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**Office of the Judicial Administrator: Annual Report**  
**Academic Year 2019**  
*Recognizing the past, realizing the future*

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## **Table of Contents**

|                                                                                                                          |         |
|--------------------------------------------------------------------------------------------------------------------------|---------|
| 1. Executive Summary                                                                                                     | Page 3  |
| 2. Personnel and Committee Membership                                                                                    | Page 4  |
| 3. Accomplishments and Observations of Note                                                                              | Page 5  |
| 4. Projected Needs                                                                                                       | Page 11 |
| 5. Future Considerations and Projects                                                                                    | Page 11 |
| 6. Appendix                                                                                                              |         |
| a. Analytics                                                                                                             |         |
| b. OJA's Reflection Options Chart                                                                                        |         |
| c. Public Records                                                                                                        |         |
| d. Campus Codes of Conduct, Code Changes, and Procedures of the University Hearing Board and the University Review Board |         |

## Executive Summary

As experienced across the campus, Academic Year 2019<sup>1</sup> (AY 2019), seemed to pass with expedited speed for the Office of the Judicial Administrator (OJA). While undoubtedly, the increased case load and number of university hearings contributed to the pace of the year<sup>2</sup>, so too did the fact that these cases were increasingly complex, often involved many parties, and crossed campus policies. Contributing also to the whirlwind pace of the year included: the fact that as the perception of the OJA continues to evolve, the office and its staff are more readily included as collaborative partners on campus matters; the continued challenges of working within the Campus Code of Conduct (Code), given its adversarial and procedurally complex structure; futile efforts to revise the Code; the implementation of additional educational interventions within the system; and, the professional and personal development which occurs over the course of a year.

Despite the speed of the year and its subsequent challenges, AY 2019 started with optimism. The theme for the 2019 academic year was “*Recognizing the past, realizing the future.*” Encompassed within that theme was the notion that as the OJA continues to “recognize the past” by building upon positive changes, respecting the genesis of the Code, and adhering to how the campus community (through its University Hearing and Review Boards) interprets the values of the community as articulated in the Code. That reverence must be balanced with “realizing the future.” Specifically, the OJA must: continue to adapt to the needs of the campus community (especially as a new generation of students have started to matriculate); advocate more strongly to align the policies which govern behavioral expectations with best-practice in the fields of student conduct, student affairs, conflict resolution, and restorative justice particularly; and, to see beyond where the Code currently is to where it could be—all while preserving the parts of the policy which have served the Cornell community well.

Finally, of note, 820 referrals were made to the OJA in AY 2019. Of those referrals, the University Hearing Board (UHB) convened ten times<sup>3</sup> to hear cases which could not be resolved

<sup>1</sup> July 1, 2018-June 30, 2019.

<sup>2</sup> In AY 2019, the OJA experienced a 28.12% increase in its case load, a 40% increase in cases that went to hearing, and a 75% increase in cases that went to appeal. The exhibit packet for a case heard by a University Hearing Board is typically, at minimum 50 pages long, and encompasses a plethora of procedural and substantive information. The largest hearing packet prepared for AY 2019 hearing exceeded hundreds of pages.

<sup>3</sup> Three of these hearings were joint hearings—two were joint-hearings with two respondents in each, and the third was a joint-hearing of eight respondents.

by a Summary Decision Agreement (SDA); of those ten UHBs, four qualified for and were appealed to the University Review Board (URB), and zero of those four URB cases qualified for a Presidential appeal.

### **Personnel and Committee Membership**

During AY 2019, the personnel of the OJA remained stable, but grew with the addition of a temporary employee in May 2019. Michelle R. Horvath continued to serve as the Judicial Administrator (JA). While Michelle's initial two-year appointment was extended for one year by University Assembly in AY 2018, this extension was lengthened for another year in AY 2019. During the academic year, Michelle: presented at two conferences; served a partial term as the co-chair of the Fraternity and Sorority Life Community of Practice for the Association of Student Conduct Administrators (ASCA) before resigning for time commitment reasons; continued to serve as a hazing point of contact resource for COFHE/Ivy Plus conduct administrators; and, renewed her Mental Health First Aid certification.

Christina Liang continued her service as an Associate Judicial Administrator (AJA), and during the academic year: served the second year of her term as ASCA Treasurer; presented at a conference; and, served as the co-chair of Cornell's Women of Color Colleague Networking Group.

Vincent J. Ciampolillo continued his service as an AJA, and during the academic year, continued to volunteer with ASCA as co-chair for the state of New York and presented at a conference.

Janey Bosch continued her service as Case Manager, celebrating 15 years of service to Cornell. Janey also continued to serve as a "Let's Meditate" facilitator.

Steve Morey continued his service as Administrative Assistant, celebrating 20 years of service to Cornell. Steve remains the first point of contact for those calling or coming into the OJA.

Francheska Alers-Rojas joined the OJA as a temporary employee in May 2019 as an Assistant Judicial Administrator. Since her hire, Francheska, has contributed profoundly to the work of the OJA.

Finally, members of the OJA staff served on multiple University committees and working groups in AY 2019, including:

- Alcohol and Other Drugs Incident Review Team;
- ALERT Team;
- Behavioral Health Committee;
- Bias Assessment and Review Team;
- Coalition on Mental Health and Wellness;
- Codes and Judicial Committee (ex-officio member);
- COFHE/Ivy Plus;
- Council on Sexual Violence Prevention (Renamed SHARE Committee);
- Hazing (HARP) Committee;
- Human Resources Excellence Awards Committee;
- Public Safety Advisory Committee;
- Senior Business Group;
- Senior Finance Group;
- Sorority and Fraternity Judicial Review Committee; and,
- Various search committees.

### **Accomplishments and Observations of Note**

As noted, and as experienced across the campus, Academic Year 2019 (July 1, 2018-June 30, 2019), seemed to pass with expedited speed for the Office of the Judicial Administrator (OJA). While undoubtedly, the increased case load and number of cases going to university hearings contributed to pace of the year<sup>4</sup>, so too did the fact that these cases were increasingly complex, often involved many parties, and crossed campus policies. The increased case load resulted in a lag between the time in which the educational interventions following an incident were administered. For the first time in three years, the time between the referral and the completion of the adjudication increased instead of decreasing from the prior year. AY 2019 was also the first time since AY 2017 in which there was an increase in the recidivism rate in the same academic year. While this may be a coincidence, anecdotally, there does seem to be some

<sup>4</sup> In AY 2019, the OJA experienced a 28.12% increase in its case load, and 40% increase in cases that went to hearing, and a 75% increase in cases that went to an appeal.

correlation with the amount of time that case-handlers in the OJA can spend with a respondent with an increased case load, which reasonably was reduced in AY 2019 given that a single case can involve meeting with multiple witnesses.

An unexpected cause of the increased case load was related to the uptick in obstruction cases. There are three types of obstruction cases, all of which were supported by University Hearing Board (UHB) decisions in AY 2019. First, under the Code, every member of the community has a duty to cooperate with the enforcement of the Code.<sup>5</sup> But, during AY 2019, this duty was not as recognized as in prior years. For example, there were multiple instance in AY 2019 in which a student identified as witness that a respondent would like to the OJA to speak with to provide exculpatory information, ignored the OJA's request to meet as a witness, with all of the rights afforded to them as a witness under the Code. When that needed witness would not meet with the OJA as part of an investigation, following multiple attempts at contact, that person would be referred to the OJA for obstructing the operation and enforcement of the Code. Such situations delayed the underlying adjudication of the respondent's case until the obstruction of the witness's case was adjudicated. While ultimately the obstructing witness may not have had any information to provide, as a member of the Cornell community, they are expected to share that they have no information with the OJA so that the investigation is complete and all of the witnesses identified as being relevant to a case are met with.

The second set of obstruction cases, supported by the UHB, involve cases in which a respondent's case is adjudicated to finality, but the respondent has failed to complete their sanctions. While the OJA works with respondents who request extensions to complete their sanctions, and an automatic one-week extension is granted before an obstruction charge is filed, some sanctions remain overdue. While the Code provides for an immediate temporary suspension<sup>6</sup> when a sanction is overdue, the OJA has decided to first file a new charge of

<sup>5</sup> "The Campus Code of Conduct is the University's community's code, a hence is the responsibility of all community members. All members have a duty to cooperate with University officials in this Code's operation and enforcement." (Title One, Art. I, Sec. C.2 (pg. 2, 2018))

<sup>6</sup> If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator shall notify the University Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may

obstruction and adjudicate the obstruction case before imposing the draconian temporary suspension<sup>7</sup>. Only if the respondent remains overdue on their sanctions from this type of obstruction case will a respondent be temporarily suspended until the sanctions are completed or a new timeline for completion is set with the JA. Two students were temporarily suspended in AY 2019 under these circumstances.

Finally, the third instance of obstruction cases result from a person providing untruthful information in an investigation; this is coupled with providing false information with the intent to deceive under the Code. The information that is gathered in an investigation must be reliable because such information has a ripple effect—it can determine whether any interim measures need to be enacted to protect the campus community or its members, and ultimately is used to decide whether a person or organization should remain part of the Cornell community. Although it may be uncomfortable to disclose the truth about a matter that one observed, especially if there is recognition that what one observed is contrary to the values and rules of Cornell, veracity must not be a transient value of this community. The precedent from UHB decisions this year have supported that honesty is an expectation when participating in an investigation under the Code.

While the case-load of the OJA increased substantially in AY 2019, this data does not accurately capture the increased work-load of the office; in-particular, the data does not capture the work generated from conducting co-investigations with (primarily) the Office of Sorority and Fraternity Life (OSFL)<sup>8</sup>. The time, effort, cost, and administrative wherewithal required by these investigations cannot be overstated. However, the import of investigating the behaviors which were the focus of these joint initiatives—hazing—cannot be minimized. Thus, even though this work substantially drained the personnel resources of the OJA, the collective commitment to investigating these allegations remains so fundamentally important that the long hours inquiring into reported instances of hazing—even if actions could not be substantiated<sup>9</sup>—

petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation. (Title Three, Art. IV, Sec. C.2 (pg. 37, 2018)).

<sup>7</sup> The OJA as advocated that this provision of the Code be modified.

<sup>8</sup> Over the course of AY 2019, a pool of investigators was also recruited and trained to help with these investigations by the JA and the Director of the Office of Sorority and Fraternity Life.

<sup>9</sup> Please see Hazing at Cornell (<https://hazing.cornell.edu/violations/2018-19-academic-year>) for more information regarding behaviors substantiated during AY 2019, noting however that this website does not list the number of persons found responsible for hazing, nor those charged with obstructing the application of the Code by not providing truthful information during the hazing investigations.

were justified by the knowledge that such efforts were being made to protect the campus community. This work also honored the courage that it took reporters to disclose such behaviors.

Contributing to the whirlwind pace of the year included the notable fact that as the perception of the OJA continues to evolve, the office and its staff are more readily included as collaborative partners on campus matters. For example, multiple times this year, the OJA was invited by resident assistants to present to their communities, in their community spaces. Being invited to spaces where students live and learn outside of the classroom denotes a particular level of progress, coupled with the fact that the invitations have come from student leaders themselves. The OJA has been purposeful in working to dispel the mythos associated with this office—that it is a place of punitive interactions. While a conduct office on any university will never be a place the community would automatically associate with being a place of support for the community—conduct offices, including the OJA, are. Progress continues to be made moving the community towards associating the OJA as a place of support, especially as the OJA has more opportunities to challenge community preconceptions of the office. While the OJA does not have a platform to explain what the office does and to share the expectations for community members once they have affiliated with Cornell in a setting such as orientation<sup>10</sup>, such perceptions are changing on a “grass-roots” level. This is evidenced by the expanding pool of mentors from around the University who want to partner with the OJA, an increase of incident reports submitted from different campus offices, and most importantly to the staff of the OJA—the number of students (including prior respondents) and campus partners who simply stop by 120 Day Hall for a beverage, a few pieces of candy, or to visit.

Despite efforts to change the perception of the OJA and the work that we do, there remains one paramount obstacle to being fully realized as an office which supports students: the adversarial nature of the Code. The adjudication of behaviors in a university setting is an educational administrative process. While fundamental fairness requires an appropriate set of checks and balance in the process of behavioral adjudication, the Code favors the privilege of affiliating with Cornell or remaining at Cornell without learning from behavioral choices, more than the privilege of community members to study, live, and work where the rules of the community are respected. Over the course of AY 2019, the adversarial nature of the Code

<sup>10</sup>Efforts to include the OJA for the AY 2020 orientation process are progressing.

continued to hamper the learning and education that is meant to be a part of the process, in addition to the elements of accountability and the repairing of harm. Nowhere is this adversarial nature of the Code more in evidence than a university hearing. Hearings under the Code have turned into leviathan proceedings in which the focus is not directed towards learning the facts to evaluate the harm or likelihood of harm caused by the respondent's actions (which the OJA presents on behalf of the Cornell community), or whether the elements of the Code's provisions are met. But, because of the adversarial nature which ground the proceedings, hearings are perceived as the OJA advocating against the respondent, instead of being viewed as the OJA advocating for the environment that the Code envisions for the community and those who represent the institution as its students, staff, and faculty beyond campus. It is a credit to the respondents and the case-handlers that any subsequent learning after a hearing, such as through the OJA's probation program, can occur after a hearing. The brokenness of the hearing process can be evidenced by the amount of documentation required for a hearing, and the length of the hearing themselves. The exhibit packet for a case heard by a UHB is typically, at minimum 50 pages long and encompasses a plethora of procedural and substantive exhibits. The largest hearing packet prepared for AY 2019 hearing exceeded hundreds of pages. Joint-hearings, or hearings for cases that are particularly complex, should be expected to span timeframes of a multiple hours. However, the processes and procedures in-place under the Code result in hearings lasting multiple hours, even for the most ordinary of cases. One UHB hearing in AY 2019 necessitated the board convene on three different dates. Although there is a multiplicity of reasons for such length—including the valiant efforts of hearing board members to do their best in a process which is as complex as it is complicated—the length is often not related to understanding the truth of what happened in a matter. This not only impacts the respondent in the process, but also witnesses, complainants, and members of the community volunteering<sup>11</sup> to serve on hearing and review boards. The Cornell community deserves better than this, and such progress towards reformation was intended to occur during AY 2019.

<sup>11</sup> The OJA would fully support developing an academic class in which student members of the UHRB receive academic credit for serving on these boards, and would encourage moving toward a system in which UHRB chairs are granted a reduced teaching load for their service. Recognizing that the time and effort devoted by staff and non-chair faculty members of the board must also be considered, the OJA would welcome working with members of shared governance to generate proposals towards these goals.

Contributing to the pace of the year, in which it felt at times like movement did not lead to progress, is that the Code remains unchanged despite calls by the community to do so. Similar to members of the Cornell community, the OJA was frustrated by the lack of progress regarding amending, revising, and overhauling the Code. While compromise resulted in a consensus about some changes, omnibus resolutions and lack of transparency were among a plethora of reasons which hampered actual changes to better the campus conduct system by revising the Code. However, the OJA strongly supports the University Assembly's recognition that revising a document such as the Code is a herculean task—one which requires more time than those trying to serve the campus community by participating in shared governance can reasonably commit. While Cornell must be proud of the document which has served the institution for 50 years, there must too be a recognition that as the needs of the campus community change, so too must the document which governs it.

Although the pace of AY 2019 was hectic, the OJA implemented three additional educational interventions within the system that provided a needed pause and anchoring point to the work of year. First, while a suspension reintegration program to work with students while away and upon their return following the sanction of a suspension was created in AY 2018, AY 2019 was the first year that this intervention was implemented. While the long-term efficacy of the program is yet to be seen, the short-term impact has been positive. Second, by partnering with a career services colleague, the OJA expanded its decision-making class curriculum, and added a class that evaluates the impact of Myers Briggs typologies with decision making choices. Third, while every case in which there is a finding of “responsible” typically includes a reflective component, and while respondents were always welcome to propose different reflective methods than a paper, a paper was too often the default means of contemplation. Thus, a reflection options chart was created (See Appendix B), and it has been with great pleasure that respondents have utilized this chart to reflect in a manner that is meaningful to them.<sup>12</sup>

Finally, while noting that AY 2019 was a year of frenzy—it felt like sprinting a marathon at times—repeating the conclusion from AY 2018's Annual Report remains appropriate in that the past year strengthened the OJA's resolve in some ways, resulted in critical reflection in

<sup>12</sup> The OJA is creating a process that would allow willing respondents to share their reflection in an anonymized manner, such as agreeing to have their video added to the OJA's website. This peer-to-peer learning is a secondary goal of the reflection options chart.

others, and despite the continuing challenges of not having a direct reporting line or departmental home, demonstrated the breadth of intersecting points the OJA and Code have within the Cornell community.

### **Projected Needs**

At this time, there are no major projected needs for the OJA which have not already been shared with campus partners.

### **Future Considerations and Projects**

As articulated last year, the OJA would welcome any opportunity to participate in efforts related to revising and overhauling the Code, to increase campus knowledge of the Code and the expectations contained therein, and to increase transparency about the work and role of the OJA. Additionally, during the 2020 academic year, the OJA plans to: develop additional sanctioning options for organizations; transition to a paper-less office; collaborate with campus partners to utilize existing programs as educational sanctions for individuals; continue to build on its partnership with the Scheinman Institute by expanding the types of cases that student-mediators can participate in; consider strengthening the educational interventions utilized for Good Samaritan Protocol cases; implementing a probation petition length reduction process; and, completing the unfinished tasks from AY 2019 of revising the OJA's website and creating a JA Advisory Council.

## Appendix A: Analytics<sup>13</sup>

### Total Referrals

|                                                                 |         |
|-----------------------------------------------------------------|---------|
| Total number of referrals to the OJA in 2017-2018               | 640     |
| Total number of referrals to the OJA in 2018-2019 <sup>14</sup> | 820     |
| Percentage change                                               | +28.12% |

*Note of Explanation:* Of the 820 referrals to the OJA, 128 referrals qualified for the Cornell Good Samaritan Protocol, which the OJA administers.

Every three years, the OJA evaluates the referrals' demographics to the community's demographics to examine any unconscious biases regarding referrals; please note that any trends observed during an academic year related to unconscious bias are evaluated and considered contemporaneous to the emergence of qualitative or quantitative data which may denote a trend that needs to be evaluated. But, at the time of the data compilation for this report, there were 654 undergraduate conduct cases (excluding Good Samaritan Protocol cases) adjudicated to finality. Using Fall 2018 enrollment data from the University Factbook (<http://irptest2.wpengine.com/university-factbook>), the OJA compared the proportion of undergraduate students that were referred to the OJA with the Fall 2018 undergraduate student population (n=15,182) to determine if there were any statistically significant differences based on gender, race, or ethnicity. Of those comparisons, only students who have identified as gendered male in PeopleSoft are disproportionately more involved in conduct proceedings (59%) when compared to the number of undergraduate men enrolled in Fall 2018 (47%). While this is statistically significant, this is not an uncommon trend within student conduct offices and was not considered a reflection of unconscious bias.

When considering unconscious racial bias related to referrals, the OJA was only able to compare white and minority students (U.S. underrepresented or other minority) based on the undergraduate data available in the Diversity Dashboards for Fall 2018 (<http://irp.dpb.cornell.edu/university-factbook/diversity>). Maxient, the software used to track cases, does not provide international student status information. The OJA found no statistically significant difference in the proportion of White (39%) or minority students (48%) that were referred to the OJA when compared to the race or ethnic composition of Cornell's undergraduate student population (36% and 48%, respectively). Results related to minority status should be interpreted with caution given the different definitions of race, ethnicity, and minority status provided in the University Factbook, Diversity Dashboard, and Maxient.

<sup>13</sup> For reference, the OJA has included the AY 2018 as a comparison for AY 2019.

<sup>14</sup> For the purpose of defining the start and end of an academic year, the dates July 1, 2018 – June 30, 2019 were used. Additionally, if a referral was received, but a respondent could not be identified or the behavior did not meet the jurisdictional requirements of the Code, the incident is reflected in the referral number, but not the findings numbers. Due to these dates, some cases which occurred in in AY 2019 may not be included in the data until AY 2020 because adjudication was not finalized by the date of the data pull. Thus, unless noted otherwise, this explains the discrepancies in the summation of some data categories.

### Case Turnaround Time

|                   | <b>Calendar Days from Reported Date to Adjudication Date</b> | <b>Calendar Days from Reported Date to Adjudication Date, excluding cases which went to a hearing or in which a student was on a leave of absence</b> |
|-------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2017-2018         | 24.3                                                         | 19                                                                                                                                                    |
| 2018-2019         | 32.6                                                         | 30                                                                                                                                                    |
| Percentage change | +34.15%                                                      | +57.89                                                                                                                                                |

*Note of Explanation:* The increased time between the reported date to the adjudicated date for cases which did not proceed to a hearing or in which a student was on a leave of absence, can be attributed to three primary factors. First, the increased case load, second, the increased trend of respondents missing appointments, and third, the instances of obstruction by witnesses detailed in the annual report.

### Findings (Responsible/Not Responsible)

|                   | <b>Number of charges alleged<sup>15</sup></b> | <b>Findings of Responsible</b> | <b>Findings of Not Responsible</b> |
|-------------------|-----------------------------------------------|--------------------------------|------------------------------------|
| 2017-2018         | 841                                           | 318 (38%)                      | 272 (32%)                          |
| 2018-2019         | 1030                                          | 377 (36%)                      | 375 (36%)                          |
| Percentage change | +22.47%                                       | +18.55%                        | +37.86%                            |

*Note of Explanation:* The increase in charges alleged represent two facts—that AY 2019 saw both an increase of complex cases, and that based on the incident report submitted (which is prior to an investigation), multiple Code provisions could apply and were thus charged to ensure a respondent’s notice letter accurately reflected all possible violations suggested by the incident report. Findings of “Not Responsible” reflect both the fact that when an incident report is received, only one perspective is provided and thus an investigation can either demonstrate that the elements of the Code are not met or that the Code’s standard of proof of “clear and convincing” could not be met.

### Gender<sup>16</sup> of Respondent

|           | <b>Male</b> | <b>Female</b> | <b>Organization</b> |
|-----------|-------------|---------------|---------------------|
| 2017-2018 | 385         | 221           | 1117                |
| 2018-2019 | 477         | 320           | 6                   |

<sup>15</sup> Includes charges for Good Samaritan Protocol (GSP), where students are neither found Responsible nor Not Responsible, but may include GSP+ cases (ex: a case where a student called for help for assistance following, but also was possessing a form of fake identification). For more information about GSP, please visit: <https://health.cornell.edu/resources/health-topics/alcohol-other-drugs/good-sam>

<sup>16</sup> Data is automatically merged from PeopleSoft if available.

<sup>17</sup> The six University-registered organizations charged with violations were: Club Hockey, Cornell Mock Trial, Nigerian Student Association, Nothing But Treble, Outdoor Odyssey, and The Hangovers. At the time of the data pull, all organizations, were found “Not Responsible,” with the exception of Cornell Mock Trial whose case was still being adjudicated.

|                   |         |         |         |
|-------------------|---------|---------|---------|
| Percentage change | +23.89% | +44.79% | -45.45% |
|-------------------|---------|---------|---------|

*Note of Explanation:* There were 17 cases in which the gender field in PeopleSoft was not entered.

### Classification<sup>18</sup> of Respondent (Year in School)

|                   | Freshmen  | Sophomore | Junior   | Senior   | Graduate or Professional | Faculty & Staff | Organization |
|-------------------|-----------|-----------|----------|----------|--------------------------|-----------------|--------------|
| 2017-2018         | 296 (47%) | 145 (23%) | 67 (11%) | 70 (11%) | 11 (2%)                  | 4 (0.6%)        | 11 (1.7%)    |
| 2018-2019         | 523 (66%) | 136 (17%) | 58 (7%)  | 48 (6%)  | 19 (2%)                  | 4 (0.05%)       | 6 (0.07%)    |
| Percentage change | +19%      | -6%       | -4%      | -5%      | No change                | -0.55%          | -1.63%       |

*Note of Explanation:* The increase of freshman cases included a substantial upsurge in multi-party cases (ex: eight students in one room consuming alcohol under age).

There were 32 cases in which the classification field fell outside of these categories. For example, summer college students, continuing education students, or another classification discovered during an investigation.

### Location of Alleged Violation (Top 10 locations) 2017-2018

| Location                                     | Number of Incidents | Percentage |
|----------------------------------------------|---------------------|------------|
| Off campus                                   | 64                  | 10.2%      |
| Mary Donlon Hall                             | 43                  | 6.8%       |
| Hans Bethe House                             | 26                  | 4.1%       |
| North Campus Townhouse C                     | 25                  | 4%         |
| The Cornell Store                            | 21                  | 3.3%       |
| Clara Dickson Hall                           | 20                  | 3.2%       |
| George Jameson Hall                          | 18                  | 2.8%       |
| Cascadilla Hall                              | 14                  | 2.2%       |
| Multiple locations for ongoing circumstances | 14                  | 2.2%       |
| Mews Hall                                    | 13                  | 2/0%       |

### Location of Alleged Violation (Top 10 locations) 2018-2019

| Location                 | Number of Incidents | Percentage |
|--------------------------|---------------------|------------|
| Mary Donlon Hall         | 55                  | 6.7%       |
| Mews Residence Hall      | 51                  | 6.2%       |
| Clara Dickson Hall       | 45                  | 5.5%       |
| Day Hall                 | 45                  | 5.5%       |
| North Campus Townhouse B | 37                  | 4.5%       |
| Bauer Hall               | 34                  | 4.1%       |

<sup>18</sup> Data is automatically merged from PeopleSoft, if available.

|                      |    |      |
|----------------------|----|------|
| George Jameson Hall  | 32 | 3.9% |
| Court Residence Hall | 28 | 3.4% |
| Low Rise 6           | 28 | 3.4% |
| Low Rise 7           | 28 | 3.4% |

*Note of Explanation:* The location of Day Hall almost always demotes an obstruction case.

