
To: NMIMT Student Government Association

From: Associate Justice Andrew H. Aliser

Subject: RE: Irregularities in procedure related to denial of late club packets by some SGA officers

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The purpose of this response is to clarify and provide explanations for the memo sent by GSA Representative Jose Martinez Claros. As part of my duties as Associate Justice I provide on constitutional mandates and ensure constitutional procedure is being followed.

The definitions from GSA Rep. Claros's will be considered for this memo with any additional definitions defined under the section where they are relevant to the discussion.

1) "In the document titled "Rebuttal", the SGA Vice-President does not indicate in his rebuttal when is the deadline to have club packets turned in, specifically anywhere in this document"

   While this is true, this statement is not helpful as it provides no substance to the discussion nor does it detract from Vice President Sobers's decision.

2) "Based on this statement, I wish to raise some few points of discussion: - During the October 22 SGA meeting, there was evidence to indicate that both Justice Sheerin and Vice-President Sobers met to discuss official business. There is no indication of whether President Sherman participated in all of this discussion"

   In section 1. of VP Sobers's Rebuttal it states " While did not receive a response from Michelle I managed to meet in my office briefly with her and Chief Justice Sheerin to discuss any loophole or possibility for allowing clubs with late paperwork to receive status on Tuesday, September 24th". This clearly states that President was present during the meeting. However, this meeting was not confirmed verbally during the October 22nd senate meeting.

   "During the October 22 SGA meeting, President Sherman mentioned she overheard a meeting of several justices with Vice President Sobers while the Supreme Court was preparing its official interpretation. Such a document was not sent in advance to the

Senate for revision. Justice Sheerin's appeal to her health condition that day is an ad misericordiam fallacy, which even though it is true, it does not answer the question."

According to Section 5.2.2
"In times of need, the President may make executive rulings necessary for the enforcement and execution of this Constitution and SGA legislation which are not in violation of this Constitution and SGA legislation. The executive rulings must then be reviewed by the Judicial Branch within two weeks to ensure constitutionality. The executive ruling must be recorded and presented to the Senate at the following regularly scheduled Senate meeting. If the ruling is found to be unconstitutional or violates the Student Code of Conduct, it shall be reversed"

The senate is not required to revise the executive ruling and instead that duty falls upon the Supreme Court. As per the constitution the ruling was presented to the senate on October 22nd. The ad misericordiam fallacy does not apply to Chief Justice Sherin as her extraneous circumstances were the reason the Associate Justices were unable to meet in her office. However, this discussion is not present in the meeting minutes thus making it difficult to provide a proper contradiction.

3) "Message exchange with former SGA Vice-President Matt Dougherty. Although the opinion of an expert is appreciated, presenting a message thread involving an individual no longer affiliated to the school in any quality, but as an alumni, is a fallacy of appeal of authority. Whatever Matt Dougherty believes should be done does not necessarily mean that it should be done. Further, a former public citizen in the reference frame of the SGA is considered now a private citizen within the same reference frame. A public citizen should not guide his moral, ethical or procedural compass based on the opinions of a former public citizen, regardless of their past experience"

Precedent is defined by the Merriam-Webster Dictionary per the second definition as:
"Something done or said that may serve as an example or rule to authorize or justify a subsequent act of the same or an analogous kind"

Again this fallacy does not apply as per the rebuttal VP Sobers was messaging Matt Dougherty to ascertain the precedent for previous administrations when dealing with late club packets. The conversation between Matt Dougherty and VP Sobers does not disregard other evidence such as the constitution so, an Appeal to Authority Fallacy can not be applied.

4) “Email exchange: neither the SGA Vice-President nor any of the witnesses he called to speak during the meeting produced any written permission that indicates that emails should be exchanged in a public meeting, such as the SGA Senate. More than the official contents of such emails, the fact that official email handles were not redacted from the presented documents raises FERPA violation questions. Such a question should have been raised immediately by a Senator, including myself, during the Senate meeting. However, due to the lack of due process, including the absence of some relevant documents in addition to the absence of enough evidence can constitute sufficient reason to not raise an immediate question. In other words, while the Vice-President didn’t act incorrectly by sharing evidence within the Senate exclusively via email, it acted incorrectly by not indicating the exact nature of the procedure he would follow during the SGA Senate meeting, the bringing of witnesses, and the display of contentsensitive evidence without any guarantee of the protection of privacy of all private citizens”

   GSA Rep. Claros did not cite any definition within the The Family Educational Rights and Privacy Act (FERPA) to support his argument. However, according to section 34 CFR § 99.3 of FERPA school email addresses fall under Directory Information “Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

   Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (*e.g.,* undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.”

