demonstrates his failure to effectively run the office across the board.

President Yan also abused his power by withholding the delivery of the Veto of B55-04 until after the conclusion of the Senate meeting on the day after the last possible day to veto B55-04. The ASUCI Senate Minutes, February 11,

2020 show that the meeting adjourned at 6:46 P.M. The Delivery of Executive Veto of B55-04 to the Senate President from ASUCI President shows that the veto was sent out at 6:57 P.M. This thereby disallowed the Senate the opportunity to overturn the veto at that Senate meeting. This nontransparent action thereby extended the veto period and delayed the Senate from exercising their right to overturn a veto.

Furthermore, according to the Memo on the Procedure and Implications of B55-04, President Yan under oath during his testimony before the Senate, stated "'This document, the minutes and everything were all done on the 10th, we sent it out on the 11th.' As shown in the above screen captures, the veto [sic]? was in fact not 'done' on the 10th. In fact, I would go on to note that the minutes were also not completed until the 11th." This memo was attached to R55-47 Impeachment of the ASUCI President.

President Yan also failed to notify and invite the Senate President and Senate President Pro-Tempore to his executive cabinet meeting where Legislation B55-04 was vetoed, which is their parliamentary right as specified in RONR (11th ed.), p. 122, ll. 1 - 5. The Executive Cabinet includes both the Senate President and Senate President Pro-Tempore under the ASUCI Constitution Art VII § 1 (C). This abuse of power prevented the Senate President from being able to deliberate the merit of vetoing legislation in the Executive Cabinet meetings. The Special Cabinet Meeting Minutes, 01/21/2020 and Special Cabinet Meeting Minutes, 02/10/2020 have the Senate President marked as absent. This is because she was never given the opportunity to attend in the first place.

This constitutes item 4 of Charge 1, "for refusing to disclose meeting times of vital importance to the Senate President."

Facts: CHARGE III

On February 4th, 2020, Legislation B55-04 was passed on the Senate floor. According to the ASUCI Constitution Art 7 §2(a)1(G), the Executive Cabinet has 5 academic days to veto legislation. The final day and time a veto for B55-04 could be signed was February 10th, 2020 at 11:59 PM as specified by RONR (11th ed.), p. 122, ll. 1 - 5. On February 11 th at 6:57 PM, President Randy Yan of ASUCI sent over documents allegedly proving the Cabinet had

vetoed and signed the veto declaration on February 10th, 2020. After suspicions of the validity of this report were voiced, the Senate Parliamentarian along with anonymous sources investigated the metadata for this pdf. The document was determined to be originally created with the application pdfescape, which is a free pdf application that allows documents to be easily signed digitally. A pdf document does not contain any initial metadata within the document. However, pdf converter applications generate pdf metadata upon their creation and generate metadata upon modification of the document. Pdfescape is a program that generates metadata on documents that do not already contain metadata. Other programs such as Google Docs do not produce metadata for documents created. After analyzing the metadata of the official and original document provided to the Senate President on 2/11/2020, the metadata showed a creation date of 6:49:07 PM PST on 2/11/20, and a modification date of 2/11/20 at 6:54:30 PM PST. This document did not contain any previous metadata, and thus could not have been edited or signed prior to the creation date and time as any previous modifications would have left metadata trails as per basic properties of the pdf file format. While it is possible that other types of modifications such as the insertion of a text box could create metadata that alters the modification time and date, it would not change the initial creation date of the pdf and thus could not prove the metadata analysis to be inaccurate or incorrect. The creation of a pdf and signing of a pdf with pdfescape was shown to produce nearly identical results and metadata as the document provided to the Senate President on 2/11/20. President Yan and External Vice President Dashay Richmond testified under oath regarding the veto during the Senate meeting on February 13th, 2020 (Senate Standing Rules, ASUCI Senate Minutes, February 13th, 2020). The metadata also seems to confirm the testimony of External Vice President Richmond on 2/13/20, in which Mr. Richmond stated that he signed the document on 2/11/20 and not 2/10/20. If Mr. Richmond's testimony is true, which he swore under oath it is, his testimony would directly coincide with the metadata analysis and the metadata analysis would confirm that Mr. Richmond was honest and truthful in his testimony. President Yan stated in his testimony on 2/13/20 that the document was signed and completed on

2/10/20, which directly contradicts the metadata analysis of these documents as well as the

1

evidence-supported testimony from Mr. Richmond (ASUCI Senate Minutes, February 13, 2020). By the analysis of the original veto document, it can be concluded that the document was indeed signed and submitted to the Senate President on 2/11/20, which is a day after the executive veto was required to be submitted as per the ASUCI constitution.