### Recidivism Rates

|                   | Number of Respondents who have been found responsible for Code violation(s) on more than one referral to the OJA | Number of Respondents who have been found responsible for Code violation(s) on more than one referral to the OJA within the same academic year |
|-------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 2017-2018         | 50                                                                                                               | 24                                                                                                                                             |
| 2018-2019         | 47                                                                                                               | 27                                                                                                                                             |
| Percentage change | -6%                                                                                                              | +12.5%                                                                                                                                         |

### Sanctions 2017-2018

| Sanction                                    | Count           | Percentage |
|---------------------------------------------|-----------------|------------|
| Written Reprimand                           | 267             | 32.0%      |
| Reflection Paper                            | 242             | 29.0%      |
| AOD Level 1 – BASICS                        | 187             | 22.4%      |
| Decision Making Class                       | 29              | 15.4%      |
| Research Paper                              | 26              | 3.1%       |
| AOD Level 2                                 | 17              | 2.1%       |
| Oral Warning                                | 12              | 1.5%       |
| Facilitated Dialogue                        | 12              | 1.4%       |
| Disciplinary Probation                      | 11              | 1.3%       |
| Letter of Apology                           | 8               | 0.9%       |
| Directed Study: Emergency Health and Safety | 7               | 0.9%       |
| Deferred Suspension                         | 5               | 0.6%       |
| Restitution                                 | 4               | 0.5%       |
| AOD Level 3                                 | 3               | 0.4%       |
| AOD Level 1.5                               | 2               | 0.2%       |
| Suspension                                  | 1 <sup>19</sup> | 0.1%       |
| Counseling                                  | 1               | 0.1%       |

### Sanctions<sup>20</sup> 2018-2019

| Sanction             | Count | Percentage |
|----------------------|-------|------------|
| Written Reprimand    | 341   | 42.4%      |
| AOD Level 1 – BASICS | 268   | 33.3%      |

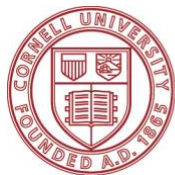
<sup>19</sup> The incident for which this Respondent was suspended for occurred in AY 2017. However, the case overlapped academic years—the UHB heard the case at the end of AY 2017, but the appeal was heard in AY 2018.

<sup>20</sup> Includes GSP cases where sanctions are tracked for completion only, but a warning or reprimand is not issued.

|                                             |                 |       |
|---------------------------------------------|-----------------|-------|
| Reflection Paper                            | 249             | 31.0% |
| Decision Making Class                       | 53              | 6.6%  |
| AOD Level 2                                 | 23              | 2.8%  |
| Letter of Apology                           | 10              | 1.2%  |
| Facilitated Dialogue                        | 9               | 1.1%  |
| Disciplinary Probation                      | 8               | 0.9%  |
| Directed Study: Emergency Health and Safety | 7               | 0.8%  |
| Restitution                                 | 6               | 0.7%  |
| AOD Level 1.5                               | 5               | 0.6%  |
| Suspension                                  | 4 <sup>21</sup> | 0.3%  |
| Counseling                                  | 2               | 0.2%  |
| Oral Warning                                | 2               | 0.2%  |
| AOD Level 3 – Counseling                    | 1               | 0.1%  |
| Research Paper                              | 1               | 0.1%  |

<sup>21</sup> The suspension lengths were: four-years, two years, one year, and one semester.

## **Appendix B: OJA's Reflection Options Chart**



Cornell University

Office of the Judicial Administrator  
120 Day Hall  
Ithaca, NY 14853

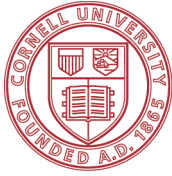
Phone: 607-255-4680  
Fax: 607-254-4464  
Email: judadmin@cornell.edu

### Reflection Options

| Written Options                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Digital Options                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Artistic Options                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Reflection Paper.</b> Complete a five-page reflection paper on the following topic: [INSERT TOPIC]. The reflection paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by November 7, 2016. The paper should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p>                                                          | <p><b>Podcast Reflection.</b> Create a five-minute podcast related to and reflecting on [INSERT TOPIC]. The podcast must be your original work, any copyrighted media must be used in accordance with the fair use exception (<a href="https://www.copyright.gov/fair-use/more-info.html">https://www.copyright.gov/fair-use/more-info.html</a> and <a href="https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf">https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf</a>), and you must sign a FERPA release for anyone else featured in your podcast. The podcast must be thoughtful and substantive in its response to the prompt. The podcast, or a link to the podcast should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p> | <p><b>Comic Strip Reflection.</b> Create a at least a six-panel comic-strip related to and reflecting on [INSERT TOPIC]. The comic strip must be your original work, and each panel must be at least 2 ½ inches by 3 inches. The comic strip must be thoughtful and substantive in its response to the prompt. The comic strip should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p>                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>Poem Reflection.</b> Write at least 45 poetic lines related to and reflecting on [INSERT TOPIC]. These stanzas must be your original work, and each line must be at least 5 words. The poem does not need to be in rhyme or follow a certain meter or couplet formation, but must be thoughtful and substantive in its response to the prompt. The poem should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p> | <p><b>RED Talk.</b> Create a five-minute RED Talk, similar to a TED Talk, related to and reflecting on [INSERT TOPIC]. The RED Talk must be your original work, and any copyrighted media must be used in accordance with the fair use exception (<a href="https://www.copyright.gov/fair-use/more-info.html">https://www.copyright.gov/fair-use/more-info.html</a> and <a href="https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf">https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf</a>). The RED Talk should follow the TED Talk presentation format, and must be thoughtful and substantive in its response to the prompt. The RED Talk, or a link to the talk, should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p>     | <p><b>Poster Series Reflection.</b> Create at least two posters related to and reflecting on [INSERT TOPIC]. The posters must be your original work, and each poster must be 8 ½ inches by 11 inches. Any copyrighted material must be used in accordance with the fair use exception (<a href="https://www.copyright.gov/fair-use/more-info.html">https://www.copyright.gov/fair-use/more-info.html</a> and <a href="https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf">https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf</a>), and you must sign a FERPA release for anyone else featured in your poster(s). The posters must be thoughtful and substantive in their response to the prompt. The posters should be sent via email to judadmin@cornell.edu and</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | include in your email the name of the individual you met with when entering this agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>Song Analysis and Written Application Reflection.</b> Identify a song whose lyrics are related to and reflect on the following topic [INSERT TOPIC]. Then, lyric by lyric, explain in writing how each lyric of the song applies to the situation which led to your referral to the OJA, or how your situation may change following your referral to the OJA. You must provide the name of the song, and its original artist at the top of the reflection. The analysis and application should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p> | <p><b>Video Reflection.</b> Create a three-minute video, with at least three different locations, related to and reflecting on [INSERT TOPIC]. The video must be your original work, any copyrighted media must be used in accordance with the fair use exception (<a href="https://www.copyright.gov/fair-use/more-info.html">https://www.copyright.gov/fair-use/more-info.html</a> and <a href="https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf">https://www.arl.org/storage/documents/publications/fair-use-code-faq-students.pdf</a>), and you must sign a FERPA release for anyone else featured in your video. The video must be thoughtful and substantive in its response to the prompt, and you are encouraged to explain how each location applies to the prompt. The video, or a link to the video should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p> | <p><b>Pamphlet or Brochure Reflection.</b> Create a pamphlet or brochure related to and reflecting on [INSERT TOPIC]. The pamphlet or brochure must be your original work, must be at least 8 ½ inches by 11 inches, be either two pages (or one page double-sided), and folded in thirds. Any copyrighted material must be used in accordance with the fair use exception (<a href="https://www.copyright.gov/fair-use/more-info.html">https://www.copyright.gov/fair-use/more-info.html</a> and <a href="https://www.arl.org/storage/documents/publication/s/fair-use-code-faq-students.pdf">https://www.arl.org/storage/documents/publication/s/fair-use-code-faq-students.pdf</a>), and you must sign a FERPA release for anyone else featured in your pamphlet or brochure. The pamphlet or brochure must be thoughtful and substantive in its response to the prompt. The pamphlet or brochure should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><b>Song Reflection.</b> Write and perform an original song, of at least three-minutes in length, related to and reflecting on [INSERT TOPIC]. The video of you performing, or a link to the video of you performing should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p><b>Other Artwork Reflection.</b> Any other form of artwork—such as a painting or sculpture—must be suggested in writing by the Respondent, and approved by the case-handler.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## **Appendix C: Public Records**



**Cornell University**

Office of the Judicial Administrator  
120 Day Hall  
Ithaca, NY 14853

Phone: 607-255-4680  
Fax: 607-254-4464  
Email: judadmin@cornell.edu

**Campus Code of Conduct – Academic Year 2019 Public Records**

| <b>Public Record #</b> | <b>Petitioner</b>                               | <b>Date of Hearing</b>           | <b>Type of Hearing</b>                | <b>Chair</b>                |
|------------------------|-------------------------------------------------|----------------------------------|---------------------------------------|-----------------------------|
| 1                      | Respondent – Undergraduate Student              | September 7, 2018                | Hearing on the merits                 | Professor Timothy Devoogd   |
|                        |                                                 | November 7, 2018                 | Appeal of the decision of the UHB     | Professor Andrea Mooney     |
| 2                      | Respondent – Undergraduate Student              | September 25, 2018               | Hearing on the merits – joint hearing | Professor Rocco Scanza      |
| 3                      | Respondent – Undergraduate Student              | November 30, 2018                | Hearing on the merits – joint hearing | Professor Tim Devoogd       |
| 4                      | Respondent – Undergraduate Student              | December 7, 2018                 | Sanctions Determination Hearing       | Professor Thomas R. Overton |
|                        |                                                 | February 19, 2019                | University Review Board               | Professor Andrea J. Mooney  |
| 5                      | Respondent – Undergraduate Student              | January 25, 2010                 | Hearing on the merits                 | Professor Thomas R. Overton |
| 6                      | Respondent – Undergraduate Student              | February 19 <sup>th</sup> , 2019 | Hearing on the merits                 | Professor Rocco Scanza      |
| 7                      | Respondents – Undergraduate Students            | April 14 <sup>th</sup> , 2019    | Hearing on the merits – joint hearing | Professor Tracy Carrick     |
|                        | Respondent – Undergraduate Student <sup>1</sup> | June 25, 2019                    | University Review Board               | Professor Andrea J. Mooney  |
| 8                      | Respondent – Undergraduate Student              | April 16, 2019                   | Sanctions Determinations Hearing      | Professor Rocco Scanza      |
| 9<br>Under appeal      | Respondent – Undergraduate Student              | April 30, 2019                   | Hearing on the merits                 | Professor Tracy Carrick     |
| 10                     | Respondent – Undergraduate Student              | May 3, 2019                      | Hearing on the merits                 | Professor Thomas R. Overton |
|                        |                                                 | June 25, 2019                    | University Review Board               | Professor Andrea J. Mooney  |

<sup>1</sup> Only 1 of the 8 joined in the underlying hearing on the merits pursued an appeal to the URB.

**PUBLIC RECORD #1**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-01

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

[REDACTED]

**RESPONDENT**

[REDACTED]

Hearing on the Merits

**Procedural History**

On April 19, 2018, Cornell University student [REDACTED] (Respondent) was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title 3, Article II, Section 1.d, 1.l:

- 1.d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.
- 1.l. To prevent a person from leaving a location (including part of the location, such as one part of a room) or to force a person to go to a location against his or her will. This is a violation whether accomplished through physical or psychological means.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, a duly constituted University Hearing Board (UHB) convened on Sept. 7, 2018 for a hearing on the merits.

**Relevant Facts**

On April 8, 2018, it is alleged the Respondent forcibly prevented his roommate from leaving their room. Complainant called Cornell Police, who came quickly and heard from the two individually, and then arranged for Respondent to leave the room while complainant gathered things and went to another room for the night. The OJA states that the accounts of the altercation by the two individuals are essentially identical, and support the charges above of violating provisions of the Campus Code. The Respondent stated that he is not responsible for the charges.

**Pre-hearing Decisions (if applicable)**

- I. Pre-hearing motions (if applicable):
  - a. Pre-hearing motion 1:

- i. Before the UHB convened, the OJA submitted a pre-hearing motion requesting that the hearing be postponed until the start of the fall semester. In response, the Respondent agreed to the delay. After reviewing both the OJA and Respondent's arguments, the Chair agreed to this request.

### **University Hearing Board Decision**

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent in violation of the following Code provision(s):

Title 3, Article II, Section A 1 l: To prevent a person from leaving a location

- Provision 1
  - Vote count: 5 - 0
  - Dissent:
- Provision 2
  - Vote count:
  - Dissent:
- Provision 3
  - Vote count:
  - Dissent:

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent not responsible for violating the following Code provision(s):

Title 3, Article II, Section A 1 d: To harass another person

- Provision 1
  - Vote count: 0 – 5. The OJA had decided not to pursue this charge and the Hearing Board concurred
  - Dissent:
- Provision 2
  - Vote count:
  - Dissent:
- Provision 3
  - Vote count:
  - Dissent:

### **Rationale for Findings**

The UHB's decision regarding its determination(s) that the Respondent is/is not responsible for violating the Code is based on the following:

1. Reason 1: The testimony of the respondent and complainant, as well as the testimony of the Cornell Police officers who responded to the incident did not differ in any meaningful way. The respondent agreed that he had obstructed his roommate from leaving. His only

defense was that his motivation was not malicious. It was to find out why the roommate was angry at him, in an effort to return to friendly interactions.

### **Sanction(s)**

The UHB determined the following sanction(s) are appropriate for the violations found<sup>1</sup>:

1. Sanction 1 Oral reprimand.
2. Sanction 2 Attendance of a Decision Making Class arranged by the OJA, by the end of October
3. Sanction 3 Reflection Paper. Complete a reflection paper of at least 5 pages on the following topic: What I learned from the decision making class, and how I will apply it in my future decision making to address effective conflict resolution techniques. It should be double spaced, 12 point New Roman font, with 1 inch margins. It must be submitted to the OJA via email ([judadmin@cornell.edu](mailto:judadmin@cornell.edu)) within 15 days of completing the class. While this is not part of the requirement, the Hearing Board recommended considering in the paper how freshmen might be taught about different styles of conflict resolution, and offering to provide insights to campus personnel involved in orientation for next year's freshmen.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanction(s) determinations is based on the following:

1. Reason 1. The sanctions listed are nearly the same as were proposed earlier by the OJA in a Summary Decision Agreement, and repeated by the OJA in the sanctions phase of the hearing. The Hearing Board was divided on Sanction 1, some feeling that the default action of the OJA of giving a written reprimand was appropriate and not overly onerous, and others feeling that an oral reprimand (which would not be reported to outside parties, even with the student's release of his personal information) would be appropriate. The Board was unanimous on Sanctions 2 and 3

Respectfully submitted,

Timothy DeVoogd, Chair of the UHB

██████████, Staff

██████████, Faculty

██████████, Student

██████████, Student

██████████, Student

---

<sup>1</sup> Please use the Sanctioning Guidelines for Respondent as a reference for language.

**Decision of the University Review Board  
November 7, 2018**

A duly constituted panel (one faculty, one staff, one student and a Chair) of the University Review Board (URB) met on November 7, 2018 to hear the appeal of the Judicial Administrator's Office (OJA). The OJA was appealing one sanction imposed by a University Hearing Board (UHB) with regard to the matter of [REDACTED].

A University Hearing Board was held on the merits on September 7, 2018. The Respondent was found responsible for violating Title 3, Article II, Section A 1 1: "To prevent a person from leaving a location." The UHB decision was unanimous.

The UHB determined to impose the following sanctions:

- 1) Sanction 1: Oral reprimand
- 2) Sanction 2: Attendance at a Decision-making class arranged by the OJA, by the end of October, 2017.
- 3) Sanction 3: Reflection paper: Complete a reflection paper of at least five pages on the following topic: "What I learned from the decision-making class, and how I will apply it in my future decision making to address effective conflict resolution techniques." It should be double spaced 12 point New Roman font, with 1 inch margins. It must be submitted to the OJA via email within 15 days of completing the class. While this is not part of the requirement, the Hearing Board recommended considering in the paper how freshmen might be taught about different styles of conflict resolution, and offering to provide insights to campus personnel involved in orientation for next year's freshmen.

The OJA appealed the decision of the UHB only insofar as it requested that Sanction 1: Oral reprimand be modified so as to be a written reprimand, with a disciplinary record that is reportable until graduation.

The Respondent, through his advisor, the Assistant Judicial Codes Counselor (JCC) responded to the appeal and argued that the oral warning was an appropriate sanction for the offense.

The URB met and reviewed the submissions of both the OJA and the JCC, and reached the following decision:

The URB affirms the decision of the UHB and lets stands the sanctions imposed by the UHB.

The reasoning of the URB is as follows:

- 1) The URB, in reviewing the decision of the UHB, determined that the UHB had all the necessary facts before it, as well as the testimony of the Respondent, the Complainant and the Cornell police officer who responded to Complainant's call. The URB

determined that the UHB's decision was a reasonable one and determined that overturning the UHB's decision would require a more substantive reason. The URB was particularly interested to note that the Complainant acknowledged that he understood that the Respondent was not trying to hurt him.

- 2) The URB rejected the OJA's argument that an oral warning would suggest that there was no code violation. Further, the URB determined that, as an oral warning is a sanction available under the Code of Conduct, it is an appropriate sanction in this matter. The OJA's argument that oral warnings should not be administered regularly was seen by the URB as a policy of the OJA to which the UHB and the URB are not held.
- 3) The URB found that the Respondent's plan to attend medical school was irrelevant to the determination of either responsibility or sanction. As far as the URB understood, whether the Respondent received an oral warning or a written reprimand, he will be required to explain his involvement in the disciplinary process if asked by any future employer or admissions office.
- 4) The URB rejected Respondent's argument that it should use an "abuse of discretion" standard in reviewing the work of the UHB. The Code of Conduct is silent as to the standard of review.

The decision of the University Review Board is unanimous.

Respectfully submitted,

██████████ Student

██████████ Staff

██████████ Faculty

Andrea J. Mooney, Chair

**PUBLIC RECORD #2**  
**Maxient Case # [REDACTED] & # [REDACTED]**



Cornell University

INTERNAL USE ONLY:

Maxient case #: [REDACTED]

Publicrecord # 2019-02

## UNIVERSITY HEARING BOARD

### COMPLAINANT

Cornell University

### RESPONDENT

[REDACTED]

Hearing on the Merits

### Procedural History

On August 17, 2018, Cornell University student [REDACTED] was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A<sup>1</sup>:

- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, a duly constituted University Hearing Board (UHB) convened on September 25, 2018 for a hearing on the merits.

### Relevant Facts

On May 9, 2018, Steven Morey of the OJA emailed Respondent requesting that she contact the JA's office and schedule an appointment for an interview. Mr. Morey's email specified that the Respondent should contact the office within two business days. The message also included the following: "Please note, failure to cooperate with this Code's operation and enforcement will result in Code charges being brought against you." Respondent did not contact the OJA.

On May 11, 2018, Mr. Morey sent a follow up email containing the same information. In the 2<sup>nd</sup> email, in large and bold print, the same message "Please note, failure to cooperate with this Code's operation and enforcement will result in Code charges being brought against you." Again, the Respondent did not contact the OJA.

On May 17, Mr. Morey sent a 3<sup>rd</sup> email to the Respondent. The subject of his message read: Request for a meeting with the OJA as a WITNESS- Response required. As in the first two email messages, Mr. Morey included the following language "The Campus Code of Conduct (Code) is the University Community's Code, and hence is the responsibility of all community members.

<sup>1</sup> Reference the current Code and include exact language from the Code for each provision

All members have a duty to cooperate with University officials in the Code's operation and enforcement. Title One, Art. I, Sec. C.2. (Pg. 2, 2017). The third email also contained the same admonition, "Failure to (contact me) will result in a referral to the OJA for obstruction of the application of the Code. Again, the OJA received no response.

On June 1, 2018, a formal Judicial Administration Referral was made by Vin Ciampollini of the OJA, alleging per the above facts that the Respondent failed to contact the OJA in connection with his ongoing investigation involving a possible hazing incident.

The Respondent states she didn't open the above emails until August, 2018, when she received a fourth email from Steven Morey, with "Please call" as the subject. She explained that the previous emails were sent just during the period approaching final examinations. She attended Slope Day and then celebrated her birthday before preparing for and then taking her final examinations. She stated she had no intention of not cooperating with the OJA and in fact, contacted the office in August and participated in the interview process as part of the underlying investigation of hazing allegations.

The OJA states the Code is clear and does not require an intent to obstruct the application of the Code. All Cornell community members have an obligation to cooperate with University officials, i.e. the OJA's investigation.

### **Pre-hearing Decisions (if applicable)**

#### **I. Objections (if applicable):**

##### **a. Objection 1:**

- i. Before the UHB convened, the OJA submitted objection(s) to three of Respondent's exhibits. In response, the Respondent stated that each exhibit was relevant to proving her case. After reviewing both the OJA and Respondent's arguments, the Chair overruled the Objections and determined that the Respondent would be permitted to have the UHB consider the relevancy of the three exhibits.

### **University Hearing Board Decision**

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent in violation of the following Code provision(s):

#### **Title Three, Article II, Section A:**

- Provision 1 3.g. To destroy evidence or otherwise obstruct the application of this Code
  - Vote count: 5
  - Dissent: 0

### **Rationale for Findings**

The UHB's decision regarding its determination that the Respondent is responsible for violating the Code is based on the following:

1. The Code does not require intent to obstruct justice, in this case, the ongoing OJA investigation of an alleged hazing incident(s).
2. Respondent's explanation for not reading her emails was deemed not credible. A student is expected to read and respond to emails from faculty members and other University officials.

### **Sanction(s)**

By a Vote of 4 to 1, the UHB determined the following sanction is appropriate for the violations found:

1. Written Reprimand -- A disciplinary record for this matter will be maintained consistent with University policies, and reportable until the Respondent graduates from Cornell University.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanction is based on the following:

1. The sanction is consistent with the severity of the violation, as recommended by the OJA.
2. The Respondent demonstrated no remorse for not responding to the three emails sent by the OJA, nor indication of understanding the impact of their actions.
3. A lesser penalty could send the wrong message to Cornell community members that there would be little or no penalty for failing to cooperate with the OJA when that office is conducting an investigation.

Respectfully submitted,

Rocca Scanza, Chair of the UHB  
[REDACTED] Student

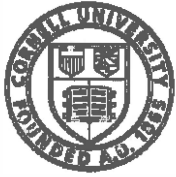
[REDACTED] Student

[REDACTED] Student

[REDACTED] Faculty

[REDACTED] Staff





Cornell University

INTERNAL USE ONLY:

Maxient case #: [REDACTED]

Public record #: 2019-02

## UNIVERSITY HEARING BOARD

### COMPLAINANT

Cornell University

### RESPONDENT

Hearing on the Merits

### Procedural History

On August 17, 2018, Cornell University student [REDACTED] was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A<sup>1</sup>:

- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, a duly constituted University Hearing Board (UHB) convened on September 25, 2018 for a hearing on the merits.

### Relevant Facts

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<sup>1</sup> Reference the current Code and include exact language from the Code for each provision

members. All members have a duty to cooperate with University officials in the Code's operation and enforcement. Title One, Art. I, Sec. C.2. (Pg. 2, 2017). The third email also contained the same admonition, "Failure to (contact me) will result in a referral to the OJA for obstruction of the application of the Code. Again, the OJA received no response.

On June 1, 2018, a formal Judicial Administration Referral was made by Vin Ciampollini of the OJA, alleging per the above facts that the Respondent failed to contact the OJA in connection with his ongoing investigation involving a possible hazing incident.

The Respondent states she didn't open the above emails until August, 2018, when she received a fourth email from Steven Morey, with "Please call" as the subject. She explained that the emails were sent prior to and during Cornell's final examination period, and she had only skimmed the subject lines, assuming they were not top priority. In addition, she was traveling to New York City for work interviews. She explained that the only emails she read during that time were those that came to her from prospective employers. She stated she had no intention of not cooperating with the OJA and in fact, contacted the office in August and participated in the interview process as part of the underlying investigation of hazing allegations.

The OJA states the Code is clear and does not require an intent to obstruct the application of the Code. All Cornell community members have an obligation to cooperate with University officials, i.e. the OJA's investigation.

### **Pre-hearing Decisions (if applicable)**

- I. Objections (if applicable):
  - a. Objection 1:
    - i. Before the UHB convened, the OJA submitted objection(s) to three of Respondent's exhibits. In response, the Respondent stated that each exhibit was relevant to proving her case. After reviewing both the OJA and Respondent's arguments, the Chair overruled the Objections and determined that the Respondent would be permitted to have the UHB consider the relevancy of the three exhibits.

### **University Hearing Board Decision**

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent in violation of the following Code provision(s):

#### **Title Three, Article II, Section A:**

- Provision 1 3.g. To destroy evidence or otherwise obstruct the application of this Code
  - Vote count: 5

- Dissent: 0

### **Rationale for Findings**

The UHB's decision regarding its determination that the Respondent is responsible for violating the Code is based on the following:

1. The Code does not require intent to obstruct justice, in this case, the ongoing OJA investigation of an alleged hazing incident(s).
2. Respondent's explanation for not reading her emails was deemed not credible. A student is expected to read and respond to emails from faculty members and other University officials.

### **Sanction**

By a Vote of 4 to 1, the UHB determined the following sanction is appropriate for the violations found:

1. Written Reprimand -- A disciplinary record for this matter will be maintained consistent with University policies, and reportable until the Respondent graduates from Cornell University.

### **Rationale for Sanction**

The UHB's decision regarding its sanction is based on the following:

1. The sanction is consistent with the severity of the violation, as recommended by the OJA.
2. The Respondent demonstrated no remorse for not responding to the three emails sent by the OJA, nor indication of understanding the impact of their actions.
3. A lesser penalty could send the wrong message to Cornell community members that there would be little or no penalty for failing to cooperate with the OJA when that office is conducting an investigation.

Respectfully submitted,

Rocca Scanza, Chair of the UHB

██████████ Student

██████████ Student

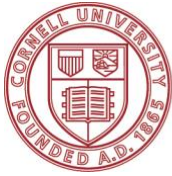
██████████ Student

██████████ Faculty

██████████ Staff



**PUBLIC RECORD #3 Maxient Case #**  
[REDACTED] [REDACTED] #



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-03

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

Hearing on the Merits

**Procedural History**

On September 10, 2018, Cornell University student, [REDACTED] (Respondent), was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A:

- 3.b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possessing alcohol with the intent to consume it while under the age of 21.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, a duly constituted University Hearing Board (UHB) convened on Nov. 30, 2018 for a hearing on the merits.

**Relevant Facts**

On July 14, 2018, it is alleged the Respondent consumed an alcoholic drink at a dinner while on a Cornell internship program in Mysore, India. The Respondent states that she should be found not responsible because the violation was so minor. The OJA states that consuming even trivial amounts of alcohol violates the Code.

**Pre-hearing Decisions (if applicable)**

- I. Pre-hearing motions (if applicable):
  - a. Pre-hearing motion 1:
    - i. Before the UHB convened, the OJA submitted a pre-hearing motion(s) requesting this hearing be joined to one with similar allegations for

another student at the same dinner. After reviewing both the OJA and the other Respondent's arguments, the Chair accepted the OJA's request.

II. Objections (if applicable):

a. Objection 1:

- i. Before the UHB convened, the OJA submitted an objection to one of the Respondent's witnesses based on not having been able to meet or interview the person. In response, the Respondent stated that the Code does not afford this right to the OJA. After reviewing both the OJA and Respondent's arguments, the Chair denied the objection.
- ii. Before the UHB convened, the Respondent submitted an objection to the Incident Report as written, and asked that it be redacted to describe only the dinner at the center of the allegation. This was agreed to by the OJA.

