



**Cornell University**  
**University Assembly**

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**Minutes**

Codes and Judicial Committee  
University Assembly  
February 20th, 2019  
4:45pm – 6:00pm  
Day Hall Room 163

**I. Call to Order**

- a. Call to Order
  - i. D. Barbaria called the meeting to order at 4:51pm.
- b. Roll Call
  - i. *Present:* K. Ashford, D. Barbaria, R. Bensel, A. Brooks, K. Kebbeh, L. Kenney, R. Lieberwitz, S. Vura
  - ii. *Absent:* D. Geisler, A. Viswanathan, K. Zoner
  - iii. *Others Present:* J. Anderson, M. Battaglia, J. Dominguez, M. Horvath, M. Lee

**II. Approval of Minutes**

- a. November 7, 2018
  - i. Minutes **approved** by unanimous consent.
- b. November 28, 2018
  - ii. Minutes **approved** by unanimous consent.
- c. February 5, 2019
  - i. Minutes **tabled** by unanimous consent.

**III. Business of the Day**

- a. Approval of UHRB Applicant Questions
  - i. D. Barbaria revised question 4 of the UHRB application questions to include tentative training session dates.
  - ii. M. Horvath said that question 9 could discourage potential applicants because it asks them to list whether they were subject to discipline even if they are currently in good standing, while question 10's reference to the Office of the Judicial Administrator is unwarranted. She said that she has voiced these concerns in previous meetings. She also objected to the use of the word "accuse" in the applicant questions because Cornell's disciplinary system is not a criminal judicial system.

1. M. Battaglia dissented to changing the word “accused” because he believes “accused” allows the applicant to best understand the question.
- iii. M. Horvath proposed to amend the language of question 12 to “As a board member are you able to find somebody not responsible all the way to dismissal”. She also proposed to strike “transcript annotation” from the question as the University Hearing and Review Boards (UHRB) have no right to transcript annotation.
- iv. M. Battaglia proposed to amend the language to “The Hearing Boards are called upon to adjudicate [...] As a member of a Board, are you comfortable finding someone not responsible? Alternatively, are you comfortable finding someone responsible, potentially imposing a sanction up to expulsion? Please explain.”
- v. R. Benseal asked what the purpose of the question is.
  1. D. Barbaria said that it is to ask individuals if they are comfortable in reaching the conclusion of expulsion if necessary.
  2. R. Benseal said that the question could simply ask that.
  3. D. Barbaria said that they hope to clearly ask whether the applicant is comfortable either finding an individual responsible or not responsible.
  4. R. Benseal said that the question may not be easily interpreted. He said that it should ask whether the applicant is comfortable reaching a conclusion of expulsion.
- vi. J. Dominguez said that the question is becoming unnecessarily complex. He proposed to ask if the applicant would be comfortable with finding somebody responsible if the facts suggest appropriate.
- vii. R. Lieberwitz said that “comfortable” and “able” retain different meanings. She suggested to make the language simple and ask whether the applicant is “able” rather than “comfortable”.
  1. D. Barbaria amended M. Battaglia’s proposed language from “comfortable” to “able”.
  2. S. Vura agreed with R. Lieberwitz.
  3. M. Horvath agreed and said that Board members need to be able to do the job. She said that the Committee should ensure they have knowledge that they can find somebody responsible or not responsible.
- viii. S. Vura said that question 13, which asks how the applicant would apply the Campus Code of Conduct when an ambiguity arises, is too obscure and open-ended.
- ix. M. Battaglia said that considering that the Code is not a perfect document, question 13 is asking how comfortable the applicant would be in operating