These facts constitute perjury under Charge III, as President Yan lied to the ASUCI Senate while under oath.

Rule: CHARGES I, II, and III

The requirements for impeachment are clearly outlined in the ASUCI Judicial Board ruling on *ASUCI Senate v. Safady* . The test used by Justice Menter is outlined in *Safady* as the following: "Constitutionality of impeachment justification is gauged on general adherence to the governing documents and is grounded in the Constitution. Thus, the determining factor of the Judicial Board's decision on impeachment is that it does not violate any right and duty granted by the Constitution to any associated party and generally adheres to ASUCI governing documents and UCI campus policy" (*Safady* 3-4). Thus, to determine the constitutionality of the charges against President Yan, we turn to the two prongs of this test.

Prong 1: Does the Impeachment of President Yan Violate Any Right and Duty Granted by the Constitution to Any Associated Party?

We find that the impeachment of President Yan does not violate any right and duty granted by the Constitution to any associated party.

Prong 2: Does the Impeachment of President Yan generally adhere to ASUCI Governing Documents and UCI Policy?

We find that the impeachment of President Yan adheres to ASUCI Governing Documents and UCI Policy. The ASUCI Constitution Art VI § 2(R) gives the Senate the authority to "determine what constitutes an impeachable

offense." President Yan committed perjury in his testimony given to the Senate on February 13th. We find that the act of lying under oath constitutes perjury. This is because it violates the ASUCI Code of Ethics under Art. I, Art. IV, § 3, Art. IV, § 6, Art. IV, § 7, Art. IV, § 9, and Art. V.

CONCLUSIoN

We conclude that ASUCI President Randy Yan has committed impeachable offenses under 3 charges: For abuse of power, maladministration, and perjury. We request that the ASUCI Judicial Board remove President Yan from office and bar him from holding office for the next two academic years.

Appendix B

Defendant Brief

For the Formal Hearing, the Judicial Board wishes each side to address each charge and component of the charges presented in Legislation R55-47. In this brief, the Judicial Board is concerned with factual allegations (did the events occur as they were said to have occurred) and if the charges themselves are constitutional grounds for impeachment.

The burden rests on the defense to sufficiently prove that the charges alleged and their components are factually inaccurate and/or unconstitutional. The Judicial Board will apply the standard determined by the Senate based on the full evidence demonstrated by both parties during the hearings and the hearing briefs. For example, of the standard the Judicial Board is using, if a Senator is impeached for various charges including abuse of power, and the Senate alleges that the engagement in nepotism was an example of the abuse of power, both sides would have to prove or disprove that nepotism was engaged in. The Judicial Board will determine if such an instance occurred based on these testimonies. If neither side sufficiently proves their case, the Judicial Board will provide deference to the Senate as per Ruling on R53-47.

Defendant's Exhibit List:

EXHIBIT # DESCRIPTION IMPORTANCE

1 Chief of Staff Update Email Chain - beginning 10/27/19
Line of communication between former Chief of Staff and the President

2 Chief of Staff Memorandum - 08/27/19
Description of updates and formal expectation of duties for the job

3 Chief of Staff Memo Email Receipt - 08/27/19
Confirmation of agreement of reading the Chief of Staff Updates and Formal Expectations Memorandum

4 Memorandum to Chief of Staff, Commissioners, and Officers - Description of general updates and general formal expectations of duties of a paid member in the Office of the President 08/27/19

5 Office of the President Memo Email Receipt - 08/27/19
Confirmation of agreement of reading the Updates and Formal Expectations Memorandum

6 Chief of Staff Resignation Email - 10/31/19
Letter of Resignation from the former Chief of Staff of the Office of the President

7 ASUCI Key Fob Return Email - 11/04/19
Reminder email to turn in key fob to complete the process of resigning from ASUCI