### University Hearing Board Decision

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent in violation of the following Code provision(s):

Title Three, Article II, Section A:

- Provision 1
  - Vote count: 5 - 0
  - Dissent:

### Rationale for Findings

The UHB's decision regarding its determination(s) that the Respondent is responsible for violating the Code is based on the following:

1. Respondent testified that she had never had a drink in the past or since. She also testified that at the dinner in question, she took a single sip to stop the others from urging her to do so.
2. This action was supported by some witnesses and not contested by any of them.
3. The Hearing Board felt that the offense was trivial, and that the root cause was a combination of poor supervision and a lack of clarity regarding which program rules were important. However, given that the OJA decided to proceed with charges and a hearing, they felt that they had no alternative under the Code as it is written but to find a violation. They then chose modest sanctions that reflect this judgment.

### Sanction(s)

The UHB determined the following sanction(s) are appropriate for the violations found:

1. **Written Reprimand.** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable until you graduate from Cornell University.

2. **Reflection Paper.** Complete a five-page reflection paper on the following topic: What motivated your decision making in this incident that led to your referral to the OJA? How was your decision consistent or in contradiction from the expectations of participants in the India program and the Campus Code of Conduct? As a participant in this elite program, how could your actions and those of the group have affected the success of the program, including its continuance for future students? How will you avoid responding to peer pressure in the future? The reflection paper should be double spaced, 12-point font, Times New Roman font with one inch margins all around. This paper must be submitted to the OJA by February 8, 2019. The paper should be sent via email to judadmin@cornell.edu and include in your email the name of AJA Christina Liang.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanction(s) determinations is based on the following:

1. The Hearing Board was split between an oral and a written reprimand. They chose a written reprimand based on the AJA's indication that this was customary for such cases, and her indication that to choose otherwise would not be fair to others involved in the incident who had accepted sanctions offered by the OJA.
2. Overall, the sanctions were selected to be commensurate with the minor nature of the offense. The Hearing Board felt that a paper focused on decision making could be helpful to the respondent.

Respectfully submitted,

Timothy DeVoogd, Chair of the UHB

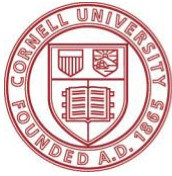
██████████, Staff

██████████, Faculty

██████████, Student

██████████, Student

██████████, Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-03

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

Hearing on the Merits

**Procedural History**

On September 10, 2018, Cornell University student, [REDACTED] (Respondent), was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A:

- 3.b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possessing alcohol with the intent to consume it while under the age of 21.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, a duly constituted University Hearing Board (UHB) convened on Nov. 30, 2018 for a hearing on the merits.

**Relevant Facts**

On July 14, 2018, it is alleged the Respondent consumed an alcoholic drink at a dinner while on a Cornell internship program in Mysore, India. The Respondent states that the allegation is untrue. The OJA states that others present at the dinner would confirm the allegation.

**Pre-hearing Decisions (if applicable)**

- I. Pre-hearing motions (if applicable):
  - a. Pre-hearing motion 1:
    - i. Before the UHB convened, the OJA submitted a pre-hearing motion(s) requesting this hearing be joined to one with similar allegations for another student at the same dinner. In response, the Respondent stated that his circumstances were substantially different from the other Respondent.

After reviewing both the OJA and Respondent's arguments, the Chair accepted the OJA's request.

II. Objections (if applicable):

a. Objection 1:

- i. Before the UHB convened, the OJA submitted an objection to one of the Respondent's witnesses based on not having been able to meet or interview the person. In response, the Respondent stated that the Code does not afford this right to the OJA. After reviewing both the OJA and Respondent's arguments, the Chair denied the objection.
- ii. Before the UHB convened, the Respondent submitted an objection to the Incident Report as written, and asked that it be redacted to describe only the dinner at the center of the allegation. This was agreed to by the OJA.

**University Hearing Board Decision**

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent not responsible for violating the following Code provision(s):

Title Three, Article II, Section A:

- Provision 1
  - Vote count: 5 - 0
  - Dissent:

**Rationale for Findings**

The UHB's decision regarding its determination(s) that the Respondent is/is not responsible for violating the Code is based on the following:

1. Respondent presented photographic evidence that he did not receive a drink at the dinner.
2. Respondent presented testimony that he explicitly turned down a drink because he was responsible for contact with program staff and for the group's return to their residence.
3. Testimony that he received a drink came from the program coordinator who had not been present at the dinner but had spoken to the Respondent about the dinner soon afterward. She testified that in this conversation, he never affirmatively confessed to having had a drink. Testimony that he drank also came from one of the other participants. In both cases, these witnesses did not describe these events to Cornell staff until approx. 6 weeks later, when it would have been difficult to recall whether most of the people at the dinner had a drink or everyone had one.

Respectfully submitted,

Timothy DeVoogd, Chair of the UHB

██████████, Staff

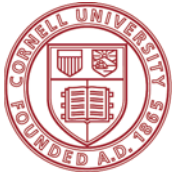
██████████, Faculty

██████████, Student

██████████, Student

██████████, Student

**PUBLIC RECORD #4**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-04

## UNIVERSITY HEARING BOARD

### COMPLAINANT

Cornell University

### RESPONDENT

[REDACTED]

Sanctions Only Hearing

### Procedural History

On January 30, 2018, Cornell University student, [REDACTED] (Respondent), was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A:

- 1.i. To steal or otherwise knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.
- 1.j. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.
- 2.a. To endanger or to cause damage to or loss of property of the University.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. Though the Respondent and the OJA were able to agree on the violations for which the Respondent is responsible, the Respondent and the OJA were unable to reach an agreement regarding sanctions. On November 29, 2018, the Respondent and the OJA were able to reach a stipulation of facts, which was submitted to the University Hearing Board (UHB) for its review. Per the Code, a duly constituted UHB convened on December 7, 2018 for a sanctions-only hearing.

Based on the agreed stipulation, the Respondent is responsible for violating the following Code provisions:

Title Three, Article II, Section A:

- 1.i. To steal or otherwise knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.
- 1.j. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.
- 2.a. To endanger or to cause damage to or loss of property of the University.

## **Relevant Facts**

Based on the agreed stipulation, the Respondent and the OJA agree to the following facts:

1. Between the dates of January 27th, 2018 - January 29th 2018 the Cornell Information Technology Security Office (ITSO) received four “unusual” reports of Net ID password resets not initiated by account owners.
2. ITSO then performed analysis on the accounts in question and a pattern was identified.
3. The pattern was that each password reset was initiated by the same machine assigned with the same network address, generally at unusual, early morning times.
4. Based on the repeated nature of the illicit access, ITSO performed “reverse analysis” and found three other accounts with the same pattern of similar activity.
5. ITSO identified [REDACTED] ([REDACTED]) as the person responsible for the activities occurring multiple time over the dates of January 27th, 2018 - January 29th 2018.
6. ITSO continued to investigate, and discovered that the Respondent exploited a flaw in the NetID password and was modifying the passwords of other users and subsequently logging in under their credentials and locking the users out of their accounts.
7. ITSO continued to investigate, and discovered by changing and logging in to users accounts, the Respondent had accessed approximately thirteen users Peoplesoft and Student Center accounts. The Peoplesoft and Student Center accounts provided the Respondent access to information including but not limited to a person’s; social security number, ethnic identity, citizenship status, financial aid records, contact information, pay stubs, class history, Blackboard, academic grades, personal data, and manipulating personal data (dropping classes, viewing grades, etc.).
8. Only when the Respondent noticed a notification on his access, which was initiated by Cornell, did he send a disclosure on January 30th, 2018 to ITSO informing the University of the flaw he discovered and was exploiting.
9. As a result of the abuse, Cornell Information Technology had to perform an emergency shutdown of the web application, which created a burden for all campus users and the CIT service desk; the burden included the IT service desk handling approximately 75 manual password change requests a day for a week.
10. Due to this breach, the University paid approximately \$3,120 out-of-pocket to the thirteen impacted parties for credit monitoring services.
11. Subsequently it was discovered in Cornell University Police Department’s (CUPD) investigation, by reviewing the Respondent’s electronic devices, that thirteen users had been further compromised by “screen-shots” being taken of their accounts. Such accounts included viewing the password and website to any account which was linked to a person’s

cornell.edu account, including information for websites including but not limited to: Amazon, Facebook, Instagram.

**Procedural Timeline:**

The parties stipulate that all procedures of the Code have been followed to this point, and that the following are the relevant procedural dates in this case:

- 01.30.18: OJA receives Incident Report.
- 03.08.18: Code provision Title III. Art. III. C. 1 (Page 22, 2018), was enacted by Hearing Board Chair to directly send this matter to a UHB.
- 03.08.18: Respondent was placed on notice by the OJA.
- 10.12.18: OJA proposed Summary Decision Agreement (SDA)
- 10.29.18: Hearing Postponement granted and hearing date confirmed.

**Pre-hearing Decisions**

I. Objections:

a. Objection 1:

- i. Before the UHB convened, the Respondent submitted an objection to the proposed testimony of [REDACTED] a witness proposed by the OJA, based upon the premise that the witness would be testifying on the facts of the case and such testimony would be prejudicial to the Respondent in that the facts have been agreed upon. In response, the OJA stated that the witness would be testifying to the impact, severity, and harm of the Respondent's actions. After reviewing both the Respondent's and OJA's arguments, the Chair ruled to allow the witness, but specified that the testimony would be limited to the impact, severity, and harm of Respondent's actions.

b. Objection 2:

- i. Before the UHB convened, the Respondent submitted an objection to the proposed testimony of [REDACTED] a witness proposed by the OJA, based upon the premise that the witness would be testifying on the facts of the case and such testimony would be prejudicial to the Respondent in that the facts have been agreed upon. In response, the OJA stated that the witness would be testifying to the impact, severity, and harm of the Respondent's actions. After reviewing both the Respondent's and OJA's arguments, the Chair ruled to allow the witness, but specified that the testimony would be limited to the impact, severity, and harm of Respondent's actions.

## University Hearing Board Decision – Sanctions

After the presentation of witnesses and information by both the Respondent and the OJA related to sanctions recommendations, the UHB determined the following sanctions are appropriate for the violations agreed:

1. **UHB Vote 5 to 0 – Written Reprimand.** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be permanently reportable.
2. **UHB Vote 3 to 2 – Suspension from Cornell University.** Respondent is suspended from and will leave Cornell University effective December 16, 2018/5:00 PM and is eligible to return for the Spring 2020 semester upon verification of good standing for the remaining sanctions in this agreement. During this period of suspension, Respondent will not take any classes at Cornell, on any of Cornell's campuses, or through any of Cornell's study-abroad programs. While on suspension, Respondent may not earn academic credit at Cornell or elsewhere toward completion of a Cornell degree. Respondent has the option to participate in the OJA Circles of Support and Accountability Suspension Reintegration Program while on suspension. However, upon Respondent's return to Cornell University, Respondent agrees to participate in the program. A persona non grata (PNG) will be put in place during Respondent's suspension and Respondent will contact Cornell University Police before returning to Cornell to request the PNG be amended or lifted. A transcript notation will be placed on Respondent's official transcript, consistent with the policies of the Office of the University Registrar.
3. **UHB Vote 5 to 0 – Disciplinary probation.** The probationary period is effective from the date of this decision until Respondent graduates from Cornell University. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. During Respondent's first full semester upon return to Cornell, Respondent agrees to participate in the OJA probation curriculum.
4. **UHB Vote 5 to 0 – Restitution.** Restitution will be in the amount of \$3,120 for the identity protection service that the institution paid out of pocket for 13 accounts/users whose information you accessed. All payments must be made with certified check or money order and submitted to the OJA by at least one week before Respondent returns to campus.
5. **UHB Vote 4 to 1 – Reflection Paper.** Complete a five-page reflection paper reflecting on the following prompts centering around harm/likelihood or harm to others and the institution.
  - a. Reflecting on the incident that led to Respondent's referral to the OJA, what would Respondent consider to be the "ripple-effect" of his actions? (Consider the amount of people involved in the referral and the impact it caused for the people whose accounts were compromised?).
  - b. What were the unintended consequences from these actions?
  - c. What does Respondent feel might be needed to repair harm/rebuild trust to those close to him as well as the greater Cornell community?
  - d. What steps/actions would be necessary to repair the harm/rebuild the trust identified in the previous prompt?

- e. Finally, why might the Cornell Community be concerned about Respondent's conduct?

The Respondent should reflect on the differences between his values, the institution's values and his actions.

The reflection paper should be double spaced, 12-point font, Times New Roman font with one inch margins all around. This paper must be submitted to the OJA at least one week before Respondent's return to campus, but no earlier than December 1, 2019. The paper should be sent via email to judadmin@cornell.edu.

### **Rationale for Sanctions**

The UHB's decision regarding sanctions determination is based on the following:

1. Although the UHB members generally deemed that the Respondent was not malicious in his actions, nonetheless the actions represented serious violations of the Code. Discussion and dissension within the UHB focused primarily on whether or not the suspension would be sanctioned as a deferred suspension. The impact of the decision on potential visa status was a major component of this discussion. Further discussion focused on the length of the suspension, and the UHB members generally agreed that the proposed 3-year suspension was too long.
2. The actions resulted in compromised integrity of the personal information of thirteen users, and the information of anyone with a Cornell Net ID could have been compromised using the approaches developed by the Respondent. These actions resulted in significant additional burden placed upon many resources at Cornell to respond to this situation to protect personal information and the integrity and security of Cornell Information Technology systems..

Respectfully submitted,



Thomas R. Overton  
Chair of the UHB

on behalf of

|                                                                                     |                                               |
|-------------------------------------------------------------------------------------|-----------------------------------------------|
|  | Student (see accompanying dissenting opinion) |
|                                                                                     | Student                                       |
|                                                                                     | Student (see accompanying dissenting opinion) |
|                                                                                     | Staff                                         |
|  | Faculty                                       |

Dear Chair Overton,

Below is our dissenting opinion regarding the sanctions for [REDACTED]

Our votes to oppose the sanctions imposed by the majority of the hearing board, which are centered on a non-deferred one-year suspension, are based on two primary considerations. First, a non-deferred suspension is a disproportionately harsh penalty when considers mitigating factors and the fact that a non-deferred suspension could effectively function as an expulsion due to [REDACTED] precarious visa status. Second, the non-deferred suspension has a high likelihood of being simply punitive rather than restorative. But we don't merely dissent; we propose an alternative core sanction, a deferred suspension that would fulfill the restorative goals of the campus justice system.

First, it's important that we make clear how serious of a risk a non-deferred suspension would pose to [REDACTED] status as a Cornell student and legal resident of the United States. As his attorney testified, if he is not enrolled in an American university, it is overwhelmingly likely that the United States government will consider him to no longer be "making progress toward [his] degree on a full-time basis." As a result, the United States will revoke his visa, and he will have to return to China. In an effort to avoid this eventuality, [REDACTED] has applied to community colleges, though he has limited to no options in regards to actually transferring to these schools because of the pending criminal charges he faces. At least one school will not admit him while he faces these charges, despite the fact that he has not been convicted, and he and his judicial codes counselor have expressed serious concerns that the other two schools to which he applied would also refuse to admit him until the conclusion of the legal process, which Assistant Judicial Administrator [REDACTED] stated could last for "years." It is highly unlikely that the case will be resolved prior to the end of [REDACTED] one-year period of suspension, which means that any school that refuses to grant him admission while he navigates the legal system will not admit him during the term of his suspension. Given the "making progress" visa

requirement discussed above, a failure to secure a spot at another institution will force [REDACTED] to depart the United States. If he does leave the country, he will have to reapply for a J-1 visa, which pending criminal charges or a criminal conviction will make it difficult for him to obtain, even after his suspension from Cornell is over and he is welcome to return to the university. Put simply, there is a high probability that after a non-deferred suspension [REDACTED] will be unable to ever complete his Cornell degree. His circumstances will likely magnify the impact of a non-deferred suspension such that it becomes an effective expulsion. This result would be an enormous setback that will severely impede his ability to achieve his life goals. Instead of leaving Ithaca in May as a graduate of one of the world's top [REDACTED] schools, he will return home to China with no college degree and quite possibly a criminal record in the United States. Though he'll have spent three years worth of time and money working toward his Cornell diploma, he'll have to repeat college in China, which means he'll enter the workforce at a later age and will lose years of potential earnings. It may very well be more difficult for him to stand out in the job market with a degree from a Chinese school rather than from Cornell, so his job opportunities may be significantly limited relative to the job opportunities he'd have if he were to graduate from this Ivy League institution. If [REDACTED] is given a non-deferred suspension, there is a high chance that he will be measurably worse-off financially and less-well equipped to accomplish what he aims to accomplish in life.

Expulsion is not within the range of sanctions for this case, nor was it discussed during our deliberations as a reasonable penalty; the hearing board's consensus was that even a three year non-deferred suspension was too harsh a sanction. We can say then, with a high degree of certainty, that each member of the hearing board believes that [REDACTED] should be able to earn his Cornell degree. Therefore, it is logically inconsistent to impose a penalty that has a high chance of preventing such an outcome. An expulsion is only warranted when a student has committed a grave and irreparable harm to others or to Cornell as an institution and must be, for the safety of others, removed from campus. As we argue in more detail below, [REDACTED]

offense was serious but of limited scope, and his continued presence here does not put the campus at risk of experiencing the effects of another Code violation at his hands.

In evaluating the proportionality of the sanction, it is important to consider mitigating factors along with the fact that a non-deferred suspension carries with it the serious risk that [REDACTED] will not graduate. We have seen no evidence whatsoever of malicious intent or of any deliberate attempt to discover a flaw in Cornell's information technology systems. Though [REDACTED] repeatedly acted based on lapses in judgment, the information presented to us gives us no indication that he took any action to harm the students whose information he accessed. Furthermore, though a board member who voted to suspend [REDACTED] expressed concern about potential sharing of the screenshots [REDACTED] took of students' course history and grades, we were not presented with so much as an allegation that he had shared the screenshots; having taken screenshots does not imply that one intends to share them. [REDACTED] also, to the best of our knowledge, cooperated with Cornell and legal authorities and reported the technical issue to Cornell IT, although he did so only after he became unable to continue to exploit the system bug.

Additionally, neither [REDACTED] nor [REDACTED] provided evidence of a large enough impact on others or the university to warrant an immediate, degree-jeopardizing non-deferred suspension. Though, in theory, [REDACTED] could have impacted everyone in the Cornell community, the fact of the matter is that his actions were limited in scope. We know he accessed a friend's email along with the grades and course histories of twelve other students, information that constitutes a small fraction of the total sum of personal information accessible with a NetID. Though these privacy violations are serious, they are minor in comparison to the magnitude of the violations his knowledge of the security flaw gave him the ability to commit. Certainly, it is regrettable that the employees in the IT department had to do more manual labor to repair the damage [REDACTED] did, and the stress he caused the DIRT team and other administrators should not be discounted. These impacts should be reflected in his sanctions;

however, even when considered alongside the other harms he's inflicted, they are not so serious as to warrant punitive measures that could result in effective expulsion and a loss of United States residency.

Furthermore, though we acknowledge that the immediate suspension would likely be one of the sanctions that an American citizen who committed the same Code violation would receive, we must weigh heavily the fact that [REDACTED] is likely to suffer far more from a non-deferred suspension than an American student would because of his visa status. A suspended American who cooperates with the Office of the Judicial Administrator Circles of Support and Accountability Suspension Reintegration Program can be sure that he or she will be able to complete his or her hard-earned and costly Cornell degree. [REDACTED], on the other hand, faces the prospect that his seven semesters of diligent work and his substantial investment in his education will have been for nothing. This inequality of outcome is plainly unjust. We cannot in good conscience impose a disproportionately severe punishment simply because, by the luck of the draw, [REDACTED] happened to have been born outside of the United States.

A board member in the majority, in defending the non-deferred suspension, raised the point that sometimes one needs to face harsh consequences in order to learn from one's actions, and on this point we agree. However, [REDACTED] has already faced and will continue to face severe consequences for his actions: he has been arrested and charged with crimes that carry with them the potential penalties of jail time and large fines. But his consequences are not just future ones; having had to hire an attorney, he faces the immediate financial repercussions of his actions. To immediately suspend him would not ensure that he experiences consequences from which he'll learn; rather, to immediately suspend him would be to impose additional retributive punishment that will not meaningfully contribute to his chances of rehabilitation and may, in fact, harm him.

After taking into account [REDACTED] ongoing criminal cases combined with his immigration status, we've concluded that a non-deferred suspension would not align with the

board's goals and the Office of the Judicial Administrator's restorative justice goals, and we are skeptical that the OJA, in advocating for a non-deferred suspension, adhered to its own restorative standards as articulated in its case analysis document. [REDACTED] justified a three-year non-deferred suspension by arguing that it enabled [REDACTED] to participate in the OJA Circles of Support and Accountability Suspension Reintegration Program, which fulfills an important restorative function in cases where a student's suspension is appropriate. Though the Program, as a complement to a non-deferred suspension, is restorative, [REDACTED] did not articulate any restorative function intrinsic to a non-deferred suspension. When asked what goals a three-year non-deferred suspension could accomplish that a one-year non-deferred suspension could not accomplish, [REDACTED] simply emphasized the fact that a non-deferred suspension would enable [REDACTED] to participate in the Reintegration Program, and he did not distinguish between a three-year non-deferred suspension's restorative effectiveness and a shorter non-deferred suspension's restorative effectiveness. In not doing so, he strongly implied that the OJA did not choose a three year non-deferred suspension over a shorter non-deferred suspension because he believed it to have greater restorative value; if the OJA had restorative justice in mind when proposing that particular penalty, it would have been in his best interest to communicate that fact.

A non-deferred suspension isn't just insufficiently restorative; it does very little to accomplish the OJA's goals, as described in the OJA case analysis document, of "address[ing] harm/likelihood of harm to others . . . or addressing[ing] harm/likelihood of harm to institution." Of course, the non-deferred suspension will remove a student who committed Code violations from campus, and in doing so it could eliminate a risk to the community, if [REDACTED] were to be a threat. However, he is not a threat. He has completed nearly two full semesters without another incident, and his record was spotless prior to his commission of the offence in January 2018. Neither the OJA, nor any witness, nor any hearing board member, expressed any concern that

he would commit another violation of the Code. By all indications, [REDACTED] plans to do his best to remain a Code-abiding community member until he receives his diploma.

[REDACTED] Code-abiding behavior prior to and after his violation raises a question about the intended effect of a non-deferred suspension. If, for the sake of argument, we assume that a non-deferred suspension is a major restorative measure that's use when a student's lack of sufficient decision-making skills causes him or her to have a high risk of committing a Code violation in the future, why did the OJA seek a non-deferred suspension in this case? Presumably, if a non-deferred suspension is intended to be a major restorative measure, the OJA would not seek one for a student it did not believe to need a large amount of restorative justice. To justify seeking a suspension for such a student, it would be most logical for the OJA to base its case on an argument that the student is a threat of some kind to the community. However, [REDACTED] did not make this argument, which suggests that he did not believe [REDACTED] continued presence at this school posed a risk. If he did not believe his presence posed a risk, he must not have believed a non-deferred suspension, an uncommon sanction of great gravity, to be necessary to, in the words of the case analysis document, "address a deficit of skillset, address issued [sic] leading to a reaction, or . . . otherwise address concerns in an educational manner." The conclusion we're inclined to draw, then, is that the OJA meant for the non-deferred suspension to penalize [REDACTED] more than it meant for it to foster "the respondent's personal growth." We draw the same conclusion from the fact that [REDACTED] did not articulate a restorative rationale for having proposed a three-year non-deferred suspension.

In addition, by advocating for a non-deferred suspension under circumstances in which a non-deferred suspension would put [REDACTED] at great risk of never returning to Cornell, the OJA communicates that it is willing to support a sanction that is beneficial because of the associated Reintegration Program even as it risks an eventuality in which [REDACTED] does not participate in the Reintegration Program and is deprived of its restorative benefits. If [REDACTED] is unable to

keep or regain his J-1, reintegration, obviously, will never occur. Should [REDACTED] participate in restorative measures during his period of suspension but be unable to actually return, the measures will have failed to better the Cornell community, and they will not be nearly as beneficial to him as they would be if he returned to Cornell. They will, in other words, be far less effective in “address[ing] harm/likelihood of harm to others . . . or addressing[ing] harm/likelihood of harm to institution” than would restorative measures put in place next semester, when [REDACTED] will certainly be able to benefit from them. That being said, the Reintegration Program—and by extension a suspension—is not critical to achieving restorative justice. The Reintegration Program’s benefits that don’t relate directly to compensating for the effects of the suspension can be accomplished by other means, which we discuss below.

Even in a more-positive scenario in which [REDACTED] is unable to secure admission to another American college but is able to overcome the visa challenges he faces and receive another J-1 to finish his final semester at Cornell, he will have gone through a difficult and stressful application process that may take a toll on his well-being. He will also experience the disruption that comes with an abrupt return home and a potentially challenging re-acclimation to American culture. At best, this experience will have no positive effect on his ability to reintegrate into the Cornell community. At worst, even with the support of the Reintegration Program, [REDACTED] may return to the United States as a student less who is well-equipped to contribute positively to the university community than he was before. It is illogical that Review Board or the OJA would take such a risk when [REDACTED] can participate in rehabilitative and restorative justice measures on Cornell’s campus starting next month, measures we describe below.

Any decision-making skill-set deficits [REDACTED] may have could be better-addressed through alternatives to a non-deferred suspension, and a non-deferred suspension would not meaningfully address the likelihood of future harm to others or to the university. The one-year non-deferred suspension imposed by our hearing board is an ineffective means of achieving the restorative justice goals outlined in the OJA case analysis document, and is, because of this,

primarily and unproductively punitive. This board is not justified in imposing a penalty that would deal this Cornell community member such a severe life setback.

### **Our Alternative**

One majority board member asserted that the sanction ultimately imposed by the board, a one-year non-deferred suspension, was a fair compromise. However, the majority decision is not a compromise. Any non-deferred suspension, whether it be for three years or one year, would have the same effect on ██████ immigration status: it would severely jeopardize his position as a lawful resident of the United States. There is little room for compromise when, due to ██████ circumstances, we are presented with binary options: allow him the opportunity to receive his degree on time and participate in restorative measures, or set into motion a series of events that would likely put at risk his ability to earn his Cornell degree and remain a legal resident of the United States.

We instead support rehabilitative measures centered on a three-year deferred suspension, an alternative sanction that emphasizes the seriousness of the offense and reflects its impact on the campus community yet provides restorative justice that does not disproportionately punish ██████ To complement the deferred suspension, we would impose the maximum-allowable term of community service, along with the other sanctions imposed by this hearing board: a written reprimand, disciplinary probation, full restitution, and the completion of a reflection paper. In addition to these sanctions, we believe ██████ would also benefit from enrollment in a decision-making course taught by the OJA or another program that, like the Suspension Reintegration Program, would help ██████ contribute to the Cornell community in more meaningful and positive ways.