- in an area with uncertainties.
- x. L. Kenney said she believes that question 12 is important, but suggested adding “considering ambiguous evidence or circumstances” to the end of the question.
  - xi. K. Ashford said that she does not think that the question is too open-ended. She said that part of the reason is because there are several ways to approach the question.
  - xii. S. Vura said that he believes the question does not belong on the application unless it is absolutely necessary.
  - xiii. M. Horvath said that she would prefer to have a question that asks the candidate’s ability to deal with confidential matters. She said that she believes question 11 already deals with the issue of ambiguity.
  - xiv. R. Bensel proposed to replace “responsible” with “violate” in question 11.
  - xv. R. Bensel asked what “ambiguous evidence” refers to in question 13.
    1. D. Barbaria said that it refers to understanding that there is no right answer.
    2. R. Bensel said that he is unsure if applicants will understand the purpose of question 13.
  - xvi. M. Battaglia said that there is no right answer to question 13, and that he expects a wide range of responses. He said that assuming there is unclear or ambiguous language, the question is aiming to form a holistic picture and ask how the applicant would go about the situation.
  - xvii. D. Barbaria said that the question may not be clear to the regular applicant.
  - xviii. J. Anderson said that the question is an important one. He also said, however, that it is important that an applicant who has no experience with the Code may be wondering why it is there. He said that the question is important in terms of assessing how the applicant thinks more so than how they answer.
  - xix. K. Ashford said that she respectfully disagrees about asking to give a specific example.
  - xx. S. Vura said that he thinks the Committee would be able to evaluate the applicant’s thought process through other questions.
  - xxi. R. Lieberwitz suggested keeping the question as is, and then returning to the question next year after seeing the type of responses received.
  - xxii. J. Dominguez suggested amending the language to “How would you think about or manage ambiguity,” considering that the Committee aims to see how the candidate thinks about ambiguity.
  - xxiii. M. Battaglia said that he is concerned about the question being too broad and suggested amending the language to “How would you view and potentially resolve ambiguity”. He suggested asking how the applicant would think and react in the case of an ambiguous situation.

- xxiv. R. Bensel said that the question itself is subject to radically different interpretations.
- xxv. K. Ashford said that she thinks that M. Battaglia's rephrased language resolves those issues.
- xxvi. M. Battaglia proposed to amend question 12 to "If in a case there is a question as to the meaning of a specific provision of the Code, how would you review and potentially resolve this ambiguity?"
- xxvii. R. Lieberwitz said that question 11 seems to educate the candidate about the concept of recusal, which does not seem appropriate for this application.
- xxviii. M. Battaglia proposed striking "recuse yourself from the hearing panel" from question 11.
- xxix. K. Ashford said that M. Horvath's point about the lack of a question on the issue of confidentiality is important. She said that adding a question about the candidate's ability to handle confidential matters would be appropriate towards the end of the application.
  - 1. M. Battaglia suggested adding a question about confidentiality towards the front since it would match with the "yes or no questions" in the front of the application.
  - 2. K. Ashford agreed and suggested adding a question about confidentiality after question 7.
  - 3. R. Bensel suggested the following language for question 8: "Would you be able to respect the confidentiality of all Hearing and Review Board proceedings?"
- xxx. R. Bensel proposed to strike the sentences following "How would you respond" in question 11.
- xxxi. R. Lieberwitz suggested replacing "were" with "have been" in question 9, as it is written in the subjunctive.
- xxxii. M. Battaglia said that question 9 has historically provided some of the best responses from applicants and that it gives an insight to how applicants see the process. He said that the question could be changed to a hypothetical to address some of M. Horvath's concerns.
- xxxiii. M. Horvath said that there is nothing that requires an individual to have good standing to be a member of the UHRB. She said that it is important to understand that the Committee may be asking a question that has no criteria through this question.
- xxxiv. M. Battaglia said that he respectfully disagrees. He said that he has personally seen phenomenal responses to this question in terms of how their experience informed their perspective. He said that he believes it is of value to ask such a question.
- xxxv. R. Bensel suggested amending the third sentence of the question to "Any disclosures will be treated confidentially."

- xxxvi. R. Lieberwitz said that she agrees with M. Horvath and that the entire question should be removed. She said that she believes disclosing a confidential matter is an invasion of privacy.
- xxxvii. M. Horvath said that there is no point in asking the question if the applicant is in good standing.
- xxxviii. S. Vura said that he believes the question has the potential to receive meaningful responses, but he is also concerned about violating privacy. He said that if he were a candidate, he would probably perceive this question as disqualifying. He also said that the Committee could strike the question to ensure that someone who is in good standing is not held against by their previous penalties.
- xxxix. R. BenseL said that he believes the question is a little odd, as it does not apply to everyone. He suggested amending the question to “If someone had been subject to discipline, please explain how this experience might make them a more conscientious member” to address this issue.
  - xl. K. Ashford said that the question could help draw in members with a wide range of experiences.
  - xli. S. Vura suggested including a phrase such as “the experience will not be held against you” so that it is clear that no candidates are excluded.
  - xlii. M. Horvath said that if a student is in good standing, there are no provisions in the Code that disallow them from serving on the UHRB. She urged the Committee not to include a question that defers candidates from the opportunity to serve on the Board.
  - xliii. S. Vura said that there should be a disclaimer in the question that having a previous penalty would not lower their chances of becoming a member of the Boards.
  - xliv. R. BenseL asked how many students were involved in cases last year.
    - 1. M. Horvath said that there were 625 cases last year, a figure that is not inclusive of Title IX cases.
    - 2. R. BenseL said that is a significant pool that cannot be ignored.
  - xlv. M. Horvath motioned to strike question 9.
    - 1. Motion **approved** by a vote of 4-2-2.
  - xlvi. M. Horvath suggested amending question 10 to an open-ended version such as the following: “The code has prescribed timelines for hearings. If either of the parties did not adhere to that, what would you do as a Board member?”
  - xlvii. M. Battaglia suggested amending the question so that it asks how the candidate would view a procedural defect.
  - xlviii. R. Lieberwitz said that the direction of the question is fitting, but it does not make sense.
  - xlix. R. BenseL said that the question is biased as M. Horvath indicates.