8 ASUCI Constitution Governing Document of ASUCI

9 ASUCI Bylaws Governing Document of ASUCI

10 Memo on the Procedure and Implications of B55-04 - 02/12/2020
Report on how the veto of B55-04 was delivered

11 Any related email chains pertaining and leading up to the impeachment of the ASUCI President during academic year 2019-2020
To analyze the topics of discussion pertaining to the impeachment of the ASUCI President

12 Statement from the Executive Director of SGSM of hiring practices in ASUCI and how legislations are implemented
Describes implementation of legislations passed by ASUCI Senate as well as discusses the hiring practices in ASUCI

13 Testimonies presented at the 2/27 ASUCI Senate Meeting
Describes testimonies from current commissioners/staff working under Randy, from other offices, and the general public regarding these allegations

14 Statement from Mitchel Fernando, ASUCI Basic Needs Policy Officer, describing what
Describes how Randy has assisted Mitchel in his duties as Basic Needs Policy Officer for the 2019-2020 year. Also describes the Randy has helped him with/his accomplishments
various events/initiatives Mitchel has been able to do in his term, which references how Randy has "addressed basic needs insecurity"

Defendant's Witness List:

1. Kenny Jones 2. Isabelle Lee 3. Daniela Romero 4. Peter Trejo 5. Niki Izadshenas 6. Anna Kim 7. Jennifer Nguyen 8. Hannah Khoury 9. Kevin Si 10. Constance Lin 11. Michelle Huynh

Witnesses will be discussing the following, but are not limited to:

1. Kenny

a. Charge
1

i. For firing a staff member, with no recourse and for no sufficient reason; ii. For engaging in cronyism; b. Demonstrates that President Yan has been doing his duties as President
2. Isabelle

a. Charge
1

i. For firing a staff member, with no recourse and for no sufficient reason; ii. For engaging in cronyism; b. Demonstrates that President Yan has been doing his duties as President
3. Daniela

a. Demonstrates that President Yan has been doing his duties as President

i. Address Basic Needs Insecurity; ii. Increase Transparency in ASUCI;
iii. Increase Accountability in the ASUCI administration;
iv. Increase Scholarship Resources;
1. Scholarship was supposed to be released towards end of last

quarter, but ended up not happening due to COVID-19 v. Promote Academic Community Engagement; b. Charge 3 c. Charge 1

i. For the failure to implement the law, including B55-04; ii. For refusing to disclose meeting times of vital importance to the Senate

President; iii. For firing a staff member, with no recourse and for no sufficient reason;

4. Peter a. Demonstrates that President Yan has been doing his duties as President

i. Address Basic Needs Insecurity; ii. Increase Transparency in ASUCI;
iii. Increase Accountability in the ASUCI administration;
iv. Increase Scholarship Resources;
1. Scholarship was supposed to be released towards end of last

quarter, but ended up not happening due to COVID-19 v. Promote Academic Community Engagement; b. Charge 3 c. Charge 1

i. For the failure to implement the law, including B55-04; ii. For refusing to disclose meeting times of vital importance to the Senate

President; 5. Niki a. Demonstrates that President Yan has been doing his duties

as President

i. Address Basic Needs Insecurity; ii. Increase Transparency in ASUCI; iii. Increase Accountability in the ASUCI administration; iv. Increase Scholarship Resources;

1. Scholarship was supposed to be released towards end of last

quarter, but ended up not happening due to COVID-19 v. Promote Academic Community Engagement; b. Charge 3 c. Charge 1

i. For the failure to implement the law, including B55-04; ii. For refusing to disclose meeting times of vital importance to the Senate

President;

6. Anna Kim

a. Demonstrates that President Yan has been doing his duties as President

i. Promote Academic Community Engagement ii. Increase Transparency in ASUCI; iii. Increase Accountability in the ASUCI administration;

7. Jennifer

a. Demonstrates that President Yan has been doing his duties as President

i. Address Basic Needs Insecurity; ii. Increase Transparency in ASUCI; iii. Increase Accountability in the ASUCI administration; 8. Hannah Khoury

a. Demonstrates that President Yan has been doing his duties as President

i. Increase Transparency in ASUCI; ii. President's Corner

1. She has seen first-hand President Yan discuss everything that has been done in ASUCI every single week for Fall AND Winter Quarter when filming the weekly President's