Such a battery of sanctions would accomplish a range of restorative goals. Critically, a deferred suspension would address the likelihood of further harm to the institution and other community members. It would provide ██████ both an opportunity and an incentive to demonstrate behavior consistent with the standards and values of the Cornell community, and it

would ensure that he is held fully accountable if he commits another violation of the Campus Code of Conduct. Facing the prospect of such a severe punitive measure, ██████ would be strongly motivated to finish out his Cornell career as a Code-abiding, productively-contributing member of the campus community. However, in emphasizing the value of the incentive the deferred suspension provides, we don't mean to suggest that ██████ has a significant probability of re-offending. Rather, we simply seek to highlight a deferred suspension's effectiveness in mitigating the likelihood of harm to others and to Cornell.

Though the deferred suspension would address the likelihood of future harm to the institution, ██████ by complying with his other sanctions, would address and the harm he has already caused to the institution by making Cornell financially whole and contributing productively to a service initiative. Furthermore, a decision-making course and a paper would require him to critically analyze his actions, evaluate their impact on others, and reflect on how he can further make amends. With a deferred suspension, this restorative process would begin immediately.

Additionally, the three year term of our proposed deferred suspension would send a clear, strong message to both ██████ and others who would seek to compromise Cornell information technology systems. It would communicate that actions like ██████ are intolerable violations of community trust that Cornell does not take lightly.

As we take time away from preparing for finals to write this dissent, we reflect on Cornell's defining tradition of freedom and responsibility, which has guided this university's growth from humble land-grant school built on a vision of inclusion to a world-leading research university that educates thousands of the world's most promising students. We would rule in a manner consistent with that tradition. As members of the University Hearing and Review Boards, we have the freedom to punish, but we have a responsibility to constructively restore. In advocating for a deferred suspension, we fulfill our responsibility and honor the time-tested traditions of our proud institution.

Respectfully Yours,

[REDACTED]

[REDACTED]

**UNIVERSITY REVIEW BOARD**  
**February 19, 2019**

The University Hearing Board (UHB) issued a decision in the matter of Respondent [REDACTED] after a sanctions-only hearing that was held on December 7, 2018.

Respondent and the Office of the Judicial Administrator (OJA) had stipulated that Respondent had violated the following Code provisions:

Title Three, Article II, Section A:

- 1.i. To steal or otherwise knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.
- 1.j. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.
- 2.a. To endanger or to cause damage to or loss of property of the University.

Respondent and the OJA had also stipulated to eleven facts (see decision of University Hearing Board, undated, Thomas R. Overton, Chair).

The UHB determined the following sanctions:

- 1) Written reprimand (UHB 5 to 0 vote)
- 2) Suspension from Cornell University (UHB 3 to 2 vote; dissenting opinion written by two of the three student members of the UHB)
- 3) Disciplinary probation (UHB 5 to 0 vote)
- 4) Restitution (UHB 5 to 0 vote)
- 5) Reflection paper (UHB 4 to 1 vote)

The Respondent in the UHB matter (Appellant in the current matter) received the decision on December 11, 2018 and filed an appeal on January 3, 2019. The grounds for appeal were that:

- 1) New evidence was discovered after the hearing and could not have been readily been discovered before the hearing, and such evidence might have had an effect upon the outcome of the hearing; and
- 2) The penalty and/or remedy imposed is unjust.

The Appellant's brief accompanied his appeal; the OJA filed a reply brief.

A duly constituted panel of the University Review Board (URB), consisting of a student, a faculty member and a staff member, met on February 19, 2019 to consider the appeal. For the following reasons, the URB affirms the decision of the UHB in its entirety.

## 1) Appellant's behavior

It is the opinion of the URB that the Appellant's behavior was quite serious and affected everyone at Cornell with access to web services, which is the majority of the Cornell community. The Appellant's interference with other students' accounts seemed purposeful – occurring at the same time every morning – and potentially devastating.

The URB took into account the discussion at the UHB that the Appellant's behavior was not malicious. But the URB questioned whether the Appellant's behavior might have escalated into maliciousness had he not been stopped. It was only when the Appellant realized that his interference with others' accounts had been discovered that he admitted his transgressions. The URB wondered whether, had he not been caught, the Appellant would have continued his behavior. The URB also questioned what the Appellant intended to do with the screen shots he had taken of other students' grades.

The URB also considered the argument that the Appellant has not committed any offenses since the one at issue and found it without merit. As the OJA pointed out, the Appellant is currently facing criminal charges and would be foolish to put himself in further legal jeopardy.

## 2) Appellant's visa status

The URB discussed the argument that the Appellant's status as an international student puts him in danger of losing his visa status and his ability to travel outside the United States and return if he is in fact suspended from school. First, the URB determined that students who come to school in the United States from another country must understand that they have responsibilities. Study in the United States is a privilege with conditions, not a right. Students expecting to study at Cornell should understand the conditions of their admission to Cornell and should understand the consequences of violating those conditions. The Appellant's behavior was serious and purposeful, and he must face the consequences of that behavior.

Second, the Appellant is facing criminal charges related to his Code of Conduct violation and thus his ability to travel outside the United States is affected by those charges as well.

Third, the URB considered that allowing an international student a different outcome than that which would be afforded a student who is a U.S. citizen would be unfair to both sides. There would be different consequences for the same violations depending on one's citizenship status. If international students were given different consequences for code violations because of potential visa implications, then U.S. citizens – who do not face visa consequences – might receive different consequences, including suspension and expulsion, for the same offense.

### 3) New evidence alleged

Appellant argues that the recent news about his grandmother's illness should be a mitigating factor for the URB's consideration. It is the understanding of the URB that the UHB, while not having specific information related to the grandmother's ill health, considered the issue of Appellant's ability to travel outside the United States and still determined that a one-year suspension was the appropriate consequence.

### **Conclusion**

It is the unanimous opinion of the URB that the UHB made the correct decision. The URB thought that the UHB demonstrated compassion in administering a one-year suspension rather than the three-year suspension requested by the OJA. In the opinion of the URB, given the seriousness of the Appellant's code violation, it would be unjust not to suspend him for one year from Cornell University.

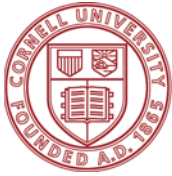
Respectfully submitted,

Andrea J. Mooney, Chair  
University Review Board

██████████ Student  
██████████ Staff  
██████████ Faculty

Submitted February 21, 2019

**PUBLIC RECORD #5**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-05

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

Hearing on the Merits

**Procedural History**

On April 27, 2018, an incident report was filed by [REDACTED] from Cornell University Police (CUPD) with the Office of the Judicial Administrator (OJA) describing the transfer, possession, disassembly, disposal, and recovery of an unregistered handgun involving both on-campus and off-campus locations and alleging the involvement of several students including [REDACTED] (Respondent). On May 2, 2018, the OJA submitted an Off Campus Jurisdiction Request to the Office of the Dean of Students based upon the opinion of the OJA that the off-campus conduct constituted a “serious violation of Title Three of the Campus Code of Conduct in that the conduct poses a substantial threat to the University’s educational mission or property or to the health or safety of University community members, as written in the Code”. Dean of Students [REDACTED] approved the request for off-campus jurisdiction on May 3, 2018. Following investigation, the OJA determined that there was reasonable cause to believe that the Respondent had violated the following Code provisions:

Title Three, Article II, Section A:

- 1.i. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
- 3.h. To assist another person to violate this Title.
- 3.i. To incite another person toward a likely and imminent violation of this Title.

The OJA and Respondent were not able to reach a Summary Decision Agreement. Accordingly, the OJA referred the case to the University Hearing Board (UHB) on December 19, 2018. Following scheduling delays related to Winter Break, a duly constituted University Hearing Board (UHB) convened on January 25, 2019 for a Hearing on the Merits.

**Allegations**

It is alleged that the Respondent engaged in activities pertaining to conspiring with others off-campus to conceal an unregistered handgun from law enforcement with the understanding that it was evidentiary in nature, and illegal to possess. Then conspired with others to dispose of the unregistered handgun.

## Pre-hearing Decisions

Following exchange of witnesses and exhibits between the OJA and Respondent, there were several pre-hearing motions and objections submitted that required pre-hearing decisions by the UHB Chair.

1. The Respondent (via advisor [REDACTED]) submitted a pre-hearing motion for dismissal of all charges. After reviewing arguments of both Respondent and OJA, the UHB Chair determined that there was no provision in the Code for the UHB Chair to dismiss charges at this point in the process and denied the motion.
2. The Respondent (on her own behalf) submitted a pre-hearing motion via email to UHB Chair to allow her brother to listen to the hearing proceedings by phone as a second support person. The UHB chair determined that there was no provision in the Code for a second support person and denied the motion.
3. The Respondent (via advisor) submitted objections to distribution of OJA Substantive Exhibit 1 and OJA Substantive Exhibit 2 in the hearing packet provided in advance to UHB panelists. OJA Substantive Exhibits 1 and 2 were both transcripts from OJA interviews with other students named in the CUPD incident report filed with OJA on April 27, 2018. After reviewing arguments from both the Respondent and OJA, the UHB Chair granted the objections with the rationale that distribution of these notes in advance without context for purpose (cross-examination or corroboration) seemed premature and that use would depend upon witness testimony.
4. The Respondent (via advisor) submitted an objection to distribution of OJA Substantive Exhibit 3 in the hearing packet provided in advance to UHB panelists. OJA Substantive Exhibit 3 consisted of email correspondence between the OJA and [REDACTED] from CUPD relating to the provision and inclusion of transcripts from FBI interviews in the hearing packet provided in advance to UHB panelists. After reviewing arguments from both the Respondent and OJA, the UHB Chair granted the objection with the rationale that the exhibit did not seem necessary.
5. The Respondent (via advisor) submitted objections to distribution of OJA Substantive Exhibits 4, 5, 6, 7, and 8 in the hearing packet provided in advance to UHB panelists. OJA Substantive Exhibits 4, 5, 6, 7, and 8 were all FBI notes from interviews conducted with individuals during their investigation. After reviewing arguments from both the Respondent and OJA, the UHB Chair granted the objections with the rationale that distribution of these notes in advance seemed premature without basis for use (cross-examination or corroboration). Furthermore, the UHB Chair noted that the individual interviewed as the subject of Substantive Exhibit 4 was on the Respondent witness list and that the individuals interviewed as the subjects of Substantive Exhibits 6 and 7 were on the OJA witness list.
6. The Respondent (via advisor) submitted objections to distribution of OJA Procedural Exhibit 7 in the hearing packet provided in advance to UHB panelists. OJA Procedural Exhibit 7 consisted of email exchanges between AJA [REDACTED] and UHB Chair Overton in June 2018 in which AJA [REDACTED] was asking whether suspension or dismissal would fall within the range of outcomes to include in Summary Decision Agreement proposals. Ultimately, the UHB Chair did not make a determination on the request. After reviewing

arguments from both the Respondent and OJA, the UHB Chair denied the objection with the rationale that the exhibit supported the following of procedure and he did not see clear basis for removal.

7. The Respondent (via advisor) submitted objections to distribution of OJA Procedural Exhibits 19, 20, 21, 22, and 23 in the hearing packet provided in advance to UHB panelists. Procedural Exhibit 19 was a proposed Summary Decision Agreement dated December 14, 2018 and sent by the OJA to the Respondent, Procedural Exhibits 20 and 21 consisted of subsequent email exchanges between the Respondent's advisor and AJA [REDACTED]. Procedural Exhibit 22 consisted of a revised proposed Summary Decision Agreement dated December 18, 2018 and sent by the OJA to the Respondent. Procedural Exhibit 23 consisted of the formal communication from AJA [REDACTED] to the Respondent that accompanied the charge letter sending the case to the UHB. After reviewing arguments from both the Respondent and OJA, the UHB Chair denied the objection with the rationale that the exhibits demonstrated the following of procedure.
8. The Respondent (via advisor) submitted an objection to the witness testimony of [REDACTED], who transcribed Substantive Exhibits 1 and 2. After reviewing arguments from both the Respondent and OJA, the UHB Chair granted the objection with the rationale that if providing Substantive Exhibits 1 and 2 was premature, then [REDACTED] testimony also premature. Further, the UHB Chair noted that [REDACTED] would not be precluded from providing testimony because she works in the OJA.
9. The Respondent (via advisor) submitted an objection to the proposed OJA witness testimony of [REDACTED] from CUPD based upon Respondent's position that all of [REDACTED] notes relating to the investigation should be provided to the Respondent and were necessary for cross-examination. After reviewing arguments from both the Respondent and OJA, the UHB Chair denied the objection with the rationale that Respondent is not entitled to discovery but would be allowed to cross-examine [REDACTED] should he be called as a witness.
10. The Respondent (via advisor) submitted an objection to the proposed OJA witness testimony of [REDACTED] based upon Respondent's position that the Summary Decision Agreement and any other agreements relating to immunity and cooperation of [REDACTED] should be provided to the Respondent and were necessary for cross-examination. After reviewing arguments from both the Respondent and OJA, the UHB Chair denied the objection with the rationale that Respondent is not entitled to discovery, but would be allowed to cross-examine [REDACTED] should he be called as a witness. Furthermore, the documents (i.e., Summary Decision Agreement between OJA and [REDACTED]) are protected by FERPA and not allowed to be shared by OJA.
11. The Respondent (via advisor) submitted an objection to the proposed OJA witness testimony of [REDACTED] based upon Respondent's position that the Summary Decision Agreement and any other agreements relating to immunity and cooperation of [REDACTED] should be provided to the Respondent and were necessary for cross-examination. After reviewing arguments from both the Respondent and OJA, the UHB Chair denied the objection with the rationale that Respondent is not entitled to discovery, but would be allowed to cross-examine [REDACTED] should he be called as a witness. Furthermore, the documents (i.e., Summary Decision Agreement between OJA and [REDACTED]) are protected by FERPA and not allowed to be shared by OJA.

12. The OJA submitted an objection to the proposed inclusion of Exhibit D of the prehearing materials submitted by the Respondent in the hearing packet provided in advance to UHB panelists. Exhibit D was an email sent on August 15, 2018 from AJA [REDACTED] to the Respondent's advisor and Respondent. The basis for the objection was that the entire email string was not provided. After reviewing arguments from both the OJA and Respondent, the UHB Chair granted the objection and indicated that Respondent should submit full copy of correspondence to OJA by noon on 1/24/19 for inclusion in packets for UHB.
13. The OJA submitted an objection to the proposed inclusion of Exhibit E of the prehearing materials submitted by the Respondent in the hearing packet provided in advance to UHB panelists. Exhibit E was an email sent on October 23, 2018 from AJA [REDACTED] to the Respondent's advisor and Respondent. The basis for the objection was that the entire email string was not provided. After reviewing arguments from both the OJA and Respondent, the UHB Chair granted the objection and indicated that Respondent should submit full copy of correspondence to OJA by noon on 1/24/19 for inclusion in packets for UHB.
14. The OJA submitted an objection to the Respondent's email sent to the UHB Chair at 5:28 PM on Tuesday, January 22<sup>nd</sup> along with inclusion of documents listed in that email in the hearing packet provided in advance to UHB panelists on the primary basis that the email was not timely relative to the agreed-upon timeline for pre-hearing exchange. After reviewing arguments from both the OJA and Respondent, the UHB Chair denied the objection with the rationale that Respondent email at 5:28 PM on 1/22/19 was indeed timely per the Code and thus allowed. Supporting documents for items 1 through 6 in the email should be sent to OJA by noon on 1/24/19 for inclusion in the UHB packets. The OJA cannot provide the SDA for [REDACTED] and [REDACTED] per FERPA; however, if they provided Respondent with copies of their SDA then they can be introduced.
15. The OJA submitted a pre-hearing motion with a request that the Respondent provide context for the calling of [REDACTED] (Respondent) as a witness. After reviewing the arguments of both the OJA and Respondent, The UHB Chair denied the pre-hearing motion and indicated that Respondent may speak on her behalf as well as question witnesses and cross-examine witnesses called by OJA. Per the Code, advisor may not participate in questioning of Respondent nor questioning or cross-examination of witnesses.

The UHB Chair reminded both the AJA and Respondent/Respondent's advisor in email correspondence following distribution of the above pre-hearing decisions that both parties would have the opportunity to renew any pre-hearing motions or objections for consideration by the UHB panel at the start of the hearing.

### **University Hearing Board Proceedings and Decision**

The UHB panel and parties convened and began proceedings shortly after the scheduled start time of 5:30 PM on Friday, January 25, 2019. At the beginning of the hearing, both the AJA and Respondent were provided the opportunity to renew any of their pre-hearing motions and objections for decision by the UHB panel. The Respondent renewed her pre-hearing motion to allow her brother to listen to the hearing proceedings by phone as a second support person. The Respondent also renewed her pre-hearing motion related to dismissal of all charges based upon her cooperation with law enforcement. After hearing arguments, the UHB panel deliberated both motions in private and voted by 5 to 0 to uphold the UHB Chair pre-hearing decisions on each of

the motions. The AJA renewed his request to provide OJA Substantive Exhibits 1 and 2 along with OJA Substantive Exhibits 3, 4, 5, 6, 7, and 8 to the UHB panelists to which the Respondent objected. After hearing arguments, the UHB panel deliberated this request in private and determined by consensus to uphold the UHB Chair pre-hearing decisions on inclusion of these materials and indicated that each could be considered by the UHB for inclusion in the context of the testimony to be provided.

Following opening statements by both the AJA and Respondent, the AJA moved to enter OJA Substantive Exhibit 2 (OJA transcript of [REDACTED] interview) and OJA Substantive Exhibit 6 (FBI notes from interview of [REDACTED]), to which the Respondent objected. After hearing arguments and requesting to be provided the exhibits as originally submitted during pre-hearing exchange for review, the UHB panel deliberated and determined by consensus to allow both exhibits with the rationale that they were relevant, not unduly prejudicial, the panel would keep in mind credibility given that the witness was not available to testify, that the exhibits were necessary to make a fair decision, and that the UHB would consider only those portions relevant to the Code charges.

The AJA called [REDACTED] of CUPD as his only witness, who provided testimony and was cross-examined by the Respondent and asked questions by the UHB panelists.

The Respondent testified on her own behalf and was asked questions by the AJA and by the UHB panelists. The Respondent moved to introduce a Declaration made by [REDACTED], which was provided to the OJA at the time of pre-hearing exchange of witnesses and materials, but was not provided by the Respondent in the packet distributed to the UHB panelists prior to the hearing. The AJA did not object to the introduction as long as OJA Substantive Exhibit 4 (FBI interview notes from two different interviews of [REDACTED]) also be admitted. After hearing arguments and requesting to be provided these exhibits for review, the UHB panel deliberated in private and determined by consensus to allow both exhibits with the rationale that they were relevant, not unduly prejudicial, the panel would keep in mind credibility given that the witness was not available to testify, that the exhibits were necessary to make a fair decision, and that the UHB would consider only those portions relevant to the Code charges.

The Respondent moved to introduce a statement made and provided to her by [REDACTED], who was on her original witness list provided to the OJA, but who was not able to provide testimony at the hearing. This document was not disclosed to the OJA or to the UHB Chair in advance of the hearing. In response, the AJA requested that OJA Substantive Exhibit 8 (FBI interview notes of [REDACTED]) also be admitted. After hearing arguments and asking questions of the Respondent regarding the circumstances related to providing this document, the UHB panel reviewed both documents in private and determined by consensus to not allow either the document or OJA Substantive Exhibit 8 with the rationale that it was not timely disclosed and the panel would give little weight to the statement based upon the circumstances and the nature in which it was produced. Furthermore, the UHB panel felt that OJA Substantive Exhibit 8 was very prejudicial.

The Respondent once again moved to dismiss all charges on the basis of her cooperation with authorities, citing Title 1, Article II of the Code. The UHB panel deliberated in private and

indicated to the Respondent that the UHB heard her arguments and would consider when deliberating its decision.

The AJA made his final statement, yielding on the charge 1.i. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software but asserting the remaining charges under the Code but asserting charges 3.g., 3.h, and 3.i.

The Respondent made her closing statement. The UHB panelists asked final questions and the UHB panel went into private session to deliberate its decisions.

Following deliberation, the UHB found the Respondent **NOT RESPONSIBLE** for the following charges under the Code:

Title Three, Article II, Section A:

- 1.i. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.
  - Vote count 5 to 0 in favor of NOT RESPONSIBLE, affirming yielding of this charge by the OJA
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
  - Vote count 3 to 2 in favor of NOT RESPONSIBLE
- 3.i. To incite another person toward a likely and imminent violation of this Title.
  - Vote count 5 to 0 in favor of NOT RESPONSIBLE

The UHB found the Respondent **RESPONSIBLE** for the following charge under the Code:

Title Three, Article II, Section A:

- 3.h. To assist another person to violate this Title.
  - Vote count 5 to 0 in favor of RESPONSIBLE

## **Rationale for Findings**

The UHB's decision regarding its determinations was based upon the following:

The unanimous view of the panel was that the Respondent played an active facilitating role in the events relating to disposition of the handgun and made active choices related to such prior to her cooperation with authorities and therefore assisted others in the violation of the Code. However, the majority view was that she herself did not destroy evidence nor sufficiently obstructed the application of the Code for a finding of responsible on that specific charge. Furthermore, the panel unanimously viewed that her actions did not incite others to violate the Code – as described above, the panel was of the opinion that she was an active participant and made active choices in that regard, but was not the driving force behind the behavior and actions of other Cornell students involved in this incident.

Due to late hour (approximately 2:00 AM on Saturday, January 26<sup>th</sup>), the UHB Chair adjourned the hearing for continuance at a later date to be agreed upon by all parties.

## **Sanctions phase**

The UHB panel, AJA, and Respondent (Respondent and Support person by Zoom internet videoconference; Respondent's advisor present in-person) reconvened on Thursday, January 31<sup>st</sup> starting shortly after 7:30 PM to conduct the sanctions phase of the hearing.

The AJA presented his sanctioning arguments, referring to Sanctioning Exhibits 1 (general OJA Case Analysis procedures), 2 (proposed Summary Decision Agreement dated December 18, 2018) and 3 (prior Summary Decision Agreement for a different Code violation by the Respondent dated November 6, 2017 and signed by the Respondent on that date).

The Respondent presented her sanctioning arguments, with primary reference to correspondence provided to her by [REDACTED], Assistant United States Attorney related to her cooperation with authorities in the federal prosecution of [REDACTED]. The Respondent also testified to the impact that a sanction of disciplinary probation, which would trigger reportability of this Code violation and associated sanctions for a period of 6 years following graduation, would have on her ability to attend law school and pursue her future goals. She also noted that she has completed all of her requirements for graduation from Cornell and would not be returning to campus.

The AJA then sought to introduce a document from the public records of the OJA related to another case, to which the Respondent objected. After arguments, the UHB deliberated in private and determined by consensus to not allow introduction of this document into the proceedings, with the rationale that it should have been provided in advance of the hearing as an exhibit to the Respondent and that the fact that it is a public record does not automatically make it admissible.

Following a final opportunity for questions from the UHB panel of the parties, the UHB went into private session to deliberate sanctions.

## **Sanctions**

Following deliberation, the UHB determined by a 5 to 0 vote that the following sanctions are appropriate for the violations found:

1. Written Reprimand – A disciplinary record will be maintained consistent with University policies.
2. Disciplinary Probation – the probationary period is effective from the date of this decision until the Respondent graduates from Cornell University. Maintaining acceptable probationary status included complying fully and timely with the terms of this agreement, and refraining from future Code violations. You agree to participate in the OJA probation meeting program that will consist of four meetings (either in-person or via technology) that will be completed by March 31<sup>st</sup>, 2019.
3. Reflection paper -- Complete a minimum of a ten-page reflection paper on the following topic:
  - (1) What were your true objectives during the incident/course of events?

- (2) Do you feel that this incident might influence your future decisionmaking? If so, how?
- (3) How will you identify resources in the future to help you when you encounter difficult situations?
- (4) Finally, why might the Cornell community be concerned about your conduct? Reflect on the differences between your values, the institution's values, and your actions.

The reflection paper should be double-spaced, 12-point font, Times New Roman font with one-inch margins all around. The paper must be submitted to the OJA by March 31, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu).

4. Reflective letter -- Complete a minimum of a two-page reflective letter on the following topic: "Draft a letter to yourself, dated one year from the date of the conclusion of the hearing. Discuss: where you want to be in regards to your goals; how you plan to get there; how this incident can be utilized as a learning experience and serve as a point of strength". The letter should be double-spaced, 12 point font, Times New Roman font with one-inch margins all around. The paper must be submitted to the OJA by March 31<sup>st</sup>, 2019. The letter should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu)

## **Rationale for Sanctions**

The UHB's decision regarding its sanctions determinations is based on the following:

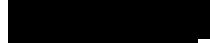
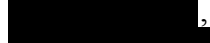
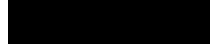
1. The Code violation for which the Respondent was found responsible was deemed by the UHB to be serious enough to warrant reportability for some period of time following graduation
2. A key consideration of the UHB deliberations related to imposing the sanction of Disciplinary Probation, which the UHB understood would automatically trigger a post-graduation reporting period of six years, was knowledge of exactly what would be reportable as part of the OJA records related to these proceedings. The UHB confirmed with Judicial Administrator Michelle Horvath that the only reportable items from these proceedings would be a finding of responsible for the specific Code violation without any additional information related to the allegations that resulted in the charge under the Code, the sanctions imposed, an indication as to whether or not the sanctions had been satisfied by the Respondent, and if so, a statement that the Respondent is in good standing with Cornell University. Furthermore, Judicial Administrator Horvath indicated to the UHB that this record was protected by FERPA and would be released to external parties only with consent of the Respondent.
3. The Board considered Respondent's concerns regarding the impact of the proposed sanction on her ability to apply to law school in the future. However, considering the severity of the conduct, the Board determined that the sanction was appropriate in spite of this potential impact. Furthermore, given that the Respondent was found responsible for a violation of the Code, and given that law schools or state bars may have requirements for disclosure of ethical matters above and beyond those that resulted in a certain level of sanction, it is possible that the Respondent may need to self-report the violation regardless of the level of sanction.

4. As indicated by the UHB Chair following the reading of the sanctions, the UHB panel felt that it was in an “all or nothing” situation relative to the issue of reportability following graduation. Had the UHB not imposed the sanction of Disciplinary Probation, any reportability would have ended upon the graduation of the Respondent, which is imminent. The UHB would have preferred a post-graduation reportability period of less than six years (seeking middle ground), but the Code, current policy of Cornell University (Policy 4.7) and the OJA procedures do not allow the UHB flexibility to set the reportability period.

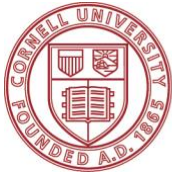
Respectfully submitted,



Thomas R. Overton, Chair (nonvoting) of the UHB, on behalf of:

, Student  
, Student  
, Student  
, Staff  
, Faculty

**PUBLIC RECORD #6**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-06

**UNIVERSITY HEARING BOARD**

**Case Number: 2018013001**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

Hearing on the Merits

**Procedural History**

On September 18, 2018, Cornell University student [REDACTED] was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A.