   Therefore the NMIMT SGA does not violate FERPA by disclosing student emails. And according to Section 3.3 “Every student has the right of access to all SGA records” also allows for the disclosure of any email concerning SGA business as falls under SGA records and is public information.

5) “When I asked Vice-President Sobers if “to publish” can be equated to “determine or establish” he said yes. The SGA Constitution defines “to publish” as is indicated above. If my counter-argument was not brought on my behalf during the SGA meeting, it was also a consequence of my original doubt of whether the whole procedure related to the same topic was within due process or not. I am very surprised that neither Vice-President Sobers nor any of the justices referred to this section of the SGA Constitution, at least to clarify. If proven that a section of the Constitution is omitted while the incumbent agenda item is actually about constitutionality, this constitutes mens re-a, as defined above”

Cornell Law School defines Mens Re-a as
"Mens Rea refers to criminal intent. The literal translation from Latin is "guilty mind." The plural of mens rea is mentes reae. A mens rea refers to the state of mind statutorily required in order to convict a particular defendant of a particular crime. See, e.g. Staples v. United States, 511 US 600 (1994). Establishing the mens rea of an offender is usually necessary to prove guilt in a criminal trial. The prosecution typically must prove beyond reasonable doubt that the defendant committed the offense with a culpable state of mind"

Mens Re-a does not apply to President Sherman, Vice President Sobers, or Supreme Court since the appeal or rebuttal process does not concern the assignment of guilt or determination of criminally intent.

6) "Based on the Fifth Amendment of the United States constitution, everyone should be entitled to due process. Further, no one can be forced to be a witness against themselves. Inviting one representative of each of the affected clubs to give a public statement severely lacks due process, as this should have been first reviewed by a Club Advisory Committee, which of course had not a proper time window to even consider these cases before they were brought up in public at the SGA Senate meeting. Further, the Vice-President produced no document detailing the intent to proceed as a trial, with the right to his own witnesses, but also did not produce any document detailing that all these club members understood the terms in which they were being called to give an oral statement. This also includes members of other clubs that were called as character witnesses of the Vice-President. Finally, if such an agenda item was meant to be handled as a trial, the SGA President also would have the right to defend herself and prepare her arguments in addition to any possible witnesses of her own. It is at least questionable that such a thread of actions between Appeal-Rebuttal-Supreme Court Interpretation should be ever handled as a court of law, and there is no indication in the SGA Constitution that it should"

The fifth amendant does not apply to the appeal and rebuttal process as it again is not a determination of guilt but, the exercise of powers given to the legislative branch. Also, the appeal process is defined in Section 7.5.1 of the SGA Constitution as

"Disciplinary decisions approved by the SGA Senate pursuant to this ARTICLE may be challenged in the Supreme Court on the grounds that the procedures were not followed in good faith, or on procedural or legal grounds."

Therefore an appeal is not a determination of guilt but, a review of how constitution the decision of the acting officer was.

7) “After Justice Sheerin read the Supreme Court interpretation, both Justice Aliser and Justice Strobel proceeded to interrogate President Sherman, also without the right to due process. Justice Aliser asked her why she produced her Executive Ruling document at 2 am, and started conjecturing on what were her true intentions on doing so, which constitutes an example of one of several ad hominem attacks observed during that meeting”

   The actions of the court were lacking decorum and I apologize for any ad hominem attacks and will focus on avoiding future incidents. Questioning also does not fall under due process as is seen whenever the senate questions clubs about the bills they present.

8) “Since there are several questions raised on the matter of the Rebuttal document produced by VicePresident Sobers, and since this document precedes both the Executive Ruling produced by President Sherman and the Supreme Court Interpretation, it is impossible to make an accurate assessment of the latter before this cases is thoroughly reviewed by a competent authority”

   The competent authority meant to review the rebuttal is the senate. However, if there is a constitutional issues then the Supreme Court would review the Rebuttal, then the Dean of Students, and finally the Board of Regents. Unless the senate comes to a decision or identifies a constitutional issue with the rebuttal VP Sobers decision stands.

It is my recommendation that GSA Rep Claros review the definitions and fallacies he uses. I recommend that the senate dismiss the memo since it provides no substance to the discussion concerning club charter, contains multiple misuses and omissions of legal definition both on the Federal and SGA level.