



Cornell University  
University Assembly

**The Codes and Judicial Committee  
of the University Assembly**

Minutes of the April 3rd, 2020 Meeting

10:00AM - 11:30AM

Held via Zoom

- I. Call to Order
  - a. J. Anderson called the meeting to order at 9:05am.
  - b. Voting Members Present: *R. Lieberwitz, L. Taylor, U. Chukwukere, A. Llinas Vahos, J. Michael, C. Huang, B. Corrigan.*
  - c. Voting Members Absent: *M. Adegbe, G. Martin, J. Hong.*
  - d. Also present: *G. Kanter, B. Krause, C. Liang, G. Giambattista, J. Pea.*
- II. Announcements
  - a. The substantive Code is posted on [assembly.cornell.edu](http://assembly.cornell.edu) for public comment.
  - b. The UA has been informed of the April 17th due date for Procedures.
  - c. The SA is sending the substantive Code through its listservs and will discuss it.
  - d. J. Anderson suggested April 17th as the date to close public comment on the substantive Code. He suggested May 1st as the date to close public comment for Procedures.
  - e. A vote was held to adopt the May 1st deadline for public comment on Procedures; the motion passed 6-0-1.
- III. Business of the Day
  - a. OJA Themes
    - i. B. Krause introduced the broad OJA themes. She felt like it would be most helpful if the OJA just commented on different versions as opposed to writing them.
      1. Referrals are from university officials, not individuals: this needs to be reflected in counsel's draft.
      2. OJA would like to revisit the recording of interviews in counsel's draft; that doesn't seem to be supportive of the educational conversations we want to have.
  - b. Draft Procedures
    - i. G. Kanter and R. Lieberwitz walked the committee through their full draft of the Procedures section.



## Cornell University University Assembly

1. R. Lieberwitz went through the first section on the complainant. They tried to make it readable and logical and tried to show how things move from less formal to more formal. They left a placeholder for a narrative section to understand the process.
  2. B. Krause and others discussed the first section in the complainant section.
  3. G. Kanter went over administrative panels, hearing panels, and appeals panels. She explained what happens when cases are referred to an administrative panel.
  4. B. Krause: her biggest concern with this is that it draws from criminal law practices. It includes the role of law students and lawyers in this process. If the goal is to be educational, one of the real challenges is for the student who is accused to speak for themselves.
  5. G. Kanter: the goal is to not use the hearing process at all, push to other outcomes.
  6. R. Lieberwitz: the due process increase is warranted.
  7. C. Liang brought up that public hearings are very much just a Cornell thing. Urges the Committee to reconsider that.
  8. R. Lieberwitz views the public hearings as a good thing. Private hearings protect the respondent. There are some issues, political protests for example, where the public has a right to know. We can think about it some more.
  9. B. Krause believes there are privacy concerns. FERPA concerns.
  10. J. Anderson has put this document in a google folder. Please make comments. The Committee will go through the comments at the next meeting.
- c. Standard of Proof
- i. J. Anderson showed his slide, which explained Preponderance of Evidence
- v. Clear and Convincing Evidence.
1. Preponderance of evidence is used in Policy 6.4 and the Greek system, and is the current best practice in the field. Clear and convincing is currently used in the code.
  2. R. Lieberwitz has been proud that Cornell uses Clear and Convincing--views it as a statement of principle. This is a frightening process for people. Clear and Convincing is more than



Cornell University  
University Assembly

- Preponderance, but not beyond a reasonable doubt. The reason 6.4 uses it is a misinterpretation of a DoE policy from 2011.
3. J. Michael spoke in support of Preponderance. The resources needed for Clear and Convincing are not housed in this process.
  4. B. Krause: these are community standards of behavior. We have to establish misconduct took place to have educational sanctions. Clear and Convincing would tilt the playing field to students who are accused. She thinks it is correct that attorneys viewed the DoE letter as instructions to use Preponderance. Institutions disregard dear colleague letters at their own peril.
  5. G. Kanter supports Clear and Convincing. There is no reason why Clear and Convincing and an educational atmosphere can't come together.
  6. J. Anderson stated the goal for the next meeting is to have more of a discussion on this and then take a Committee vote on it.
  7. R. Lieberwitz: Clear and Convincing uses substantially persuasive evidence as opposed to 50%+1 feather like Preponderance does.
  8. C. Liang stated she is in favor of Preponderance. Clear and Convincing is the hardest standard to define. She asked what happens if the University doesn't follow its own code of conduct? The University can be sued, and civil suits are judged based on Preponderance. The standard for the Code should be Preponderance.
  9. J. Anderson thanked everyone for all the hard work they put in, and the discussion today. They will meet at 9-10:30am next week.

Respectfully Submitted,  
Matthew Ferraro  
Clerk of the Committee