- 1.g. To (1) endanger another person, including but not limited to such acts as: Introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations; theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.
- 2. i.-3. To commit a violation of Article II of Title Four, specifically Title 4, Article II, Section A 3, To possess, carry, or use firearms (including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instrument, or substances in or upon University premises, except by law enforcement officers or except as specifically authorized by the University.

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, a duly constituted University Hearing Board (UHB) convened on February 19, 2019 for a hearing on the merits.

## **BACKGROUND**

The facts are not in dispute. On August 25, 2018, RA [REDACTED] received a call on the RA On-Call phone at 12:21 PM. She spoke with [REDACTED] a student who told her that he was having an issue with his roommate, Respondent [REDACTED]. [REDACTED] said that his roommate kept a large hunting knife in their room which made him very uncomfortable.

[REDACTED] contacted several other RA's who told her their understanding that all knives over 6 inches long were prohibited in Cornell dormitories. [REDACTED] stated that the Respondent's knife was approximately 10 inches long.

The RA then contacted the Cornell University Police Department (CUPD). A short time later, CUPD Officer [REDACTED] met with Respondent [REDACTED]. The Respondent complied with the officer's request and willingly showed him the hunting knife he kept stored in his dorm room. Officer [REDACTED] advised the Respondent that the knife was in violation of Campus regulations and that it should be mailed to the student's home. Officer [REDACTED] placed the knife in safekeeping at CUPD'S Barton Hall station. Several days later the Respondent received the hunting knife and mailed to his parents' home.

The Office of the Judicial Administrator was then contacted about the incident. [REDACTED] wrote to the Respondent advising him that he was charged with violating the Campus Code of Conduct. On February 19, 2019, a hearing before the UHB was conducted.

## **Pre-hearing Decisions (if applicable)**

### **I. Objections (if applicable):**

#### **a. Objection 1:**

- i. Before the UHB convened, the OJA submitted objection(s) to two of Respondent's exhibits. In response, the Respondent stated that each exhibit was relevant to proving his case. After reviewing both the OJA and Respondent's arguments, the Chair overruled the Objections and determined that the Respondent would be permitted to have the UHB consider the relevancy of the two exhibits.

## **University Hearing Board Decision**

After the presentation of witnesses and information by both the Respondent and the OJA, the UHB found the Respondent to be not in violation of the following Code provision(s):

Title Three, Article II, Section A.

- 1. G. To (1) endanger another person, including but not limited to such acts as:  
Introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations; theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether

reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.

The OJA yielded on the first charge. Accordingly, the Board found the Respondent not in violation of this Code Section

- Vote Count: 5
- Dissent: 0

Title Three, Article II, Section A:

- 2. i.-3. T To commit a violation of Article II of Title Four, specifically Title 4, Article II, Section A 3, To possess, carry, or use firearms (including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instrument, or substances in or upon University premises, except by law enforcement officers or except as specifically authorized by the University
  - Vote count: 5
  - Dissent: 0

### **Rationale for Findings**

The UHB's decision regarding its determination that the Respondent was not responsible for violating the Code is based on the following:

1. Respondent was a credible witness. He was an Eagle Scout who was very familiar with and experienced in the use of hunting knives. He viewed his knife as a tool, not a weapon.
2. The charge filed against Respondent hinges on the definition of “dangerous” weapon and that the manner of use enters into consideration.
3. The evidence demonstrated that the Respondent’s knife was not used in a dangerous manner and that Respondent’s knife was not dangerous per se.
4. Absent any specific evidence indicating that the knife was used in a dangerous manner (e.g. wielded in a manner suggesting its use as a weapon), the roommate's generalized discomfort with the respondent's knife is insufficient to establish that it is a "dangerous weapon." Situations where a student is made to feel uncomfortable by a roommate's actions should be resolved at the residence hall level when those actions do not include a clear code violation such as possession of a dangerous weapon. Residence hall level dispute resolution would have been sufficient to resolve this case, and it was not appropriate for the OJA to proceed further by asserting a code violation.

Respectfully submitted,

Rocca Scanza, Chair of the UHB

██████████ student

██████████ staff

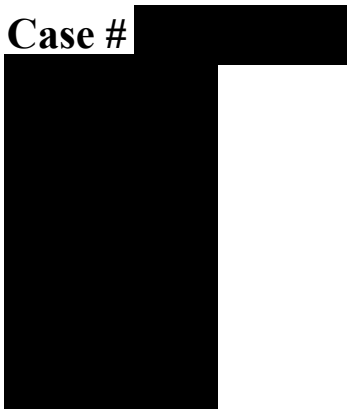
██████████ student

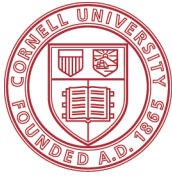
██████████ faculty

██████████ student

**PUBLIC RECORD #7**  
**Maxient Case #**

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Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(1)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

- 2.e. To furnish false information to the University with intent to deceive.
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
- 3.h. To assist another person to violate this Title.

**Allegations**

On September 21, 2018, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that Respondent [REDACTED] provided false information during a joint investigation conducted by the Office of the Judicial Administrator and the Office of Sorority and Fraternity Life, where he was asked specific questions regarding his new member process to join the fraternity, Delta Phi.

The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

### **Procedural History**

On November 16, 2018, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on November 21, 2018, the Respondent was notified that a UHB hearing would be scheduled with Chair Tracy Carrick.

On December 21, 2018, the Respondent was notified of a joinder decision rendered by University Hearing Board Chairs Carrick, Devoogd, Overton, and Scanza. Under the Code (Title Three, Art. II, Sec. E.3.b.3), cases that present common questions of law or fact, and that would come before a panel of like composition, may be joined for hearing.

On January 13, 2019, Respondent [REDACTED] requested a severance of the joint hearing given that the seven other Respondents were seeking Sanctions-Only Hearings. On February 16, 2019, the Chair denied the Respondent's request to exclude from the Joint Hearing on the grounds that the relevant facts of the joined cases were not materially different. Given that this Respondent requested a Hearing on the Merits, the joined hearing was elevated to a Hearing on the Merits for all Respondents.

A duly constituted UHB hearing was scheduled to convene on Sunday, April 14 at 9:00am for a Joint Hearing on the Merits.

### **Pre-hearing Decisions**

On January 24, 2019, Respondents [REDACTED] and [REDACTED] submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

On April 10, 2019, the Respondents submitted four shared Pre-Hearing Objections.

1. The Respondents' objection to all four of the OJA's witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], was denied on the grounds that the witness' testimony could provide relevant information about the Respondents' participation in the investigation.
2. The Respondents' objection to General Substantive Exhibit 1 titled "Delta Phi Investigation Statement" was granted on the grounds that the document was not appropriate to the UHB's evaluation of relevant facts and was not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

3. The Respondents' objection to the OJA's General Substantive Exhibit 5 titled "Email from Vice President [REDACTED] regarding an important health and safety message" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and was permitted for inclusion in the sanctions portion of the hearing only.
4. The Respondents' objection to the OJA's General Sanctions Exhibit 5 titled "Cornell University Hazing Wheel and Campus Framework" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and should remain as exhibit for the sanctions portion of the hearing only.

On April 10, 2019, seven of the eight Respondents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], submitted a shared Pre-Hearing Objection to the inclusion of each Respondents' completed witness questionnaire (Substantive Exhibit 1 or 2 in Respondents' individual hearing packets). The Chair denied the Respondents' objections on the grounds that responses to the witness questionnaire provided important information about the Respondents' truthfulness and attitudes toward cooperation.

On April 10, 2019, the OJA submitted a Pre-Hearing Objection to the Respondent's witness, [REDACTED]. The Chair granted the OJA's objection to [REDACTED] on the grounds that the JCC indicated his proposed testimony would be regarding investigative procedures. Such testimony would not be appropriate to the UHB's evaluation of relevant facts and is not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

Respondent filed one Pre-Hearing Motion concerning hearing procedures. The Chair denied the motion because it arrived at 5:59pm on April 10, 2019 after the agreed upon deadline for such motions. Given the complexity of this joined hearing, the Chair requested that both the OJA and Respondents submit proposals for Hearing Operations by Friday, April 11, 2019 at 9:00am.

### **University Hearing Board Decisions | Hearing on the Merits**

The Joint Hearing commenced at 9:00am on Sunday, April 14, 2019. After the hearing was called to order and the OJA read the charges onto the record, seven of the eight Respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) stood before the UHB and, in turn, accepted responsibility for two of three charges against them.

Title Three, Article II, Section A:

- 2.e. To furnish false information to the University with intent to deceive.
  - RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

- RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.h. To assist another person to violate this Title.
  - Not argued by JA, and so Respondents [REDACTED], [REDACTED], [REDACTED], and [REDACTED] found NOT RESPONSIBLE

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED].

### **University Hearing Board Decisions | Sanctions**

At 12:30pm on Sunday, April 14, 2019, the hearing proceeded to the Sanctions phase. All Respondents who were found responsible for any violation of the Code (in this case, all Respondents), along with their advisors and both Judicial Administrators returned to the hearing room. One JA and two of the four Respondents' advisors presented joint opening statements.

The OJA detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. The OJA also argued that since three other members of the same new member class had resolved their materially similar charges with the OJA by accepting the proposed sanctions, the UHB should impose the same sanctions out of fairness and equity.

In their opening statement, the Respondents' first advisor characterized the events of March 8, 2018 as inherently coercive and intimidating, and argued that the Respondents did not realize that they were not under investigation themselves and were worried, as they completed the questionnaires and answered follow-up interview questions, about implicating themselves. The second advisor argued that because the Respondents were victims of hazing, their Code violations should be considered differently. He reasoned that because their experiences involved violence against them, the sanction of Disciplinary Probation was too extreme.

After joint opening statements, the UHB held private Sanctions Hearings for each of the eight Respondents, wherein only a single Respondent, together with his advisor and an OJA case handler, were present in the room with the UHB panel. After the Chair announced Sanctions decisions, the Respondent was dismissed, and the next Respondent was called to the hearing room. Respondents were called upon in alphabetical order.

During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 3-2 – Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
2. **UHB Vote 3-2 – Disciplinary Probation:** The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
3. **UHB Vote 0-5 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

1) Groups/individuals more prone to haze its members? Why? 2) Why individuals cannot consent to hazing. 3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing. 4) The role of cognitive dissonance in hazing. 5) The short-terms/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 0-5 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a

community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The reflection papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

5. **UHB Vote 3-2 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the length/content of this outcome in regards to the talking points previously mentioned.
6. **UHB Vote 5-0 – Response Paper:** Complete two seven-page response papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The response papers should be both reflective and based on relevant, reputable research. Each paper should contemplate and reference at least three unique sources. The papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members believed that the Respondent accepted Responsibility in good faith for his violations of the Code and that he expressed strong regret for presenting untruthful responses in the witness questionnaire and the follow-up interview questions.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient, but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.
5. The UHB members found inappropriate the topic of the proposed Research Paper. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, they voted unanimously against that sanction and proposed instead a revised educational sanction titled "Response Papers" that integrates research into the Reflection Paper assignments.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

[REDACTED], Faculty

[REDACTED], Staff

[REDACTED], Student

[REDACTED], Student

[REDACTED], Student

Dear Chair Carrick,

Please accept the following as my dissenting opinion in regards to the sanctions set against

██████████, ██████████, ██████████, ██████████, ██████████, ██████████,  
██████████, and ██████████ (hereafter referred to as “The Respondents”).

The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board’s deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents’ treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

- 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma***

First, it is imperative to highlight the position of The Respondents as *victims* of hazing. As their Judicial Codes Counselors indicated in their opening statements ( [REDACTED] and [REDACTED], speaking on behalf of all Respondents), The Respondents, as victims of hazing, were brought into the JA's office for a line of questioning, or to use the words of some of the respondents-- an "interrogation"-- that may have felt incredibly intimidating and coercive. Before moving on, it is important to highlight that **hazing is abuse**. We do not need to look to statistics or academic studies to confirm the verity of this conclusion, the evidence submitted as part of the OJA's substantive exhibit 1 alone, concerning the hazing allegation that preceded the incident on May 8th, illustrates a pattern of both psychological/emotional and physical abuse from the Respondents' fraternity. As such, this case, particularly as far as it concerns precedent, is primarily about our expectations for/from victims of abuse.

Students should not be penalized for refusing to be reporters on their own trauma-- it would be shocking if any trauma-based investigative training indicated as such-- the very recollection of trauma or abuse can be traumatic in itself. The JA cited that some of their employees had received trauma counseling but never indicated how that experience led to a trauma-sensitive approach to the investigation. While the benefits of bringing students in all at one time and removing their ability to shape the narrative via technological communication make complete sense, it is clear that the students did not receive adequate explanation concerning the reasons why they were being held for that evening in the OJA office nor satisfactory explanation of the counseling options available to them. Training **does not guarantee effective implementation**. The board observed students brought to tears by the long process of the investigation, some students reported effects on grades and mental health; victims of abuse should not be subject to further emotional distress by the institution. It is simply unacceptable.

***2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process.***

The investigative techniques employed by the joint investigation suggest a mandatory reporting expectation on the part of not just bystanders, but also victims-- this is incredibly concerning. However, while it appears that there is no standard at this university that requires an individual to be a mandatory reporter against themselves or their abuser, many of the Respondents

reported confusion regarding the terms of the Witness Transaction Agreements and many felt during the hours-long evening ordeal that the answers they provided would incriminate themselves in the eyes of the OJA.

While the OJA is granted the ability to “during the course of an investigation... before filing formal charges... interview the persons involved” (Title 3, Article III.A.2), there is no provision that gives the OJA the authority to compel a witness to cooperate with their investigation if they have “substantial reason” to refuse (Title 3, Article II.A.3.k). In light of the evidence of psychological and physical abuse brought on by the hazing activities of the fraternity, it would seem that the students may have had valid reason to refuse the OJA’s questionnaire interrogation or to, at the very least, receive more informed counsel regarding their role in the investigation and their options surrounding participation. OJA communications with the students did not clearly communicate these options. Further, many of the respondents’ testimonies alongside substantive OJA emails summoning the students as witnesses, submitted as evidence to the hearing board, evince that the OJA’s investigative tactics undoubtedly misled the students about their rights and options for counsel (either within the community through the JCC or outside). Even among those voting in the majority, the insufficient information regarding counseling options, included as a mere- easy to miss- footnote, in the OJA email to The Respondents’ drew up extended discussion during deliberations. It is the recommendation of this dissent that the OJA make changes to their email templates in order to be more transparent with students in the future regarding their options to seek counsel or advice, particularly in cases as serious as hazing allegations.

***3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are entirely disproportionate to the offenses***

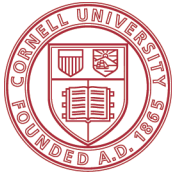
The sanctions allowed under the Code of Conduct serve both punitive and rehabilitative/educational purposes. As an educational institution, particularly when dealing with the youngest and newest members of our community, we would hope that the educationally-minded sanctions are the most valued-- particularly for their ability to provide the necessary information for growth, understanding, and reflection to combat recidivism. The sanctions handed out by the UHB, at the suggestion of the OJA, were excessively punitive while simultaneously serving little additional educational value. Also concerning were the essay

prompts provided by the OJA; prompts that ask victims of hazing-related abuse to furnish research essays on “why hazing is bad” completely miss the content of the actual case at hand: namely the respondents’ decisions to provide false answers on the 14-page long investigative survey. Essays are an incredibly valuable educational tool for Respondents to use as an opportunity and chance for extended and transformative reflection; the types of prompts included as part of an SDA or hearing board imposed set of sanctions should have a direct correlation to the specific infraction of a Respondent.

In light of the way in which the OJA’s investigation appears to have misled The Respondents leading up to and during the incident on May 8th, The Respondents’ positioning as victims of the hazing-related abuse to which the investigation itself was attempting to uncover, and the excessively long judicial process The Respondents underwent in response to the charges, the sanctions are disproportionate to the context of this offense. These Respondents acknowledged their mistakes, showed remorse, and took responsibility for their decisions. More appropriate sanctions at this point would consist of the hearing board’s amended essay prompts and an oral warning from the OJA.

Respectfully,

██████████, PhD Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(2)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

- 2.e. To furnish false information to the University with intent to deceive.
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
- 3.h. To assist another person to violate this Title.

**Allegations**

On September 21, 2018, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that Respondent [REDACTED] provided false information during a joint investigation conducted by the Office of the Judicial Administrator and the Office of Sorority and Fraternity Life, where he was asked specific questions regarding his new member process to join the fraternity, Delta Phi.

The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

### **Procedural History**

On November 19, 2018, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on November 27, 2018, a UHB hearing was scheduled to convene on February 22, 2019 at 4:00pm for a Hearing on the Merits with Chair Thomas R. Overton.

On December 21, 2018, the Respondent was notified of a joinder decision rendered by University Hearing Board Chairs Carrick, Devoogd, Overton, and Scanza. Under the Code (Title Three, Art. II, Sec. E.3.b.3), cases that present common questions of law or fact, and that would come before a panel of like composition, may be joined for hearing.

On January 13, 2019, the Respondent requested a severance of the joint hearing given that the seven other Respondents were seeking Sanctions-Only Hearings. On February 16, 2019, the Chair denied the Respondent's request to exclude from the Joint Hearing on the grounds that the relevant facts of the joined cases were not materially different. Given that this Respondent requested a Hearing on the Merits, the joined hearing was elevated to a Hearing on the Merits for all Respondents.

A duly constituted UHB hearing was scheduled to convene on Sunday, April 14 at 9:00am for a Joint Hearing on the Merits.

### **Pre-hearing Decisions**

On January 24, 2019, Respondents [REDACTED] and [REDACTED] submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

On April 10, 2019, the Respondents submitted four shared Pre-Hearing Objections.

1. The Respondents' objection to all four of the OJA's witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], was denied on the grounds that the witness' testimony could provide relevant information about the Respondents' participation in the investigation.
2. The Respondents' objection to General Substantive Exhibit 1 titled "Delta Phi Investigation Statement" was granted on the grounds that the document was not appropriate to the UHB's evaluation of relevant facts and was not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

3. The Respondents' objection to the OJA's General Substantive Exhibit 5 titled "Email from Vice President [REDACTED] regarding an important health and safety message" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and was permitted for inclusion in the sanctions portion of the hearing only.
4. The Respondents' objection to the OJA's General Sanctions Exhibit 5 titled "Cornell University Hazing Wheel and Campus Framework" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and should remain as exhibit for the sanctions portion of the hearing only.

On April 10, 2019, seven of the eight Respondents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], submitted a shared Pre-Hearing Objection to the inclusion of each Respondents' completed witness questionnaire (Substantive Exhibit 1 or 2 in Respondents' individual hearing packets). The Chair denied the Respondents' objections on the grounds that responses to the witness questionnaire provided important information about the Respondents' truthfulness and attitudes toward cooperation.

On April 10, 2019, the OJA submitted a Pre-Hearing Objection to the Respondent's witness, Professor [REDACTED]. The Chair granted the OJA's objection to Witness [REDACTED] on the grounds that the JCC indicated his proposed testimony would be regarding investigative procedures. Such testimony would not be appropriate to the UHB's evaluation of relevant facts and is not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

Respondent filed one Pre-Hearing Motion concerning hearing procedures. The Chair denied the motion because it arrived at 5:59pm on April 10, 2019 after the agreed upon deadline for such motions. Given the complexity of this joined hearing, the Chair requested that both the OJA and Respondents submit proposals for Hearing Operations by Friday, April 11, 2019 at 9:00am.

### **University Hearing Board Decisions | Hearing on the Merits**

The Joint Hearing commenced at 9:00am on Sunday, April 14, 2019. After the hearing was called to order and the OJA read the charges onto the record, seven of the eight Respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) stood before the UHB and, in turn, accepted responsibility for two of three charges against them.

Title Three, Article II, Section A:

- 2.e. To furnish false information to the University with intent to deceive.
  - RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

- RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.h. To assist another person to violate this Title.
  - Not argued by JA, and so Respondents [REDACTED], [REDACTED], [REDACTED], and [REDACTED] found NOT RESPONSIBLE

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED]. The OJA provided an opening statement and presented three witnesses ([REDACTED], [REDACTED], and [REDACTED]) who provided testimony and answered questions, and the OJA and the Respondent presented closing statements.

After hearing all relevant information, the UHB found the Respondent in violation of the following Code provisions:

Title Three, Article II, Section A:

- 2.e. To furnish false information to the University with intent to deceive.
  - Vote count: 5
  - Dissent: 0
  - RESPONSIBLE
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
  - Vote count: 5
  - Dissent: 0
  - RESPONSIBLE
- 3.h. To assist another person to violate this Title.
  - Vote count: 0
  - Dissent: 0
  - Not argued by the OJA, and so NOT RESPONSIBLE

The UHB based their findings on their judgment that the testimony presented by the OJA's three witnesses provided clear and convincing evidence that 1) the new member events referenced in the witness questionnaire that the respondent completed on March 8, 2018 occurred; 2) that the respondent attended many of the events referenced in the witness questionnaire; and 3) that the response "I don't know" is not truthful, especially given that the respondent claims to have never used drugs or alcohol at any new member event.

### University Hearing Board Decisions | Sanctions

At 12:30pm on Sunday, April 14, 2019, the hearing proceeded to the Sanctions phase. All Respondents who were found responsible for any violation of the Code (in this case, all Respondents), along with their advisors and both Judicial Administrators returned to the hearing

room. One JA and two of the four Respondents' advisors presented joint opening statements.

The OJA detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. The OJA also argued that since three other members of the same new member class had resolved their materially similar charges with the OJA by accepting the proposed sanctions, the UHB should impose the same sanctions out of fairness and equity.

In their opening statement, the Respondents' first advisor characterized the events of March 8, 2018 as inherently coercive and intimidating, and argued that the Respondents did not realize that they were not under investigation themselves and were worried, as they completed the questionnaires and answered follow-up interview questions, about implicating themselves. The second advisor argued that because the Respondents were victims of hazing, their Code violations should be considered differently. He reasoned that because their experiences involved violence against them, the sanction of Disciplinary Probation was too extreme.

After joint opening statements, the UHB held private Sanctions Hearings for each of the eight Respondents, wherein only a single Respondent, together with his advisor and an OJA case handler, were present in the room with the UHB panel. After the Chair announced Sanctions decisions, the Respondent was dismissed, and the next Respondent was called to the hearing room. Respondents were called upon in alphabetical order.

During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 5-0 – Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
2. **UHB Vote 5-0 – Disciplinary Probation:** The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
3. **UHB Vote 0-5 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's <sup>[1]</sup><sub>SEP</sub> website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

- 1) Groups/individuals more prone to haze its members? Why?
- 2) Why individuals cannot

consent to hazing.<sup>[L1][SEP]</sup>3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing.<sup>[L1][SEP]</sup>4) The role of cognitive dissonance in hazing.<sup>[L1][SEP]</sup>5) The short-term/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 0-5 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The reflection papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.

5. **UHB Vote 3-2 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the

length/content of this outcome in regards to the talking points previously mentioned.

6. **UHB Vote 5-0 – Response Paper:** Complete two seven-page response papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

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The response papers should be both reflective and based on relevant, reputable research. Each paper should contemplate and reference at least three unique sources. The papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members did not think that the Respondent accepted Responsibility in good faith for his violations of the Code or that he expressed sincere regret or remorse for presenting untruthful responses in the witness questionnaire and the follow-up interview questions.
2. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient

evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.

3. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.
4. The UHB members found inappropriate the topic of the proposed Research Paper. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, they voted unanimously against that sanction and proposed instead a revised educational sanction titled "Response Papers" that integrates research into the Reflection Paper assignments.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

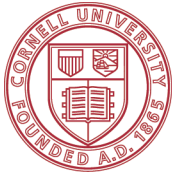
██████████, Faculty

██████████, Staff

██████████, Student

██████████, Student

██████████, Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(3)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

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**Allegations**

On September 21, 2018, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that Respondent [REDACTED] provided false information during a joint investigation conducted by the Office of the Judicial Administrator and the Office of Sorority and Fraternity Life, where he was asked specific questions regarding his new member process to join the fraternity, Delta Phi.

The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

### **Procedural History**

On November 13, 2018, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on November 26, 2018, a UHB hearing was scheduled to convene on February 15, 2019 at 4:00pm for a Hearing on the Merits with Chair Thomas R. Overton.

On December 21, 2018, the Respondent was notified of a joinder decision rendered by University Hearing Board Chairs Carrick, Devoogd, Overton, and Scanza. Under the Code (Title Three, Art. II, Sec. E.3.b.3), cases that present common questions of law or fact, and that would come before a panel of like composition, may be joined for hearing.

On January 13, 2019, Respondent [REDACTED] requested a severance of the joint hearing given that the seven other Respondents were seeking Sanctions-Only Hearings. On February 16, 2019, the Chair denied the Respondent's request to exclude from the Joint Hearing on the grounds that the relevant facts of the joined cases were not materially different. Given that this Respondent requested a Hearing on the Merits, the joined hearing was elevated to a Hearing on the Merits for all Respondents.

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### **Pre-hearing Decisions**

On January 24, 2019, Respondents [REDACTED] and [REDACTED] submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

On April 10, 2019, the Respondents submitted four shared Pre-Hearing Objections.

1. The Respondents' objection to all four of the OJA's witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], was denied on the grounds that the witness' testimony could provide relevant information about the Respondents' participation in the investigation.
2. The Respondents' objection to General Substantive Exhibit 1 titled "Delta Phi Investigation Statement" was granted on the grounds that the document was not appropriate to the UHB's evaluation of relevant facts and was not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

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On April 10, 2019, seven of the eight Respondents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], submitted a shared Pre-Hearing Objection to the inclusion of each Respondents' completed witness questionnaire (Substantive Exhibit 1 or 2 in Respondents' individual hearing packets). The Chair denied the Respondents' objections on the grounds that responses to the witness questionnaire provided important information about the Respondents' truthfulness and attitudes toward cooperation.

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### **University Hearing Board Decisions | Hearing on the Merits**

The Joint Hearing commenced at 9:00am on Sunday, April 14, 2019. After the hearing was called to order and the OJA read the charges onto the record, seven of the eight Respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) stood before the UHB and, in turn, accepted responsibility for two of three charges against them.

Title Three, Article II, Section A:

- 2.e. To furnish false information to the University with intent to deceive.
  - RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

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- 3.h. To assist another person to violate this Title.
  - Not argued by JA, and so Respondents [REDACTED], [REDACTED], [REDACTED], and [REDACTED] found NOT RESPONSIBLE

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED]

### **University Hearing Board Decisions | Sanctions**

At 12:30pm on Sunday, April 14, 2019, the hearing proceeded to the Sanctions phase. All Respondents who were found responsible for any violation of the Code (in this case, all Respondents), along with their advisors and both Judicial Administrators returned to the hearing room. One JA and two of the four Respondents' advisors presented joint opening statements.