Corner. 9. Kevin a. Demonstrates that President Yan has been doing his duties as

President

i. Address Basic Needs Insecurity; ii. Increase Transparency in ASUCI; iii. Increase Accountability in the ASUCI administration; 10. Constance

a. Demonstrates that President Yan has been doing his duties as President

11. Michelle

a. Demonstrates that President Yan has been doing his duties as President

i. Promote Academic Community Engagement; 12. Vanessa

a. Demonstrates that President Yan has been doing his duties as President

i. Address Basic Needs Insecurity; ii. Increase Transparency in ASUCI; iii. Increase Accountability in the ASUCI administration; iv. Increase Scholarship Resources;

v. Promote Academic Community Engagement; vi. Admin meetings vii. Staff meetings viii. Knowing everything I do

Charge 1: For abuse of power:

- For the failure to implement the law, including B55-04; - we will show that implementing B55-04 has nothing to do with President Yan
  - We will show exhibit #12 (explanation of how bills/legislations are processed)
  - We will explain that, even today, B55-04 is still under administrative review; therefore, President Yan never had any part to play in the implementation
- For firing a staff member, with no recourse and for no sufficient reason; - we will show that this portion is factually incorrect on two points:
  - We will show (via exhibits #1 and #6) that former CoS Sapida was not fired but instead resigned
  - We will show (via testimony) that there was "sufficient reason" for the asking of former CoS Sapida's resignation
- For engaging in cronyism;
  - We will show (via testimony) that the appointment of the Interim Chief of Staff

(Ms. Lee) was based solely on the logic given the specific situation as well as the merits and qualifications of Ms. Lee

○ As supporting evidence, we will show "Email 14.pdf" that was submitted by Senate per the defense's discovery request which shows that Legislation R55-47, as originally written, specifies that item 3 of charge 1 was referring to the Interim CoS and her personal relationship with the SAG

● For refusing to disclose meeting times of vital importance to the Senate President;

○ We will show via testimonies from the ASUCI Executive Officers that the Senate President does not necessarily have to be in Executive Cabinet Meetings and thus, President Yan did not refuse to disclose meeting times; he simply did not make a meeting notice to the public due to the fact that no Executive Cabinet Meetings have been ever made public per precedent.

○ We will explain that this meeting was not of vital importance as only the voting members of the Executive Cabinet, the Executive Officers themselves, would have been vital to the meeting in order to vote to veto B55-04.

Charge 2: For maladministration

● For failing to adequately address campaign goals, including that in which was to:

○ Address Basic Needs Insecurity;

○ Increase Transparency in ASUCI;

○ Increase Accountability in the ASUCI administration;

○ Increase Scholarship Resources;

○ Promote Academic Community Engagement;

● We will show testimonies from current commissioners that are part of the Office of the President, President's Chief of Staff, a commissioner from the Office of Academic Affairs, Internal Vice President, Academic Affairs Vice President, and Student

Services Vice President; they will speak on how all five of these aspects have been addressed and/or are currently being addressed.

- We will show budget reports that demonstrate the use of ASUCI funds.
- We will show testimony from Anteaters Television President that demonstrates that President Yan has been consistently working on advocating on behalf of the student body on a weekly basis through the President's Corner project.
- We will show written testimonies from various individuals from different offices in ASUCI to discuss President Yan's work ethic.
- We will show exhibit #14 which demonstrates that President Yan has addressed basic needs insecurity.

Charge 3: For perjury, in lying to the Senate under oath on the day the Executive veto on B55-04 was signed;

- We will show testimony from the ASUCI Executive Officers who will testify regarding this incident.
- We will show (via testimony) that other members of the Executive Cabinet corroborated the same timeline while under oath.
- We will explain that perjury requires proof that it was a lie with the intention to deceive.