1. K. Ashford suggested amending the question to “If you notice a procedural irregularity, what do you do?”
- li. M. Battaglia said that the question is meant to help the Committee understand the candidate’s thoughts about how procedures or rules affect this case.
- lii. R. Bensel said that there are important and unimportant procedural irregularities. He said that it is irrelevant unless referring to a specific irregularity. He said that it would be beneficial to ask for an example of a serious procedural irregularity.
- liii. K. Ashford said that leaving the question as a more open-ended one would be useful.
- liv. R. Bensel proposed to strike the question as painting a specific scenario would make the question biased.
- lv. R. Lieberwitz suggested making the language of the question more concrete if the question were to be kept. She proposed the following: “For example, the accused did not receive a witness list one day before the hearing rather than the three days required.”
- lvi. M. Horvath said that she thinks the intention question may not be entirely necessary.
- lvii. M. Battaglia moved to extend the meeting by 15 mins.
  1. Motion **approved** by unanimous consent.
- lviii. D. Barbaria said that he hopes to finalize these questions and bring draft amendments to the next meeting.
- lix. M. Battaglia said that there are currently seven “yes or no” type of questions, one full response question, six or seven situational questions, and six or seven non-substantive questions.
- lx. M. Battaglia asked how often respondents submit materials late.
  1. M. Horvath said that respondents usually either submit their materials on time or refuse to make an appearance.
- lxi. R. Lieberwitz said that question 10 is asking what the candidate would do and how active they should be as a Hearing Board member, which are two different questions. She said that asking how active they would be as a Hearing Board member would be more relevant, since the question intends to ask what their role is and how much they should intervene.
- lxii. K. Ashford suggested to remove the question from the application, as it would be more suitable for the training.
- lxiii. R. Bensel said that he would like for Board members to have an incentive to follow procedures. He said that the question may be contradictory as it asks for the candidate’s judgment while also asking them to police the procedures.
- lxiv. M. Battaglia said that this question may be relevant to the revised question

12 that deals with ambiguities. He said that it may be more sensible to group this question with the one that involves ambiguity.

- lxv. M. Battaglia suggested amending question 12 to include three parts as follows: “Assume you are on a hearing board. How would you react if one of the following were to occur? A. A provision of the Code is ambiguous. B. There is a failure by one of the parties to follow hearing procedures as they are prescribed in the Code. C. An advisor to an individual charged with a violation of the Code does not raise an objection to a procedural error.”
- lxvi. K. Ashford said that this question would seem intimidating to an undergraduate student.
- lxvii. R. Bensel agreed.

#### **IV. Adjournment**

- a. Adjournment
  - i. The meeting was adjourned at 6:18pm. Members continued to have a discussion on the UHRB applicant questions.
  - ii. K. Ashford suggested adding “about” after “a case” to part c of question 14.
  - iii. R. Bensel proposed to replace “an acquaintance of yours” with “someone you know personally” in question 14.
  - iv. R. Lieberwitz said that members seem to agree upon having a reflective aspect to the applicant questions.
  - v. M. Battaglia said that he hopes that the Committee can conduct interviews with finalists this year.
  - vi. D. Barbaria asked if members have any requests.
    - 1. M. Battaglia requested a version of the applicant questions that includes amendments from today.
    - 2. R. Lieberwitz requested a version of the Code that is more easily readable.

Respectfully submitted,  
Dongyeon (Margaret) Lee  
Codes and Judicial Committee Clerk