The OJA detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. The OJA also argued that since three other members of the same new member class had resolved their materially similar charges with the OJA by accepting the proposed sanctions, the UHB should impose the same sanctions out of fairness and equity.

In their opening statement, the Respondents' first advisor characterized the events of March 8, 2018 as inherently coercive and intimidating, and argued that the Respondents did not realize that they were not under investigation themselves and were worried, as they completed the questionnaires and answered follow-up interview questions, about implicating themselves. The second advisor argued that because the Respondents were victims of hazing, their Code violations should be considered differently. He reasoned that because their experiences involved violence against them, the sanction of Disciplinary Probation was too extreme.

After joint opening statements, the UHB held private Sanctions Hearings for each of the eight Respondents, wherein only a single Respondent, together with his advisor and an OJA case handler, were present in the room with the UHB panel. After the Chair announced Sanctions decisions, the Respondent was dismissed, and the next Respondent was called to the hearing room. Respondents were called upon in alphabetical order.

During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 3-2 – Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
2. **UHB Vote 3-2 – Disciplinary Probation:** The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
3. **UHB Vote 0-5 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

1) Groups/individuals more prone to haze its members? Why? 2) Why individuals cannot consent to hazing. 3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing. 4) The role of cognitive dissonance in hazing. 5) The short-terms/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 0-5 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a

community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The reflection papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

5. **UHB Vote 3-2 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the length/content of this outcome in regards to the talking points previously mentioned.
6. **UHB Vote 5-0 – Response Paper:** Complete two seven-page response papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

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The response papers should be both reflective and based on relevant, reputable research. Each paper should contemplate and reference at least three unique sources. The papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members believed that the Respondent accepted Responsibility in good faith for his violations of the Code and that he expressed strong regret for presenting untruthful responses in the witness questionnaire and the follow-up interview questions.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient – the Respondent himself indicated that he would not have lied if he had realized that the consequences were potentially so significant – but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.
5. The UHB members found inappropriate the topic of the proposed Research Paper. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, they voted unanimously against that sanction and proposed instead a revised educational sanction titled "Response Papers" that integrates research into the Reflection Paper assignments.

Respectfully submitted,

*TH Carrick*

Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

[REDACTED], Faculty

[REDACTED], Staff

[REDACTED], Student

[REDACTED], Student

[REDACTED], Student

Dear Chair Carrick,

Please accept the following as my dissenting opinion in regards to the sanctions set against

██████████, ██████████, ██████████, ██████████, ██████████, ██████████  
██████████, and ██████████ (hereafter referred to as “The Respondents”).

The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board’s deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents’ treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

- 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma***

First, it is imperative to highlight the position of The Respondents as *victims* of hazing. As their Judicial Codes Counselors indicated in their opening statements ( [REDACTED] and [REDACTED], speaking on behalf of all Respondents), The Respondents, as victims of hazing, were brought into the JA's office for a line of questioning, or to use the words of some of the respondents-- an "interrogation"-- that may have felt incredibly intimidating and coercive. Before moving on, it is important to highlight that **hazing is abuse**. We do not need to look to statistics or academic studies to confirm the verity of this conclusion, the evidence submitted as part of the OJA's substantive exhibit 1 alone, concerning the hazing allegation that preceded the incident on May 8th, illustrates a pattern of both psychological/emotional and physical abuse from the Respondents' fraternity. As such, this case, particularly as far as it concerns precedent, is primarily about our expectations for/from victims of abuse.

Students should not be penalized for refusing to be reporters on their own trauma-- it would be shocking if any trauma-based investigative training indicated as such-- the very recollection of trauma or abuse can be traumatic in itself. The JA cited that some of their employees had received trauma counseling but never indicated how that experience led to a trauma-sensitive approach to the investigation. While the benefits of bringing students in all at one time and removing their ability to shape the narrative via technological communication make complete sense, it is clear that the students did not receive adequate explanation concerning the reasons why they were being held for that evening in the OJA office nor satisfactory explanation of the counseling options available to them. Training **does not guarantee effective implementation**. The board observed students brought to tears by the long process of the investigation, some students reported effects on grades and mental health; victims of abuse should not be subject to further emotional distress by the institution. It is simply unacceptable.

***2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process.***

The investigative techniques employed by the joint investigation suggest a mandatory reporting expectation on the part of not just bystanders, but also victims-- this is incredibly concerning. However, while it appears that there is no standard at this university that requires an individual to be a mandatory reporter against themselves or their abuser, many of the Respondents

reported confusion regarding the terms of the Witness Transaction Agreements and many felt during the hours-long evening ordeal that the answers they provided would incriminate themselves in the eyes of the OJA.

While the OJA is granted the ability to “during the course of an investigation... before filing formal charges... interview the persons involved” (Title 3, Article III.A.2), there is no provision that gives the OJA the authority to compel a witness to cooperate with their investigation if they have “substantial reason” to refuse (Title 3, Article II.A.3.k). In light of the evidence of psychological and physical abuse brought on by the hazing activities of the fraternity, it would seem that the students may have had valid reason to refuse the OJA’s questionnaire interrogation or to, at the very least, receive more informed counsel regarding their role in the investigation and their options surrounding participation. OJA communications with the students did not clearly communicate these options. Further, many of the respondents’ testimonies alongside substantive OJA emails summoning the students as witnesses, submitted as evidence to the hearing board, evince that the OJA’s investigative tactics undoubtedly misled the students about their rights and options for counsel (either within the community through the JCC or outside). Even among those voting in the majority, the insufficient information regarding counseling options, included as a mere- easy to miss- footnote, in the OJA email to The Respondents’ drew up extended discussion during deliberations. It is the recommendation of this dissent that the OJA make changes to their email templates in order to be more transparent with students in the future regarding their options to seek counsel or advice, particularly in cases as serious as hazing allegations.

***3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are entirely disproportionate to the offenses***

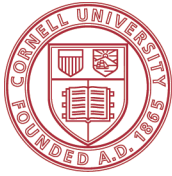
The sanctions allowed under the Code of Conduct serve both punitive and rehabilitative/educational purposes. As an educational institution, particularly when dealing with the youngest and newest members of our community, we would hope that the educationally-minded sanctions are the most valued-- particularly for their ability to provide the necessary information for growth, understanding, and reflection to combat recidivism. The sanctions handed out by the UHB, at the suggestion of the OJA, were excessively punitive while simultaneously serving little additional educational value. Also concerning were the essay

prompts provided by the OJA; prompts that ask victims of hazing-related abuse to furnish research essays on “why hazing is bad” completely miss the content of the actual case at hand: namely the respondents’ decisions to provide false answers on the 14-page long investigative survey. Essays are an incredibly valuable educational tool for Respondents to use as an opportunity and chance for extended and transformative reflection; the types of prompts included as part of an SDA or hearing board imposed set of sanctions should have a direct correlation to the specific infraction of a Respondent.

In light of the way in which the OJA’s investigation appears to have misled The Respondents leading up to and during the incident on May 8th, The Respondents’ positioning as victims of the hazing-related abuse to which the investigation itself was attempting to uncover, and the excessively long judicial process The Respondents underwent in response to the charges, the sanctions are disproportionate to the context of this offense. These Respondents acknowledged their mistakes, showed remorse, and took responsibility for their decisions. More appropriate sanctions at this point would consist of the hearing board’s amended essay prompts and an oral warning from the OJA.

Respectfully,

 Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(4)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

- 2.e. To furnish false information to the University with intent to deceive.
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
- 3.h. To assist another person to violate this Title.

**Allegations**

On September 21, 2018, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that Respondent [REDACTED] provided false information during a joint investigation conducted by the Office of the Judicial Administrator and the Office of Sorority and Fraternity Life, where he was asked specific questions regarding his new member process to join the fraternity, Delta Phi.

The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

### **Procedural History**

On November 16, 2018, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on November 21, 2018, the Respondent was notified that a UHB hearing would be scheduled with Chair Timothy Devoogd.

On December 21, 2018, the Respondent was notified of a joinder decision rendered by University Hearing Board Chairs Carrick, Devoogd, Overton, and Scanza. Under the Code (Title Three, Art. II, Sec. E.3.b.3), cases that present common questions of law or fact, and that would come before a panel of like composition, may be joined for hearing.

On January 22, 2019, the Respondent met with the OJA to discuss the terms of a new SDA. The OJA did not accept the Respondent's request to amend the November 16, 2018 SDA and change the length of disciplinary probation from one year to one semester.

On January 13, 2019, Respondent [REDACTED] requested a severance of the joint hearing given that the seven other Respondents were seeking Sanctions-Only Hearings. On February 16, 2019, the Chair denied the Respondent's request to exclude from the Joint Hearing on the grounds that the relevant facts of the joined cases were not materially different. Given that this Respondent requested a Hearing on the Merits, the joined hearing was elevated to a Hearing on the Merits for all Respondents.

A duly constituted UHB hearing was scheduled to convene on Sunday, April 14 at 9:00am for a Joint Hearing on the Merits.

### **Pre-hearing Decisions**

On January 24, 2019, Respondents [REDACTED] and [REDACTED] submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

On April 10, 2019, the Respondents submitted four shared Pre-Hearing Objections.

1. The Respondents' objection to all four of the OJA's witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], was denied on the grounds that the witness' testimony could provide relevant information about the Respondents' participation in the investigation.

2. The Respondents' objection to General Substantive Exhibit 1 titled "Delta Phi Investigation Statement" was granted on the grounds that the document was not appropriate to the UHB's evaluation of relevant facts and was not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.
3. The Respondents' objection to the OJA's General Substantive Exhibit 5 titled "Email from Vice President [REDACTED] regarding an important health and safety message" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and was permitted for inclusion in the sanctions portion of the hearing only.
4. The Respondents' objection to the OJA's General Sanctions Exhibit 5 titled "Cornell University Hazing Wheel and Campus Framework" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and should remain as exhibit for the sanctions portion of the hearing only.

On April 10, 2019, seven of the eight Respondents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], submitted a shared Pre-Hearing Objection to the inclusion of each Respondents' completed witness questionnaire (Substantive Exhibit 1 or 2 in Respondents' individual hearing packets). The Chair denied the Respondents' objections on the grounds that responses to the witness questionnaire provided important information about the Respondents' truthfulness and attitudes toward cooperation.

On April 10, 2019, the OJA submitted a Pre-Hearing Objection to the Respondent's witness, Professor [REDACTED]. The Chair granted the OJA's objection to Witness [REDACTED] on the grounds that the JCC indicated his proposed testimony would be regarding investigative procedures. Such testimony would not be appropriate to the UHB's evaluation of relevant facts and is not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

Respondent filed one Pre-Hearing Motion concerning hearing procedures. The Chair denied the motion because it arrived at 5:59pm on April 10, 2019 after the agreed upon deadline for such motions. Given the complexity of this joined hearing, the Chair requested that both the OJA and Respondents submit proposals for Hearing Operations by Friday, April 11, 2019 at 9:00am.

### **University Hearing Board Decisions | Hearing on the Merits**

The Joint Hearing commenced at 9:00am on Sunday, April 14, 2019. After the hearing was called to order and the OJA read the charges onto the record, seven of the eight Respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) stood before the UHB and, in turn, accepted responsibility for two of three charges against them.

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  - Not argued by JA, and so Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] found NOT RESPONSIBLE

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED].

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The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

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1. The UHB members believed that the Respondent accepted Responsibility in good faith for his violations of the Code and that he expressed strong regret for presenting untruthful responses in the witness questionnaire and the follow-up interview questions.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient, but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that,

because the word “witness” is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA’s interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.

5. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, the UHB members found inappropriate the topic of the proposed Research Paper. For other Respondents, the UHB members voted instead for a revised educational sanction titled “Response Papers” that integrates research into the Reflection Paper topics. The Respondent, however, reported that he had already completed two of the three writing assignments, and so, in consideration of the Respondent’s labor and initiative, the UHB members voted unanimously in favor of both the Research and Reflections Papers as proposed in the OJA’s SDA.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

██████████, Faculty

██████████, Staff

██████████ Student

██████████ Student

██████████ Student

Dear Chair Carrick,

Please accept the following as my dissenting opinion in regards to the sanctions set against

██████████, ██████████, ██████████, ██████████, ██████████, ██████████,  
██████████, and ██████████ (hereafter referred to as “The Respondents”).

The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board’s deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents’ treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

- 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma***

First, it is imperative to highlight the position of The Respondents as *victims* of hazing. As their Judicial Codes Counselors indicated in their opening statements ( [REDACTED] and [REDACTED], speaking on behalf of all Respondents), The Respondents, as victims of hazing, were brought into the JA's office for a line of questioning, or to use the words of some of the respondents-- an "interrogation"-- that may have felt incredibly intimidating and coercive. Before moving on, it is important to highlight that **hazing is abuse**. We do not need to look to statistics or academic studies to confirm the verity of this conclusion, the evidence submitted as part of the OJA's substantive exhibit 1 alone, concerning the hazing allegation that preceded the incident on May 8th, illustrates a pattern of both psychological/emotional and physical abuse from the Respondents' fraternity. As such, this case, particularly as far as it concerns precedent, is primarily about our expectations for/from victims of abuse.

Students should not be penalized for refusing to be reporters on their own trauma-- it would be shocking if any trauma-based investigative training indicated as such-- the very recollection of trauma or abuse can be traumatic in itself. The JA cited that some of their employees had received trauma counseling but never indicated how that experience led to a trauma-sensitive approach to the investigation. While the benefits of bringing students in all at one time and removing their ability to shape the narrative via technological communication make complete sense, it is clear that the students did not receive adequate explanation concerning the reasons why they were being held for that evening in the OJA office nor satisfactory explanation of the counseling options available to them. Training **does not guarantee effective implementation**. The board observed students brought to tears by the long process of the investigation, some students reported effects on grades and mental health; victims of abuse should not be subject to further emotional distress by the institution. It is simply unacceptable.

***2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process.***

The investigative techniques employed by the joint investigation suggest a mandatory reporting expectation on the part of not just bystanders, but also victims-- this is incredibly concerning. However, while it appears that there is no standard at this university that requires an individual to be a mandatory reporter against themselves or their abuser, many of the Respondents

reported confusion regarding the terms of the Witness Transaction Agreements and many felt during the hours-long evening ordeal that the answers they provided would incriminate themselves in the eyes of the OJA.

While the OJA is granted the ability to “during the course of an investigation... before filing formal charges... interview the persons involved” (Title 3, Article III.A.2), there is no provision that gives the OJA the authority to compel a witness to cooperate with their investigation if they have “substantial reason” to refuse (Title 3, Article II.A.3.k). In light of the evidence of psychological and physical abuse brought on by the hazing activities of the fraternity, it would seem that the students may have had valid reason to refuse the OJA’s questionnaire interrogation or to, at the very least, receive more informed counsel regarding their role in the investigation and their options surrounding participation. OJA communications with the students did not clearly communicate these options. Further, many of the respondents’ testimonies alongside substantive OJA emails summoning the students as witnesses, submitted as evidence to the hearing board, evince that the OJA’s investigative tactics undoubtedly misled the students about their rights and options for counsel (either within the community through the JCC or outside). Even among those voting in the majority, the insufficient information regarding counseling options, included as a mere- easy to miss- footnote, in the OJA email to The Respondents’ drew up extended discussion during deliberations. It is the recommendation of this dissent that the OJA make changes to their email templates in order to be more transparent with students in the future regarding their options to seek counsel or advice, particularly in cases as serious as hazing allegations.

***3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are entirely disproportionate to the offenses***

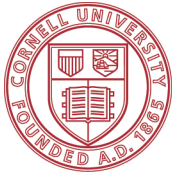
The sanctions allowed under the Code of Conduct serve both punitive and rehabilitative/educational purposes. As an educational institution, particularly when dealing with the youngest and newest members of our community, we would hope that the educationally-minded sanctions are the most valued-- particularly for their ability to provide the necessary information for growth, understanding, and reflection to combat recidivism. The sanctions handed out by the UHB, at the suggestion of the OJA, were excessively punitive while simultaneously serving little additional educational value. Also concerning were the essay

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In light of the way in which the OJA’s investigation appears to have misled The Respondents leading up to and during the incident on May 8th, The Respondents’ positioning as victims of the hazing-related abuse to which the investigation itself was attempting to uncover, and the excessively long judicial process The Respondents underwent in response to the charges, the sanctions are disproportionate to the context of this offense. These Respondents acknowledged their mistakes, showed remorse, and took responsibility for their decisions. More appropriate sanctions at this point would consist of the hearing board’s amended essay prompts and an oral warning from the OJA.

Respectfully,

██████████, PhD Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(5)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

- 2.e. To furnish false information to the University with intent to deceive.
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
- 3.h. To assist another person to violate this Title.

**Allegations**

On September 21, 2018, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that Respondent [REDACTED] provided false information during a joint investigation conducted by the Office of the Judicial Administrator and the Office of Sorority and Fraternity Life, where he was asked specific questions regarding his new member process to join the fraternity, Delta Phi.

The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

### **Procedural History**

On December 1, 2018, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on December 6, 2018, the Respondent was notified that a UHB hearing would be scheduled with Chair Timothy Devoogd.

On December 21, 2018, the Respondent was notified of a joinder decision rendered by University Hearing Board Chairs Carrick, Devoogd, Overton, and Scanza. Under the Code (Title Three, Art. II, Sec. E.3.b.3), cases that present common questions of law or fact, and that would come before a panel of like composition, may be joined for hearing.

On January 13, 2019, Respondent [REDACTED] requested a severance of the joint hearing given that the seven other Respondents were seeking Sanctions-Only Hearings. On February 16, 2019, the Chair denied the Respondent's request to exclude from the Joint Hearing on the grounds that the relevant facts of the joined cases were not materially different. Given that this Respondent requested a Hearing on the Merits, the joined hearing was elevated to a Hearing on the Merits for all Respondents.

A duly constituted UHB hearing was scheduled to convene on Sunday, April 14 at 9:00am for a Joint Hearing on the Merits.

### **Pre-hearing Decisions**

On January 24, 2019, the Respondent and Respondent [REDACTED] both submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

On April 10, 2019, the Respondents submitted four shared Pre-Hearing Objections.

1. The Respondents' objection to all four of the OJA's witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], was denied on the grounds that the witness' testimony could provide relevant information about the Respondents' participation in the investigation.
2. The Respondents' objection to General Substantive Exhibit 1 titled "Delta Phi Investigation Statement" was granted on the grounds that the document was not appropriate to the UHB's evaluation of relevant facts and was not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

3. The Respondents' objection to the OJA's General Substantive Exhibit 5 titled "Email from Vice President [REDACTED] regarding an important health and safety message" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and was permitted for inclusion in the sanctions portion of the hearing only.
4. The Respondents' objection to the OJA's General Sanctions Exhibit 5 titled "Cornell University Hazing Wheel and Campus Framework" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and should remain as exhibit for the sanctions portion of the hearing only.

On April 10, 2019, seven of the eight Respondents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], submitted a shared Pre-Hearing Objection to the inclusion of each Respondents' completed witness questionnaire (Substantive Exhibit 1 or 2 in Respondents' individual hearing packets). The Chair denied the Respondents' objections on the grounds that responses to the witness questionnaire provided important information about the Respondents' truthfulness and attitudes toward cooperation.

On April 10, 2019, the OJA submitted a Pre-Hearing Objection to the Respondent's witness, Professor [REDACTED]. The Chair granted the OJA's objection to Witness [REDACTED] on the grounds that the JCC indicated his proposed testimony would be regarding investigative procedures. Such testimony would not be appropriate to the UHB's evaluation of relevant facts and is not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

Respondent filed one Pre-Hearing Motion concerning hearing procedures. The Chair denied the motion because it arrived at 5:59pm on April 10, 2019 after the agreed upon deadline for such motions. Given the complexity of this joined hearing, the Chair requested that both the OJA and Respondents submit proposals for Hearing Operations by Friday, April 11, 2019 at 9:00am.

### **University Hearing Board Decisions | Hearing on the Merits**

The Joint Hearing commenced at 9:00am on Sunday, April 14, 2019. After the hearing was called to order and the OJA read the charges onto the record, seven of the eight Respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) stood before the UHB and, in turn, accepted responsibility for two of three charges against them.

Title Three, Article II, Section A:

- 2.e. To furnish false information to the University with intent to deceive.
  - RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], and [REDACTED]
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

- RESPONSIBLE, as accepted by Respondents [REDACTED]
- 3.h. To assist another person to violate this Title.
  - Not argued by JA, and so Respondents [REDACTED] found NOT RESPONSIBLE

Respondents [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED].

### **University Hearing Board Decisions | Sanctions**

At 12:30pm on Sunday, April 14, 2019, the hearing proceeded to the Sanctions phase. All Respondents who were found responsible for any violation of the Code (in this case, all Respondents), along with their advisors and both Judicial Administrators returned to the hearing room. One JA and two of the four Respondents' advisors presented joint opening statements.

The OJA detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. The OJA also argued that since three other members of the same new member class had resolved their materially similar charges with the OJA by accepting the proposed sanctions, the UHB should impose the same sanctions out of fairness and equity.

In their opening statement, the Respondents' first advisor characterized the events of March 8, 2018 as inherently coercive and intimidating, and argued that the Respondents did not realize that they were not under investigation themselves and were worried, as they completed the questionnaires and answered follow-up interview questions, about implicating themselves. The second advisor argued that because the Respondents were victims of hazing, their Code violations should be considered differently. He reasoned that because their experiences involved violence against them, the sanction of Disciplinary Probation was too extreme.

After joint opening statements, the UHB held private Sanctions Hearings for each of the eight Respondents, wherein only a single Respondent, together with his advisor and an OJA case handler, were present in the room with the UHB panel. After the Chair announced Sanctions decisions, the Respondent was dismissed, and the next Respondent was called to the hearing room. Respondents were called upon in alphabetical order.

During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 3-2 – Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
2. **UHB Vote 3-2 – Disciplinary Probation:** The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
3. **UHB Vote 5-0 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

1) Groups/individuals more prone to haze its members? Why? 2) Why individuals cannot consent to hazing. 3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing. 4) The role of cognitive dissonance in hazing. 5) The short-terms/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 5-0 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a

community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The reflection papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.

5. **UHB Vote 4-1 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the length/content of this outcome in regards to the talking points previously mentioned.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. Although the Respondent accepted Responsibility for his violations of the Code, the UHB members did not believe that he expressed sincere regret or remorse for presenting untruthful responses in the witness questionnaire and the follow-up interview questions.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient, but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask

questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.

5. Although the UHB members found inappropriate the topic of the proposed Research Paper, given that the Respondent was not himself charged with a hazing violation, they nevertheless upheld the OJA's proposed sanction because the Respondent did not acknowledge the egregiousness of the hazing activities he was untruthful about on the witness questionnaire and the follow-up interview.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

██████████, Faculty

██████████████████, Staff

██████████, Student

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Dear Chair Carrick,

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The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board's deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents' treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

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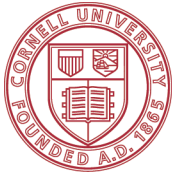
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Respectfully,

██████████, PhD Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

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Cornell University

**RESPONDENT**

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A duly constituted UHB hearing was scheduled to convene on Sunday, April 14 at 9:00am for a Joint Hearing on the Merits.

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On January 24, 2019, Respondents [REDACTED] and [REDACTED] submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

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Respondents [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED].

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At 12:30pm on Sunday, April 14, 2019, the hearing proceeded to the Sanctions phase. All Respondents who were found responsible for any violation of the Code (in this case, all Respondents), along with their advisors and both Judicial Administrators returned to the hearing room. One JA and two of the four Respondents' advisors presented joint opening statements.

The OJA detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. The OJA also argued that since three other members of the same new member class had resolved their materially similar charges with the OJA by accepting the proposed sanctions, the UHB should impose the same sanctions out of fairness and equity.

In their opening statement, the Respondents' first advisor characterized the events of March 8, 2018 as inherently coercive and intimidating, and argued that the Respondents did not realize that they were not under investigation themselves and were worried, as they completed the questionnaires and answered follow-up interview questions, about implicating themselves. The second advisor argued that because the Respondents were victims of hazing, their Code violations should be considered differently. He reasoned that because their experiences involved violence against them, the sanction of Disciplinary Probation was too extreme.

After joint opening statements, the UHB held private Sanctions Hearings for each of the eight Respondents, wherein only a single Respondent, together with his advisor and an OJA case handler, were present in the room with the UHB panel. After the Chair announced Sanctions decisions, the Respondent was dismissed, and the next Respondent was called to the hearing room. Respondents were called upon in alphabetical order.

During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 3-2 – Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
2. **UHB Vote 3-2 – Disciplinary Probation:** The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
3. **UHB Vote 0-5 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

1) Groups/individuals more prone to haze its members? Why? 2) Why individuals cannot consent to hazing. 3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing. 4) The role of cognitive dissonance in hazing. 5) The short-terms/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 0-5 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a

community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The reflection papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

5. **UHB Vote 2-3 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the length/content of this outcome in regards to the talking points previously mentioned.
6. **UHB Vote 5-0 – Response Paper:** Complete two seven-page response papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

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The response papers should be both reflective and based on relevant, reputable research. Each paper should contemplate and reference at least three unique sources. The papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members believed that the Respondent accepted Responsibility in good faith for his violations of the Code and that he expressed strong regret for presenting untruthful responses in the witness questionnaire and the follow-up interview questions. Given that the Respondent also conveyed sincere remorse, several of the UHB members considered unnecessary the OJA's proposed sanction of Letter to Self.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient – the Respondent himself indicated that he would not have lied if he had realized that the consequences were potentially so significant – but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.
5. The UHB members found inappropriate the topic of the proposed Research Paper. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, they voted unanimously against that sanction and proposed instead a revised educational sanction titled "Response Papers" that integrates research into the Reflection Paper assignments.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

, Faculty

, Staff

, Student

, Student

, Student

Dear Chair Carrick,

Please accept the following as my dissenting opinion in regards to the sanctions set against

[REDACTED]

[REDACTED] (hereafter referred to as "The Respondents").

The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board's deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents' treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

- 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma***

First, it is imperative to highlight the position of The Respondents as *victims* of hazing. As their Judicial Codes Counselors indicated in their opening statements ( [REDACTED] and [REDACTED], speaking on behalf of all Respondents), The Respondents, as victims of hazing, were brought into the JA's office for a line of questioning, or to use the words of some of the respondents-- an "interrogation"-- that may have felt incredibly intimidating and coercive. Before moving on, it is important to highlight that **hazing is abuse**. We do not need to look to statistics or academic studies to confirm the verity of this conclusion, the evidence submitted as part of the OJA's substantive exhibit 1 alone, concerning the hazing allegation that preceded the incident on May 8th, illustrates a pattern of both psychological/emotional and physical abuse from the Respondents' fraternity. As such, this case, particularly as far as it concerns precedent, is primarily about our expectations for/from victims of abuse.