Appendix C

Witness Lists

President

1. Isabelle Lee, Mental Health Commissioner, former Interim Chief of Staff
2. Michelle Huynh, Art Lab Commissioner
3. Jennifer Nguyen, Housing Security Commissioner
4. Hannah Koury, Anteater TV President
5. Kenneth Jones, Mental Health Co-Commissioner
6. Kevin Si, School Outreach Commissioner
7. Constance Lin, Campus Climate Commissioner
8. Anna Kim, Academic Engagement Commissioner
9. Daniela Romero, Internal Vice President
10. Niki Izadshenas, Student Services Vice President
11. Peter Trejo, Academic Affairs Vice President
12. Dashay Richmond External Vice President
13. Vanessa Yang, Office of the President Chief of Staff

Senate

1. Kaitlyn Sapida - Former Chief of Staff to ASUCI President
2. Nikita Patel - Higher Education Equity Commissioner
3. Jo Hannah Faith Castillo Chua - Senate President
4. Dashay Richmond - External Vice President

Exhibit List

President

1. Chief of Staff Update Email Chain- beginning 10/27/19
2. Chief of Staff Memorandum- 08/27/2019
3. Chief of Staff Memo Email Receipt-08/27/2019
4. Memorandum to Chief of Staff, Commissioners, and Officers- 08/27/2019
5. Office of the President Memo Email Receipt- 08/27/2019
6. Chief of Staff Resignation Email- 10/31/2019
7. ASUCI Key Fob Return Email- 11/04/2019
8. ASUCI Constitution
9. ASUCI Bylaws
10. Memo on the Procedure and Implications of B55-04- 02/12/2020
11. Any related email chains pertaining and leading up to the impeachment of the ASUCI President during academic year 2019-2020
12. Statement from the Executive Director of SGSM of hiring practices in ASUCI and how legislations are implemented
13. Testimonies presented at the 2/27/2020 ASUCI Senate Meeting

14. Statement from Mitchel Fernando, ASUCI Basic Needs Policy Officer, describing what Randy has helped him with/his accomplishments
15. Any documents/evidence/testimony transcripts regarding Charge 1, item#2 presented by the prosecution

Senate

1. Response to Response to the current ASUCI Climate (March 8th, 2020)
   Special Cabinet Meeting Minutes, 01/21/2020
2. Special Cabinet Meeting Minutes, 02/10/2020
3. Executive Memo of Veto - 02/10/2020
4. Delivery of Executive Veto of B55-04 to Senate President from ASUCI President
5. Clinton Impeachment Oath
6. Trump Impeachment Oath
7. Testimony of ASUCI President under oath
8. Testimony of ASUCI External Vice President under oath
9. Memo on the Procedure and Implications of B55-04.
10. Metadata analysis of Executive Memo of Veto - 02/10/2020
11. Office of President Budget Report, Week 3 Fall quarter
12. Office of President Budget Report, Week 6 Fall quarter
13. Office of President Budget Report, Week 3 Winter quarter
14. Office of President Budget Report, Week 8 Winter quarter
15. ASUCI Wordpress Application Forms
16. Notice of Special Cabinet Meeting, 01/21/2020
17. Notice of Special Cabinet Meeting, 02/10/2020
18. Original electronic file of "Executive Memo of Veto - 02/10/2020" (google doc or word doc etc)
19. Email correspondence between ASUCI President and Kaitlyn Sapida regarding resignation as Chief of Staff
20. Detailed expenditures under Office of President and Executive Cabinet Budget
    President's notes and agendas from meetings with UCI administrators
21. Documentation of ASUCI President communication with Kaitlyn Sapida to give an opportunity for improvement when the initial issue arose

Appendix D

UCI University of California, Irvine

The Office of Academic Integrity and Student Conduct

NO FURTHER

ACTION TAKEN LETTER

June 20, 2019

BRIAN DAMAVANDI
90493191
571811 PO BOX
TARZANA, California 91357

Dear BRIAN DAMAVANDI,

I am writing to confirm the results of our meeting on May 16, 2019 and to share in writing the resolution that was reached related to your alleged violation of the University of California Policies Applying to Campus Activities, Organizations and Students:

> **Student Conduct Policies/102.02 Dishonesty - "Other forms of dishonesty including but not limited to fabricating information, furnishing false information, or reporting a false emergency to the University."**
>
> Allegations: On April 7, 2019, Brian Damavandi is alleged to have plagiarized and used another ASUCI candidate's election posting as his own.

Meeting Summary

We met on May 16, 2019 to discuss the incident.

During our meeting, you shared that you did not believe that this was an issue of plagiarism. You shared that there was no similarity in the campaign goals and that other candidates were using similar terms in their posts. You shared that the other candidate had no claim statements such as "hello friends" and "share and comment."

When you ran the statements against one another in a "checker," it was determined that they were 47% similar. You shared that due to the post being short the percentage identified as similar is exaggerated. You shared that a number of candidates had similar posts and used similar language.

I asked if other candidates had similar posts why was yours singled out to be reported. You allege that this report against you was politically motivated. You called yourself someone "already in the establishment" and that this report was an attempt to attack your candidacy.

You also allege that professional staff had overstepped their jurisdiction and acted with bias in determining what to investigate.

You shared that ultimately, when this was brought to the attention of the judicial board they dismissed the case.

Stephanie van Ginkel Interview

I interviewed Executive Director of Student Government and Student Media, Stephanie van Ginkel to capture additional context with regard to the culture of the campaign process for candidates seeking election for the Associated Student of UC Irvine.

She shared that it was not uncommon for candidates to use similar language and structure for posts and shared that the post in question was not an uncommon occurrence.

Evidence submitted

Attached to the report for this incident were screenshots of two posts from Facebook.

Additionally, Mr. Damavandi's advisor Mr. Gandall submitted 4 other posts.

Findings

The issue at hand is with regard to the posts from Mr. Damavandi and Mr. Yan and whether Mr. Damavandi used Mr. Yan's post dishonestly. Mr. Yan's post is dated March 27 and Mr. Damavandi's post is dated April 7. The two posts share a similar structure:

- An announcement of their candidacy
- Overview of each candidates platform
- A direct link to their platform
- A direct link to their Facebook page
- Elections information
- Invitation for questions
- A hope to have "full support."

In addition to the similar structure, each of these "sections" has very similar language if not exactly the same:

- I will be campaigning to run for ASUCI (Associated Students of UC Irvine) [Vice President for the next two/President in the coming] weeks.
- Here is a brief overview of my platform:
- Here is a direct link to a copy of my platform in full detail
- While you're at it, like and share my Facebook page:
- Elections Week will be held Week 3 of Spring Quarter (April 15th - 19th)!
- If you have any questions regarding my platforms or anything [pertaining to/about] school [please feel free to/do not hesitate] to message me.
- With that being said, I hope to have your full support [during elections week and beyond/as i embark on my next great big adventure at UCI!] Zot! Zot! Zot!

The difference in these two posts is with regard to the office they are running for, their specific platforms, and links to their personal platforms and Facebook pages.

Mr. Damavandi argues that the similarity of the posts is based in a common practice shared by candidates within ASUCI. He argues that the short headers and quick posts help the community get a quick glimpse into who the candidate is and it is employed by a number of other candidates.

I asked Mr. Damavandi for examples of additional posts to help corroborate his argument.

In the email sent on May 28, 2019, Mr. Gandall, Mr. Damavandi's advisor, states that another presidential candidate's post is "virtually exactly the same in order." This post identified as Appendix A is comprised of the following elements:

- An announcement of their candidacy
- Promises of their candidacy
- Election information
- Candidate statement
- Invitation for questions

Mr. Gandall submitted three additional appendices which are reviewed here.

Appendix B

- Election information
- An announcement of their candidacy, with an admission of their love for Bob Ross
- Qualifications statement
- Initiatives

Appendix C

- An announcement of their candidacy
- A link to their platform
- Elections information

Appendix D

- Elections information
- Platform
- Additional information regarding Mr. Damavandi's platform
- Elections information
- Invitation for questions

Based on our administrative meeting on May 16, 2019, evidence submitted, and the interview with Ms. van Ginkle, I find insufficient evidence of plagiarism and and dishonesty. The posts submitted by Mr. Damavandi were not not exactly the same, but they are very similar, and do use similar language. These posts were from various candidates, running for different positions. Ms. van Ginkle, also shared a similar statement. I find that the preponderance of the evidence does not support a finding that Mr. Damavandi is in violation of policy.

At this time, no further action will be taken on your alleged violation(s), at this time. Should you have any questions or need further clarification, please do not hesitate to contact me at 949-824-1479. Please note, if new information is brought forward, this case may be re-opened.

Sincerely,

Christopher Coronel
Associate Director of Student Conduct
Office of Academic Integrity and Student Conduct

Cc: Dr. Rameen Talesh, Dean of Students

Case# 00633-001-2019

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