Students should not be penalized for refusing to be reporters on their own trauma-- it would be shocking if any trauma-based investigative training indicated as such-- the very recollection of trauma or abuse can be traumatic in itself. The JA cited that some of their employees had received trauma counseling but never indicated how that experience led to a trauma-sensitive approach to the investigation. While the benefits of bringing students in all at one time and removing their ability to shape the narrative via technological communication make complete sense, it is clear that the students did not receive adequate explanation concerning the reasons why they were being held for that evening in the OJA office nor satisfactory explanation of the counseling options available to them. Training **does not guarantee effective implementation**. The board observed students brought to tears by the long process of the investigation, some students reported effects on grades and mental health; victims of abuse should not be subject to further emotional distress by the institution. It is simply unacceptable.

***2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process.***

The investigative techniques employed by the joint investigation suggest a mandatory reporting expectation on the part of not just bystanders, but also victims-- this is incredibly concerning. However, while it appears that there is no standard at this university that requires an individual to be a mandatory reporter against themselves or their abuser, many of the Respondents

reported confusion regarding the terms of the Witness Transaction Agreements and many felt during the hours-long evening ordeal that the answers they provided would incriminate themselves in the eyes of the OJA.

While the OJA is granted the ability to “during the course of an investigation... before filing formal charges... interview the persons involved” (Title 3, Article III.A.2), there is no provision that gives the OJA the authority to compel a witness to cooperate with their investigation if they have “substantial reason” to refuse (Title 3, Article II.A.3.k). In light of the evidence of psychological and physical abuse brought on by the hazing activities of the fraternity, it would seem that the students may have had valid reason to refuse the OJA’s questionnaire interrogation or to, at the very least, receive more informed counsel regarding their role in the investigation and their options surrounding participation. OJA communications with the students did not clearly communicate these options. Further, many of the respondents’ testimonies alongside substantive OJA emails summoning the students as witnesses, submitted as evidence to the hearing board, evince that the OJA’s investigative tactics undoubtedly misled the students about their rights and options for counsel (either within the community through the JCC or outside). Even among those voting in the majority, the insufficient information regarding counseling options, included as a mere- easy to miss- footnote, in the OJA email to The Respondents’ drew up extended discussion during deliberations. It is the recommendation of this dissent that the OJA make changes to their email templates in order to be more transparent with students in the future regarding their options to seek counsel or advice, particularly in cases as serious as hazing allegations.

***3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are entirely disproportionate to the offenses***

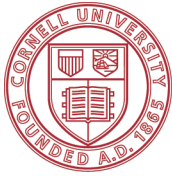
The sanctions allowed under the Code of Conduct serve both punitive and rehabilitative/educational purposes. As an educational institution, particularly when dealing with the youngest and newest members of our community, we would hope that the educationally-minded sanctions are the most valued-- particularly for their ability to provide the necessary information for growth, understanding, and reflection to combat recidivism. The sanctions handed out by the UHB, at the suggestion of the OJA, were excessively punitive while simultaneously serving little additional educational value. Also concerning were the essay

prompts provided by the OJA; prompts that ask victims of hazing-related abuse to furnish research essays on “why hazing is bad” completely miss the content of the actual case at hand: namely the respondents’ decisions to provide false answers on the 14-page long investigative survey. Essays are an incredibly valuable educational tool for Respondents to use as an opportunity and chance for extended and transformative reflection; the types of prompts included as part of an SDA or hearing board imposed set of sanctions should have a direct correlation to the specific infraction of a Respondent.

In light of the way in which the OJA’s investigation appears to have misled The Respondents leading up to and during the incident on May 8th, The Respondents’ positioning as victims of the hazing-related abuse to which the investigation itself was attempting to uncover, and the excessively long judicial process The Respondents underwent in response to the charges, the sanctions are disproportionate to the context of this offense. These Respondents acknowledged their mistakes, showed remorse, and took responsibility for their decisions. More appropriate sanctions at this point would consist of the hearing board’s amended essay prompts and an oral warning from the OJA.

Respectfully,

██████████, PhD Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(7)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

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**Allegations**

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The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

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Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

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During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 3-2 – Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
2. **UHB Vote 3-2 – Disciplinary Probation:** The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
3. **UHB Vote 0-5 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

1) Groups/individuals more prone to haze its members? Why? 2) Why individuals cannot consent to hazing. 3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing. 4) The role of cognitive dissonance in hazing. 5) The short-terms/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 0-5 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

**2) Social Pressure.** Define what social pressure, and social ostracism means to you. Discuss how the fear of social ostracism impacted your decisions in this incident? Also explore how was your decision to not tell the full truth during the hazing investigation consistent/inconsistent with your want/desire to fit in with a group, even if being subject to hazing.

**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a

community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The reflection papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

5. **UHB Vote 3-2 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the length/content of this outcome in regards to the talking points previously mentioned.
6. **UHB Vote 5-0 – Response Paper:** Complete two seven-page response papers on two of the three topics below:
  - 1) **Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.
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  - 3) **Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

The response papers should be both reflective and based on relevant, reputable research. Each paper should contemplate and reference at least three unique sources. The papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to judadmin@cornell.edu and include in your email the name of the individual you met with when entering this agreement.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members believed that the Respondent accepted Responsibility in good faith for his violations of the Code and that he expressed strong regret for presenting untruthful responses in the witness questionnaire and the follow-up interview questions.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient – the Respondent himself indicated that he would not have lied if he had realized that the consequences were potentially so significant – but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.
5. The UHB members found inappropriate the topic of the proposed Research Paper. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, they voted unanimously against that sanction and proposed instead a revised educational sanction titled "Response Papers" that integrates research into the Reflection Paper assignments.

Respectfully submitted,

*TH Carrick*

Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

[REDACTED], Faculty

[REDACTED], Staff

[REDACTED], Student

[REDACTED], Student

[REDACTED], Student

Dear Chair Carrick,

Please accept the following as my dissenting opinion in regards to the sanctions set against

██████████, ██████████, ██████████, ██████████, ██████████, ██████████  
██████████, and ██████████ (hereafter referred to as “The Respondents”).

The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board’s deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents’ treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

- 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma***

First, it is imperative to highlight the position of The Respondents as *victims* of hazing. As their Judicial Codes Counselors indicated in their opening statements ( [REDACTED] and [REDACTED], speaking on behalf of all Respondents), The Respondents, as victims of hazing, were brought into the JA's office for a line of questioning, or to use the words of some of the respondents-- an "interrogation"-- that may have felt incredibly intimidating and coercive. Before moving on, it is important to highlight that **hazing is abuse**. We do not need to look to statistics or academic studies to confirm the verity of this conclusion, the evidence submitted as part of the OJA's substantive exhibit 1 alone, concerning the hazing allegation that preceded the incident on May 8th, illustrates a pattern of both psychological/emotional and physical abuse from the Respondents' fraternity. As such, this case, particularly as far as it concerns precedent, is primarily about our expectations for/from victims of abuse.

Students should not be penalized for refusing to be reporters on their own trauma-- it would be shocking if any trauma-based investigative training indicated as such-- the very recollection of trauma or abuse can be traumatic in itself. The JA cited that some of their employees had received trauma counseling but never indicated how that experience led to a trauma-sensitive approach to the investigation. While the benefits of bringing students in all at one time and removing their ability to shape the narrative via technological communication make complete sense, it is clear that the students did not receive adequate explanation concerning the reasons why they were being held for that evening in the OJA office nor satisfactory explanation of the counseling options available to them. Training **does not guarantee effective implementation**. The board observed students brought to tears by the long process of the investigation, some students reported effects on grades and mental health; victims of abuse should not be subject to further emotional distress by the institution. It is simply unacceptable.

***2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process.***

The investigative techniques employed by the joint investigation suggest a mandatory reporting expectation on the part of not just bystanders, but also victims-- this is incredibly concerning. However, while it appears that there is no standard at this university that requires an individual to be a mandatory reporter against themselves or their abuser, many of the Respondents

reported confusion regarding the terms of the Witness Transaction Agreements and many felt during the hours-long evening ordeal that the answers they provided would incriminate themselves in the eyes of the OJA.

While the OJA is granted the ability to “during the course of an investigation... before filing formal charges... interview the persons involved” (Title 3, Article III.A.2), there is no provision that gives the OJA the authority to compel a witness to cooperate with their investigation if they have “substantial reason” to refuse (Title 3, Article II.A.3.k). In light of the evidence of psychological and physical abuse brought on by the hazing activities of the fraternity, it would seem that the students may have had valid reason to refuse the OJA’s questionnaire interrogation or to, at the very least, receive more informed counsel regarding their role in the investigation and their options surrounding participation. OJA communications with the students did not clearly communicate these options. Further, many of the respondents’ testimonies alongside substantive OJA emails summoning the students as witnesses, submitted as evidence to the hearing board, evince that the OJA’s investigative tactics undoubtedly misled the students about their rights and options for counsel (either within the community through the JCC or outside). Even among those voting in the majority, the insufficient information regarding counseling options, included as a mere- easy to miss- footnote, in the OJA email to The Respondents’ drew up extended discussion during deliberations. It is the recommendation of this dissent that the OJA make changes to their email templates in order to be more transparent with students in the future regarding their options to seek counsel or advice, particularly in cases as serious as hazing allegations.

***3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are entirely disproportionate to the offenses***

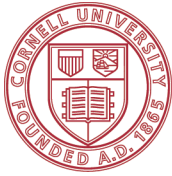
The sanctions allowed under the Code of Conduct serve both punitive and rehabilitative/educational purposes. As an educational institution, particularly when dealing with the youngest and newest members of our community, we would hope that the educationally-minded sanctions are the most valued-- particularly for their ability to provide the necessary information for growth, understanding, and reflection to combat recidivism. The sanctions handed out by the UHB, at the suggestion of the OJA, were excessively punitive while simultaneously serving little additional educational value. Also concerning were the essay

prompts provided by the OJA; prompts that ask victims of hazing-related abuse to furnish research essays on “why hazing is bad” completely miss the content of the actual case at hand: namely the respondents’ decisions to provide false answers on the 14-page long investigative survey. Essays are an incredibly valuable educational tool for Respondents to use as an opportunity and chance for extended and transformative reflection; the types of prompts included as part of an SDA or hearing board imposed set of sanctions should have a direct correlation to the specific infraction of a Respondent.

In light of the way in which the OJA’s investigation appears to have misled The Respondents leading up to and during the incident on May 8th, The Respondents’ positioning as victims of the hazing-related abuse to which the investigation itself was attempting to uncover, and the excessively long judicial process The Respondents underwent in response to the charges, the sanctions are disproportionate to the context of this offense. These Respondents acknowledged their mistakes, showed remorse, and took responsibility for their decisions. More appropriate sanctions at this point would consist of the hearing board’s amended essay prompts and an oral warning from the OJA.

Respectfully,

 Student



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-07(8)

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

**Joint Hearing on the Merits**

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

On April 14, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

- 2.e. To furnish false information to the University with intent to deceive.
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.
- 3.h. To assist another person to violate this Title.

**Allegations**

On September 21, 2018, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that Respondent [REDACTED] provided false information during a joint investigation conducted by the Office of the Judicial Administrator and the Office of Sorority and Fraternity Life, where he was asked specific questions regarding his new member process to join the fraternity, Delta Phi.

The Respondent participated in the investigation on March 8, 2018, where he, along with other members of the new member class, met with an investigator to complete an investigative questionnaire and to respond to questions in a subsequent interview, which occurred on the same evening. On this date, the Respondent was also given Witness Immunity under the Code, conditioned on his truthfulness.

At the conclusion of the joint investigation, the OJA compared the responses provided by the Respondent to corroborated information by other individuals interviewed, as well as the results of a separate adjudicative hearing held by the Office of Sorority and Fraternity Life. It is alleged that the Respondent was not truthful in all of the responses he provided in his March 8, 2018 questionnaire and follow-up interview.

### **Procedural History**

On November 16, 2018, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on November 21, 2018, the Respondent was notified that a UHB hearing would be scheduled with Chair Tracy Carrick.

On December 21, 2018, the Respondent was notified of a joinder decision rendered by University Hearing Board Chairs Carrick, Devoogd, Overton, and Scanza. Under the Code (Title Three, Art. II, Sec. E.3.b.3), cases that present common questions of law or fact, and that would come before a panel of like composition, may be joined for hearing.

On January 13, 2019, Respondent [REDACTED] requested a severance of the joint hearing given that the seven other Respondents were seeking Sanctions-Only Hearings. On February 16, 2019, the Chair denied the Respondent's request to exclude from the Joint Hearing on the grounds that the relevant facts of the joined cases were not materially different. Given that this Respondent requested a Hearing on the Merits, the joined hearing was elevated to a Hearing on the Merits for all Respondents.

A duly constituted UHB hearing was scheduled to convene on Sunday, April 14 at 9:00am for a Joint Hearing on the Merits.

### **Pre-hearing Decisions**

On January 24, 2019, the Respondent and Respondent [REDACTED] both submitted Motions for Exclusion from the Joint Hearing. Their motions were denied on the grounds that they did not sufficiently meet the standard of the Code. The details of the decisions are as follows: joinder is more efficient for all parties because the UHB can conserve resources and the Respondents can limit access to sensitive and embarrassing information; joinder is more equitable as the joint hearing enables all Respondents to stand before the same UHB panel; the relevant facts of the joined cases are not materially different, and holding a joint hearing does not prevent Respondents from presenting unique mitigating circumstances for consideration in the sanctions portion of the hearing; and the UHB will read decisions privately to each respondent to address privacy concerns.

On April 10, 2019, the Respondents submitted four shared Pre-Hearing Objections.

1. The Respondents' objection to all four of the OJA's witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], was denied on the grounds that the witness' testimony could provide relevant information about the Respondents' participation in the investigation.
2. The Respondents' objection to General Substantive Exhibit 1 titled "Delta Phi Investigation Statement" was granted on the grounds that the document was not appropriate to the UHB's evaluation of relevant facts and was not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

3. The Respondents' objection to the OJA's General Substantive Exhibit 5 titled "Email from Vice President [REDACTED] regarding an important health and safety message" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and was permitted for inclusion in the sanctions portion of the hearing only.
4. The Respondents' objection to the OJA's General Sanctions Exhibit 5 titled "Cornell University Hazing Wheel and Campus Framework" was denied on the grounds that the exhibit could provide context for explaining why Respondents did not provide truthful information and should remain as exhibit for the sanctions portion of the hearing only.

On April 10, 2019, seven of the eight Respondents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], submitted a shared Pre-Hearing Objection to the inclusion of each Respondents' completed witness questionnaire (Substantive Exhibit 1 or 2 in Respondents' individual hearing packets). The Chair denied the Respondents' objections on the grounds that responses to the witness questionnaire provided important information about the Respondents' truthfulness and attitudes toward cooperation.

On April 10, 2019, the OJA submitted a Pre-Hearing Objection to the Respondent's witness, Professor [REDACTED]. The Chair granted the OJA's objection to Witness [REDACTED] on the grounds that the JCC indicated his proposed testimony would be regarding investigative procedures. Such testimony would not be appropriate to the UHB's evaluation of relevant facts and is not necessary to make a fair decision as to whether or not the Code of Conduct was violated. The Code of Conduct does not task the UHB with evaluating investigative procedures.

Respondent filed one Pre-Hearing Motion concerning hearing procedures. The Chair denied the motion because it arrived at 5:59pm on April 10, 2019 after the agreed upon deadline for such motions. Given the complexity of this joined hearing, the Chair requested that both the OJA and Respondents submit proposals for Hearing Operations by Friday, April 11, 2019 at 9:00am.

### **University Hearing Board Decisions | Hearing on the Merits**

The Joint Hearing commenced at 9:00am on Sunday, April 14, 2019. After the hearing was called to order and the OJA read the charges onto the record, seven of the eight Respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) stood before the UHB and, in turn, accepted responsibility for two of three charges against them.

Title Three, Article II, Section A:

- 2.e. To furnish false information to the University with intent to deceive.
  - RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.g. To destroy evidence or otherwise obstruct the application of this Code.

- RESPONSIBLE, as accepted by Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- 3.h. To assist another person to violate this Title.
  - Not argued by JA, and so Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] found NOT RESPONSIBLE

Respondents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were dismissed from the hearing room until the Sanctions portion of the hearing.

The Hearing on the Merits continued for Respondent [REDACTED].

### University Hearing Board Decisions | Sanctions

At 12:30pm on Sunday, April 14, 2019, the hearing proceeded to the Sanctions phase. All Respondents who were found responsible for any violation of the Code (in this case, all Respondents), along with their advisors and both Judicial Administrators returned to the hearing room. One JA and two of the four Respondents' advisors presented joint opening statements.

The OJA detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. The OJA also argued that since three other members of the same new member class had resolved their materially similar charges with the OJA by accepting the proposed sanctions, the UHB should impose the same sanctions out of fairness and equity.

In their opening statement, the Respondents' first advisor characterized the events of March 8, 2018 as inherently coercive and intimidating, and argued that the Respondents did not realize that they were not under investigation themselves and were worried, as they completed the questionnaires and answered follow-up interview questions, about implicating themselves. The second advisor argued that because the Respondents were victims of hazing, their Code violations should be considered differently. He reasoned that because their experiences involved violence against them, the sanction of Disciplinary Probation was too extreme.

After joint opening statements, the UHB held private Sanctions Hearings for each of the eight Respondents, wherein only a single Respondent, together with his advisor and an OJA case handler, were present in the room with the UHB panel. After the Chair announced Sanctions decisions, the Respondent was dismissed, and the next Respondent was called to the hearing room. Respondents were called upon in alphabetical order.

During this Respondent's private portion of the Sanctions Hearing, the Respondent and the JA provided brief respondent-specific opening statements, the Respondent answered questions, and both parties presented brief closing statements.

The UHB determined the following sanctions are appropriate for the violations found:

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3. **UHB Vote 0-5 – Research Paper:** Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website ([hazing.cornell.edu/resources/recommended-websites](http://hazing.cornell.edu/resources/recommended-websites)) and cite the sources in your paper.

Draft a five-page research paper on two of the following topics based on your research:

1) Groups/individuals more prone to haze its members? Why? 2) Why individuals cannot consent to hazing. 3) How privilege, experiences, and past trauma shape whether an individual is more susceptible to hazing. 4) The role of cognitive dissonance in hazing. 5) The short-terms/long-term impacts of physical and mental hazing.

The research paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by January 28, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

4. **UHB Vote 0-5 – Reflection Paper:** Complete two five-page reflection papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

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**3) Decision-Making.** As a result of your actions, what did you perceive as the negative consequences at the time of the investigation? Who or what did these negative consequences impact? Share your thoughts on why it is important for a

community to stop instances of hazing. Lastly, given the systemic nature of hazing, should this investigation not have occurred, share your thoughts on whether or not you think you might have participated in hazing new members, keeping in mind the following: that many brothers who hazed you did not think that they would haze others, even hazing activities that are made "safer" are still hazing, and simply choosing not to be present at a hazing activity does not equate to proper bystander intervention to stop hazing.

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5. **UHB Vote 0-5 – Letter to Self:** Draft a letter to yourself with the intention of reading it five years from now. Reflect on what you feel is important at this time of your life, your biggest worries, and what you hope to be doing five years from now. Submit this letter with your permanent address by December 31, 2019 to the OJA. The OJA will send the letter to your address listed in approximately five years. It is solely to your discretion the length/content of this outcome in regards to the talking points previously mentioned.
6. **UHB Vote 3-2 – Response Paper:** Complete two seven-page response papers on two of the three topics below:

**1) Loyalty and Integrity.** Define loyalty and integrity, whether those values are important to you, and if they were compromised during and after the investigation. Also, reflect on how loyalty and integrity played a role in this incident. How your integrity as an individual student, not as a new member of Delta Phi, was challenged during the course of the hazing investigation. Finally, whether you believe that the risk of loyalty to someone else is worth jeopardizing the goals that you have for yourself.

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The response papers should be both reflective and based on relevant, reputable research. Each paper should contemplate and reference at least three unique sources. The papers should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. These papers must be submitted to the OJA by December 31, 2019. The papers should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email the name of the individual you met with when entering this agreement.

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members believed that the Respondent accepted Responsibility in good faith for his violations of the Code and that he expressed strong regret for presenting untruthful responses in the witness questionnaire and the follow-up interview questions. Given that the Respondent also conveyed extreme and sincere remorse, the UHB members considered unnecessary the OJA's proposed sanction of Letter to Self; two also questioned the need to sanction the Respondent with any writing assignments involving research and reflection.
2. The UHB members acknowledged and expressed concern over the fact that the Respondent is likely a victim of hazing. They contemplated the role that resulting trauma may have played in his decision to provide untruthful information on the witness questionnaire and during the follow-up interview. Ultimately, they did not consider an Oral Reprimand sufficient – the Respondent himself indicated that he would not have lied if he had realized that the consequences were potentially so significant – but they questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the Written Reprimand.
3. Although the UHB members understood that the Respondent believed that the reporting period of the Written Reprimand was excessively punitive, they found little sufficient evidence that a transcript or disciplinary notation would negatively impact future academic and professional opportunities.
4. The UHB discussed the effectiveness of the OJA's March 6, 2018 email to the Respondent informing him that he had been "identified as a person with information regarding an alleged Campus Code of Conduct (Code) violation." Although the subject line reads "Mandatory OJA **Witness**" (emphasis added), the UHB was concerned that, because the word "witness" is not repeated anywhere in the text of the email, the Respondent could have, in haste, confused the nature of the request and misconstrued the OJA's interest in meeting with him. This discussion did not have an impact on the UHB decision, as the UHB determined that the Respondent had ample opportunities to ask questions and clarify his role in the investigation, but the UHB members respectfully request that the OJA consider if and how they might make future correspondence with witnesses more trauma-informed.
5. The UHB members found inappropriate the topic of the proposed Research Paper. Given that the Respondent was not charged with a hazing violation, and further that he is likely to have been a victim of hazing, they voted unanimously against that sanction and

proposed instead a revised educational sanction titled “Response Papers” that integrates research into the Reflection Paper assignments.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

on behalf of

, Faculty

, Staff

, Student

, Student

, Student

Dear Chair Carrick,

Please accept the following as my dissenting opinion in regards to the sanctions set against

██████████, ██████████, ██████████, ██████████, ██████████, ██████████  
██████████, and ██████████ (hereafter referred to as “The Respondents”).

The votes to oppose the sanctions of disciplinary probation and the connected written reprimand (reportable for 6 years after graduation) in the cases of The Respondents are based on the following compelling factors.

This dissenting opinion takes seriously the precedent set by this hearing board’s deliberations and the potential message that the decision may send to members of the Cornell community concerning University policy surrounding and/or tolerance for hazing. However, this case does not merely set precedent for any future hazing violations (in fact, this is a case about providing false information/obstruction, not hazing): it sets a dangerous precedent for how the OJA/UHB treats victims of abuse.

For this reason, this dissent puts forward three (3) considerations concerning The Respondents’ treatment during the OJA investigation and their requisite sanctions as part of the UHB decision. With the serious understanding that the treatment of the respondents as part of the investigation and hearing process has the potential to dissuade students from coming forward in any future investigations, particularly in cases involving younger students, hazing, and established student groups with clear social hierarchies, the concerns are as follows: 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma; 2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process; and 3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are disproportionate to the offenses.

- 1. Identifies strong concerns about JA investigative techniques, particularly the type of precedent this case has set regarding how to treat victims of abuse/trauma***

First, it is imperative to highlight the position of The Respondents as *victims* of hazing. As their Judicial Codes Counselors indicated in their opening statements ( [REDACTED] and [REDACTED], speaking on behalf of all Respondents), The Respondents, as victims of hazing, were brought into the JA's office for a line of questioning, or to use the words of some of the respondents-- an "interrogation"-- that may have felt incredibly intimidating and coercive. Before moving on, it is important to highlight that **hazing is abuse**. We do not need to look to statistics or academic studies to confirm the verity of this conclusion, the evidence submitted as part of the OJA's substantive exhibit 1 alone, concerning the hazing allegation that preceded the incident on May 8th, illustrates a pattern of both psychological/emotional and physical abuse from the Respondents' fraternity. As such, this case, particularly as far as it concerns precedent, is primarily about our expectations for/from victims of abuse.

Students should not be penalized for refusing to be reporters on their own trauma-- it would be shocking if any trauma-based investigative training indicated as such-- the very recollection of trauma or abuse can be traumatic in itself. The JA cited that some of their employees had received trauma counseling but never indicated how that experience led to a trauma-sensitive approach to the investigation. While the benefits of bringing students in all at one time and removing their ability to shape the narrative via technological communication make complete sense, it is clear that the students did not receive adequate explanation concerning the reasons why they were being held for that evening in the OJA office nor satisfactory explanation of the counseling options available to them. Training **does not guarantee effective implementation**. The board observed students brought to tears by the long process of the investigation, some students reported effects on grades and mental health; victims of abuse should not be subject to further emotional distress by the institution. It is simply unacceptable.

***2. Necessity of the OJA to more clearly outline to students (whether they be potential witnesses or respondents) what resources are available to them as they navigate any investigative process.***

The investigative techniques employed by the joint investigation suggest a mandatory reporting expectation on the part of not just bystanders, but also victims-- this is incredibly concerning. However, while it appears that there is no standard at this university that requires an individual to be a mandatory reporter against themselves or their abuser, many of the Respondents

reported confusion regarding the terms of the Witness Transaction Agreements and many felt during the hours-long evening ordeal that the answers they provided would incriminate themselves in the eyes of the OJA.

While the OJA is granted the ability to “during the course of an investigation... before filing formal charges... interview the persons involved” (Title 3, Article III.A.2), there is no provision that gives the OJA the authority to compel a witness to cooperate with their investigation if they have “substantial reason” to refuse (Title 3, Article II.A.3.k). In light of the evidence of psychological and physical abuse brought on by the hazing activities of the fraternity, it would seem that the students may have had valid reason to refuse the OJA’s questionnaire interrogation or to, at the very least, receive more informed counsel regarding their role in the investigation and their options surrounding participation. OJA communications with the students did not clearly communicate these options. Further, many of the respondents’ testimonies alongside substantive OJA emails summoning the students as witnesses, submitted as evidence to the hearing board, evince that the OJA’s investigative tactics undoubtedly misled the students about their rights and options for counsel (either within the community through the JCC or outside). Even among those voting in the majority, the insufficient information regarding counseling options, included as a mere- easy to miss- footnote, in the OJA email to The Respondents’ drew up extended discussion during deliberations. It is the recommendation of this dissent that the OJA make changes to their email templates in order to be more transparent with students in the future regarding their options to seek counsel or advice, particularly in cases as serious as hazing allegations.

***3. Sanctions sought and brought (by repeated split 3/2 votes) against respondents, in light of compelling mitigating factors, are entirely disproportionate to the offenses***

The sanctions allowed under the Code of Conduct serve both punitive and rehabilitative/educational purposes. As an educational institution, particularly when dealing with the youngest and newest members of our community, we would hope that the educationally-minded sanctions are the most valued-- particularly for their ability to provide the necessary information for growth, understanding, and reflection to combat recidivism. The sanctions handed out by the UHB, at the suggestion of the OJA, were excessively punitive while simultaneously serving little additional educational value. Also concerning were the essay

prompts provided by the OJA; prompts that ask victims of hazing-related abuse to furnish research essays on “why hazing is bad” completely miss the content of the actual case at hand: namely the respondents’ decisions to provide false answers on the 14-page long investigative survey. Essays are an incredibly valuable educational tool for Respondents to use as an opportunity and chance for extended and transformative reflection; the types of prompts included as part of an SDA or hearing board imposed set of sanctions should have a direct correlation to the specific infraction of a Respondent.

In light of the way in which the OJA’s investigation appears to have misled The Respondents leading up to and during the incident on May 8th, The Respondents’ positioning as victims of the hazing-related abuse to which the investigation itself was attempting to uncover, and the excessively long judicial process The Respondents underwent in response to the charges, the sanctions are disproportionate to the context of this offense. These Respondents acknowledged their mistakes, showed remorse, and took responsibility for their decisions. More appropriate sanctions at this point would consist of the hearing board’s amended essay prompts and an oral warning from the OJA.

Respectfully,

[REDACTED]

Student

**Cornell University Review Board  
June 25, 2019**

**In the Matter of** [REDACTED]

**Review Board Panel:**

**Student**

[REDACTED] (participating remotely)

**Faculty**

[REDACTED]

**Staff**

[REDACTED]

**Andrea J. Mooney, Chair**

**Appeal from decision of a panel of the University Hearing Board  
held on April 14, 2019, Tracey Hamler Carrick, Chair.**

**I. Background**

On March 6, 2018, [REDACTED] (Respondent) was notified by the Office of the Judicial Administrator (OJA) that he was to attend a meeting on March 8, 2018 at Day Hall as a "person with information regarding an alleged Campus Code of Conduct (Code) violation occurring in the Spring 2018 academic semester."

Respondent attended the meeting, where he signed a Witness Immunity Agreement and completed a questionnaire regarding "hazing" activities for new members of the Delta Phi fraternity. The investigation was into the hazing practices of the Delta Phi fraternity. Respondent was asked to give information as a victim of the hazing practices; at that point he was not accused of any violations of the Code. It is undisputed that Respondent was a victim of serious misconduct on the part of the fraternity.

On September 21, 2018, the OJA notified the Respondent that he was alleged to have violated the Code, specifically:

**Title Three, Art. III, Sec. A:**

- 2e. To furnish false information to the University with intent to deceive.**
- 3g. To destroy evidence or otherwise obstruct the application of this Code.**
- 3h. To assist another person to violate this Title.**

The specific allegations were with regard to the March 8, 2018 meeting, during which Respondent met with an investigator to complete an investigative questionnaire and to respond to interview questions. Respondent was alleged to have been untruthful in his responses to the questionnaire.

The Respondent and the OJA were unable to agree to a Summary Decision Agreement (SDA) and the matter was scheduled for a University Hearing Board. (UHB)

Because there were several other hazing victims who were also alleged to have been untruthful during the investigation of the hazing incident, there was a joint hearing on the merits with regard to eight Respondent, including the Respondent herein.

Respondent accepted responsibility for two of the three charges against him:

**Title Three, Art. III, Sec. A:**

- 2e. To furnish false information to the University with intent to deceive.**
- 3g. To destroy evidence or otherwise obstruct the application of this Code.**

The OJA did not argue the third charge (3h. To assist another person to violate this Title), so Respondent was found not responsible.

After this admission, the hearing proceeded to the Sanctions phase. After joint opening statements by several of the Respondents in the

matter, each Respondent received a private Sanctions hearing. In Respondent's hearing, he and the JA provided opening statements specific to his case; the Respondent answered questions, and both parties presented brief closing statements.

In large part, the Respondent's argument focused on his experience as a victim of hazing and on his inexperience and fright during the investigation, leading to his lack of honesty.

The UHB determined the following sanctions for the violations found:

- 1) UHB vote 3-2: Written Reprimand. A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable for six years after you graduate from Cornell University.
- 2) UHB vote 3-2: Disciplinary Probations. The probationary period is effective from the date of this decision and will remain in effect for one year. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes of the fall 2019 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
- 3) UHB vote 5-0: Research Paper. Research at least three sources in regards to hazing prevention, including one resource listed on Cornell Health's website.
- 4) UHB vote 5-0: Reflection Paper. Complete two five-page reflection papers on two of three suggested topics.
- 5) UHB vote 3-2: Letter to Self. Draft a letter to yourself with the intention of reading it five years from now.

In the written decision, the UHB provided rationales for the sanctions provided:

- 1) The Respondent accepted responsibility for his violation of the Code and expressed regret for presenting untruthful responses in the questionnaire and interview.
- 2) The UHB members acknowledged and expressed concern that the

Respondent is likely a victim of hazing and contemplated the role that resulting trauma may have played in his providing untruthful information. Ultimately, the UHB did not consider an oral reprimand sufficient but questioned the fact that they did not have discretionary jurisdiction to modify the reporting period of the written reprimand.

- 3) The UHB members found little sufficient evidence that a transcript or disciplinary notation would negatively impact Respondent's future academic and professional opportunities.
- 4) The UHB was concerned that the Respondent may have been confused as to the nature of the request to meet in the March 6, 2019 email from the OJA, but determined that the Respondent had ample opportunity to ask questions and clarify his role in the investigation. The UHB members also requested that the OJA consider if they might make future correspondence with witnesses more trauma informed.
- 5) Although the UHB members found one topic of the proposed research paper to be inappropriate, given that Respondent had already completed two of the three writing assignments, the UHB voted unanimously in favor of both the research and reflection papers proposed in the OJA's SDA.

One member of the UHB wrote an extensive dissenting opinion with regard to the sanctions provided to the Respondent. The thrust of the dissenting opinion was:

- 1) The precedent set by this case as to how the OJA treats victims of trauma and abuse;
- 2) The need for the OJA to make more clear to students, whether potential witnesses or respondents, the resources available to them as they navigate the investigative process; and
- 3) The sanctions imposed by the UHB are disproportionate to the offenses, in light of compelling mitigating factors.

## **II. The Present Appeal**

Respondent appealed the UHB decision, listing four grounds:

- 1) The UHB violated the fair application of the procedures established by the Board of Trustees, the University Assembly, or the UHB and such violation may have had a prejudicial effect upon the outcome of the hearing;
- 2) The UHB committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence;
- 3) New evidence was discovered after the hearing and could not have been readily been discovered before the hearing, and such evidence might have had an effect upon the outcome of the hearing;
- 4) The penalty and/or remedy imposed is unjust.

A duly constituted panel met at 9:00 a.m. on June 25, 2019 at the Law School to consider this appeal, with one member participating via Zoom.

## **III. The Decision**

- 1) As to grounds for appeal #3:

The new evidence that the Respondent seeks to offer are the reports of two psychologists who examined Respondent after the decision of the UHB had been reached and who spoke of the trauma Respondent experienced, both as a result of the hazing and as a result of the investigation.

The URB disagrees with Respondent's assertion that there was no opportunity for him to have provided the evidence before the UHB hearing. The Respondent received notice on November 18, 2018 that he would be the subject of a UHB. Even before that date, in September of 2018 Respondent knew that he was alleged to have violated the Code and was attempting to negotiate an SDA with the OJA. The psychological evaluations were not conducted until June of 2019. There was no reason Respondent could not have obtained psychological evaluations between September 2018 and the date of the UHB hearing,

May of 2019 and offered them as mitigating evidence in the Sanctions phase of the UHB hearing. Further, the OJA has had no opportunity to challenge the reports of the psychologists, and there is nothing in either report that is materially new or different information. Finally, the URB notes that one psychologist listed the material he reviewed in preparing his report. It appears that the psychologist was provided with the dissent to the UHB decision, but not the actual UHB decision, which seems to suggest that the psychologist had a skewed version of the proceedings in this matter.

**2) As to grounds for appeal #1:**

The URB does not agree with Respondent that the UHB violated the fair application of the procedures established by the Board of Trustees, the University Assembly, or the UHB and such violation may have had a prejudicial effect upon the outcome of the hearing. Respondent's objections here are that a year-long probation is recommended only in the context of a severe or three-time offender, and that the UHB failed to take into account the Respondent's "clean record." The URB agreed that the UHB had the right to impose probation as a sanction for the violations Respondent admitted to, but – for reasons stated below – the URB finds that the sanction is excessive.

**3) As to grounds for appeal # 2:**

The URB does not agree with Respondent that the UHB committed a prejudicial error in interpreting the Code or rendered a decision clearly against the evidence. As is shown in the UHB decision, each step of the process was followed, the specific violations of the Code were enumerated, and the UHB took into account Respondent's hazing experience and subsequent trauma. At the beginning of the process, in March of 2018, the Respondent received timely written notice of the matter to be discussed and the fact that he was being questioned as a witness. He was offered the information regarding the assistance of the Judicial Codes Counselor.

The sanctions imposed by the UHB were permissible under the Code. Indeed, in its decision, the UHB mentioned that it considered the imposition of an oral warning but determined that such a sanction was

not sufficiently severe. Respondent points to the language of the Code that states that a Respondent's prior conduct history be considered prior to sanctions and that a year-long probation is recommended only in the context of a severe or three-time offender. The JA points out, however, that the language is that the prior record "should" be considered (not must) and that a term of probation "ordinarily" should be considered for a third violation (not must). Thus, the URB does not agree that the UHB committed a prejudicial error in interpreting the Code or rendering a decision clearly against the evidence.

4) As to grounds for appeal #4:

The URB agrees with the Respondent that the probationary penalty imposed is unjust. The URB acknowledges and takes seriously that the Respondent was a victim of hazing and is undergoing or experienced the resulting effects. The URB considered that, given the trauma of the hazing Respondent experienced, and his subsequent fear and confusion, a one-year probationary period on top of a written reprimand are excessive.

The URB did agree with the UHB that an oral warning was too light a penalty given the seriousness of Respondent's Code violation. Nonetheless, the URB noted in its review of the penalties that the fraternity in question – the perpetrators of the hazing – received a suspension of only four years, while the Respondent – the victim of the hazing – was going to have the penalty on his record for a total of about eight years. This seemed unjust.

The URB also assumes that the Respondent himself will respond truthfully when asked in the future to reveal non-confidential information about his disciplinary record in college.

The URB therefore modifies the penalty in the interests of justice as follows:

- a) Removal of the one-year probationary period.
- b) Retention of the written reprimand, with the provision that the reprimand will remain on Respondent's record until he graduates from the University and not six years after he graduates.

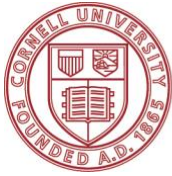
- c) Retention of all other sanctions imposed by the UHB, which include a research paper, two reflection papers and a letter to self.

Respectfully submitted,



Andrea J. Mooney  
Chair, University Review Board

**PUBLIC RECORD #8**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-08

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

Sanctions Only Hearing

**Procedural History**

On March 13, 2019, Cornell University student [REDACTED] (Respondent), was referred to the Office of the Judicial Administrator (OJA) for allegedly violating the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Section A.:

- 3g. to destroy evidence or otherwise obstruct the application of this Code.
- 
- 

At the conclusion of the OJA's investigation, the OJA proposed a summary decision agreement (SDA) to the Respondent. Though the Respondent and the OJA were able to agree on the violation(s) for which the Respondent is responsible, the Respondent and the OJA were unable to reach an agreement regarding sanctions. On April 16, 2019, the Respondent and the OJA were able to reach a stipulation of facts, which was submitted to the University Hearing Board (UHB) for its review. Per the Code, a duly constituted UHB convened on April 16, 2019, for a sanctions-only hearing.

Based on the agreed stipulation, the Respondent is responsible for violating the following Code provisions:

Title \_Three, Article II, Section \_A:

- 3g. to destroy evidence or otherwise obstruct the application of this Code.

**Relevant Facts**

Based on their stipulation, the Respondent and the OJA agree to the following facts:

- In a prior case, Respondent agreed to complete a set of sanctions. On February 28, 2019, the Office of the Judicial Administrator (OJA) advised the

Respondent that because he had failed to complete, in a timely manner, the sanction requirements from the earlier case, he was being charged with obstructing the application of the Campus Code of Conduct.

- The Respondent stipulated to the above facts but objected to the new proposed sanction of a letter of warning. Respondent argued that an oral warning would suffice because at the time of this hearing he had already completed the prior sanction requirements.

### **University Hearing Board Decision – Sanctions**

After the presentation of witnesses and information by both the Respondent and the OJA related to sanctions recommendations, and by a vote of three (3) to two (2), the UHB determined the following sanction<sup>1</sup> is appropriate for the violation(s) agreed:

1. Sanction : Written warning

### **Rationale for Sanction(s)**

The UHB's decision regarding its sanction determination is based on the following:

Prior cases of a similar nature ended with the sanction of a written warning. For the purposes of consistency, the UHB believed the recommended sanction in this matter was appropriate.

Respectfully submitted,

Rocco M. Scanza, Chair of the UHB

\_\_\_\_\_, Student

\_\_\_\_\_, Student

\_\_\_\_\_, Student

\_\_\_\_\_, Faculty

\_\_\_\_\_, Staff

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<sup>1</sup> Please utilize the Sanctioning Guidelines for Respondent as a reference for language.

**PUBLIC RECORD #9**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-09

**UNIVERSITY HEARING BOARD**

**COMPLAINANT**

Cornell University

**RESPONDENT**

[REDACTED]

Hearing on the Merits

On April 30, 2019, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Sec. A.

- 1.f. To haze another person, regardless of the person's consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.
- 1.g. To (1) endanger another person, including but not limited to such acts as: introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations; theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.
- 1.h. To endanger or to cause damage to or loss of property of another person.
- 1.i. To prevent a person from leaving a location (including part of the location, such as one part of a room) or to force a person to go to a location against his or her will. This is a violation whether accomplished through physical or psychological means.
- 2.g. To enter upon or make use of University or private property or facilities without authorization.

- 3.b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possessing alcohol with the intent to consume it while under the age of 21.
- 3.h. To assist another person to violate this Title.
- 3.i. To incite another person toward a likely and imminent violation of this Title.

## **Allegations**

On January 23, 2019, the Office of the Judicial Administrator (OJA) notified the Respondent of allegations of Campus Code of Conduct (Code) violations.

Specifically, it is alleged that in his capacity as [REDACTED], the Respondent hazed the Spring 2018 new members of Sigma Phi Epsilon by: (1) being present and overseeing the new member process and all new member activities; (2) picking up new members from the waiting room in the fraternity house for the initiation process; (3) leading the “name game” (which was played on 2-3 separate occasions lasting 2-3 hours each) where new members were asked to recite the names of brothers (current and new members) and if an incorrect answer was given, new members were instructed to start over, were scolded by current brothers and beer cans were thrown at new members by current brothers; (4) leading the Burning Heart event where reported behaviors include: (i) coordinating new members to be taken in cars to an off-campus location described as an open field of private, non-University owned property; (ii) instructing members of the new member class to bubble wrap two new members and then roll them in the grass and dirt for approximately 50 feet; (iii) instructing new members to run towards a tree line in the field, while shooting a pellet gun at new members; (iv) instructing new members to blindfold themselves, line up and walk to a cabin approximately one hundred yards in distance where new members were guided to the cabin by holding the shoulders of the individual in front of them; (v) instructing new members at the cabin to consume alcohol, vinegar and hot dogs; (vi) upon discovering new members were throwing hot dogs out of the cabin’s window, paddling new members with a wooden paddle as punishment; (vii) instructing the “pledge class president” to paddle other members of the new member class as punishment; and, (viii) instructing new members to “take down a tree” and carry the tree to another location for a fraternity ritual; (5) supervising the Sound Body event where new members engaged in physical exercises including, but not limited to push-ups, sit-ups, wall-sits, etc.; and (6) distributing punishment to new members that involved cleaning the fraternity house.

## **Procedural History**

On March 21, 2019, the OJA proposed a summary decision agreement (SDA) to the Respondent. The matter was not resolved by a SDA, and per the Code, on March 26, 2019, the Respondent was notified that a UHB hearing would be scheduled with Chair Tracy Carrick.

A duly constituted UHB hearing was scheduled to convene on Tuesday, April 30, 2019 14 at 4:30pm for a Hearing on the Merits.

## Pre-hearing Decisions

On April 25, 2019, the Respondent submitted seven Pre-Hearing Objections.

1. The Respondent's objections to OJA's Procedural Exhibit 1 and Substantive Exhibits 7 and 12 were denied on the grounds that Procedural Exhibit 1 was relevant as this incident report led to the Respondent being placed on notice, and Substantive Exhibit 12 was relevant given the Respondent's role as the [REDACTED]. The OJA agreed to remove Substantive Exhibit 7.
2. The Respondent's objections to OJA's Procedural Exhibits 28, 34, 35, and 36 were denied on the grounds that the exhibits demonstrate the OJA's proper application of the Code.
3. The Respondent objected to OJA's Substantive Exhibits 5, subsections 2, 3, 4, and 5. The OJA agreed to remove Substantive Exhibits 5, subsections 2, 3, 4, and 5.
4. The Respondent objected to OJA's Substantive Exhibits 7, 8, and 9. The OJA agreed to remove was Substantive Exhibits 7, 8, and 9 from the exhibit packet, and was granted the opportunity to introduce the exhibits at hearing for impeachment purposes only, at which time Respondent could renew objections.
5. The Respondent's objections to OJA's Substantive Exhibits 2, 3, 10, 11, and 12 were denied on the grounds that the exhibits provided relevant background information given the Respondent's role as [REDACTED] at the time of the OSFL investigation.
6. The Respondent's objected to OJA's Sanctions Exhibits 3 and 4. The objection to Sanctions Exhibit 4 was granted on the grounds that it was not relevant. The OJA agreed to remove Sanctions Exhibit 3.
7. The Respondent's objections to OJA's Sanctions Exhibits 6-11 were denied on the grounds that these previous UHB decisions appeared relevant to the charges before the panel; the UHB may feel equally compelled to agree or disagree with past UHB decisions as they consider the facts and conditions presented in a hearing.

On April 25, 2019, the OJA submitted four Pre-Hearing Objections.

1. The OJA's Objection to Respondent's Witness was granted on the grounds that testimony from Lieutenant [REDACTED] was not relevant for the merits phase of the hearing. The Respondent agreed to only call upon this witness during the sanctions phases of the hearing.
2. The OJA's Objection to Respondent's Exhibit A was denied on the grounds that the witness statements appeared relevant to the charges before the panel; the OJA can present concerns about reliability at a hearing.
3. The OJA's Objection to Respondent's Exhibit C was granted on the grounds that the Respondent's academic transcript was not relevant for the merits phase of the hearing. The Respondent agreed to limit the exhibit to the sanctions phases of the hearing.

4. The OJA's Objection to Respondent's Exhibit D was granted on the grounds that the letter from this proposed witness was not relevant for the merits phase of the hearing. The Respondent agreed to limit the exhibit to the sanctions phases of the hearing.

On April 25, 2019, the OJA submitted two Pre-Hearing Motions.

1. The OJA's Motion for Anonymous Testimony was denied on the grounds that the proposed system of anonymous testimony was inconsistent with Code provisions regarding the Respondent's right to question witnesses and confront accusers.
2. The OJA's Motion to Consolidate Testimony was granted as the Respondent did not contest the OJA's stipulation that witnesses be called once during the Hearing on the Merits.

The Respondent filed three Pre-Hearing Motions concerning jurisdiction. The Chair denied the motions because they arrived at 3:30pm on April 26, 2019 after the agreed upon deadline for such motions. As the Code clearly provides for the possibility of jurisdictional arguments at the hearing (Title Three, Article III, Section E, 9. a.)), the Chair left open the possibility for the Respondent to present jurisdictional defenses at the onset of the hearing.

### **University Hearing Board Decisions | Hearing on the Merits**

The Hearing commenced at 4:38pm on Tuesday, April 30, 2019. After the hearing was called to order but before the OJA read the charges onto the record, the Chair asked the parties to present jurisdictional arguments on the timeliness of events included in the charges. Specifically, the Respondent argued that because the formal charge letter was dated March 26, 2019, events that occurred before March 26, 2018 should be excluded from consideration. After nearly an hour of deliberations, the UHB set forth a unanimous decision that in the absence of an extension request, matters that occurred before March 26, 2018 were not properly before the Board.

At 5:36pm on Tuesday, April 30, 2019, the hearing continued and the OJA read the charges against the Respondent.

The Respondent renewed his objections to OJA's Substantive Exhibits 2, 3, 10, 11, and 12. The exhibits document the adjudication of hazing allegations against the then recognized Cornell chapter of Sigma Phi Epsilon by the Office of Sorority and Fraternity Life (OSFL), the organization the Respondent belonged to. The Respondent argued that the inclusion of the exhibits would be unfair as they pertain to an investigation, fact-finding, and appeal process that was completely outside of the case before the UHB. The members of the UHB panel unanimously denied the objections on the grounds that the exhibits provided relevant background information given the Respondent's role as [REDACTED] at the time of the OSFL investigation.

At 5:50pm, the OJA and the Respondent provided opening statements.

The OJA presented three witnesses. OJA witnesses [REDACTED] and [REDACTED], both members of the 2018 new member class, provided testimony and answered questions primarily

on events that occurred on May 5, 2018 during an event called “Burning Heart.” They testified that, over the course of several hours, members of the new member class were dropped off at an off-campus location without cell phones; wrapped in bubble wrap and rolled on the ground; instructed to run several dozen yards to a tree line while the Respondent fired an Airsoft gun; blindfolded and led to a cabin where they were instructed to eat hot dogs and drink vinegar and alcohol; paddled on their backsides and instructed to paddle each other; and tasked with uprooting a tree and carrying it several yards to join senior members of Sigma Phi Epsilon around a heart-shaped fire. As the [REDACTED], the Respondent supervised this event. Other senior members of the organization were present only at the beginning of the event when they dropped off new members, and again at the end of the event when they met up with new members around the “burning heart” and then drove them home.

OJA witness [REDACTED], Director of the Skorton Center for Health Initiatives, provided expert testimony on hazing. He offered a definition of hazing; explained its risks, consequences, and impacts on both individuals and the larger community; and answered general questions.

The Respondent presented five witnesses. [REDACTED], [REDACTED], and [REDACTED], all members of the 2018 new member class provided further testimony and answered questions about the events that occurred on May 5, 2018 at the “Burning Heart” event. [REDACTED], president of the organization during the Spring 2018 semester and [REDACTED], continuing member of the organization, provided testimony and answered questions about another event, [REDACTED]

After the OJA and the Respondent presented closing statements, because of the late hour, 12:52am on Wednesday, May 1, the Chair adjourned the Hearing on the Merits.

On Thursday, June 2 at 9:15pm, the members of the UHB panel reconvened to deliberate the merits of the case. After considering all relevant information, the UHB found the Respondent in violation of the following Code provisions:

Title Three, Article II, Sec. A.

- 1.f. To haze another person, regardless of the person’s consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.
  - Vote count: 5
  - Dissent: 0
  - RESPONSIBLE

- 1.g. To (1) endanger another person, including but not limited to such acts as: introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations; theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.
  - Vote count: 4
  - Dissent: 1
  - RESPONSIBLE
- 1.h. To endanger or to cause damage to or loss of property of another person.
  - Vote count: 0
  - Dissent: 5
  - NOT RESPONSIBLE
- 1.i. To prevent a person from leaving a location (including part of the location, such as one part of a room) or to force a person to go to a location against his or her will. This is a violation whether accomplished through physical or psychological means.
  - Vote count: 1
  - Dissent: 4
  - NOT RESPONSIBLE
- 2.g. To enter upon or make use of University or private property or facilities without authorization.
  - Vote count: 0
  - Dissent: 5
  - NOT RESPONSIBLE
  - OJA Withdrew
- 3.b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possessing alcohol with the intent to consume it while under the age of 21.
  - Vote count: 5
  - Dissent: 0
  - RESPONSIBLE
- 3.h. To assist another person to violate this Title.
  - Vote count: 5
  - Dissent: 0
  - RESPONSIBLE

- 3.i. To incite another person toward a likely and imminent violation of this Title.
  - Vote count: 5
  - Dissent: 0
  - RESPONSIBLE

On Friday, May 3 at 5:03pm, the Chair emailed the UHB decisions the Respondent.

The UHB based their findings on their judgment that the witness testimony presented by the five members of the 2018 new member class (two OJA witnesses and three Respondent witnesses) provided clear and convincing evidence that:

- 1) the “Burning Heart” event occurred on May 5, 2018;
- 2) the Respondent was the only continuing member of Sigma Phi Epsilon present for the majority of activities held during the “Burning Heart” event;
- 3) as the [REDACTED], the Respondent supervised and directed the activities that occurred at the “Burning Heart” event;
- 4) the Respondent directed activities that a reasonable person would consider hazing insofar as they endangered the physical health and/or humiliated, demeaned, or intimidated members of the 2018 new member class (Title Three, Article II, Sec. A. 1. f.);
- 5) the Respondent instructed the members of the 2018 new member class to consume alcohol or other substances to excess (Title Three, Article II, Sec. A. 1. f.);
- 6) the Respondent endangered the safety of others by threatening members of the 2018 new member class with an Airsoft gun as they ran to a tree line as directed by the Respondent, and intimidated and used physical force by paddling members of the 2018 new member class when they threw hot dogs out of a window instead of eating them as instructed (Title Three, Article II, Sec. A. 1. g.);
- 7) the Respondent provided alcohol to members of the 2018 new member class, none of whom were of legal drinking age (Title Three, Article II, Sec. A. 3. b.);
- 8) alcohol was present throughout this event that was supervised by the Respondent (Title Three, Article II, Sec. A. 3. h.);
- 9) the Respondent directed, either implicitly or explicitly, members of the 2018 new member class to paddle each other and to consume alcohol and other substances to excess (Title Three, Article II, Sec. A. 3. i.).

## **University Hearing Board Decisions | Sanctions**

The hearing was set to reconvene for the Sanctions phase on Thursday, May 9, 2019.

On Tuesday, May 7, 2019 at 5:46pm, the Respondent submitted a Motion to Amend the Witness List as an originally proposed witness, Lieutenant [REDACTED], had been deployed out of the country and would not have reliable access to provide remote testimony. The motion was granted with no objections from the OJA, and Sergeant First Class [REDACTED] was added to the witness list to replace LTC [REDACTED].

In response to the Respondent’s Motion to Amend the Witness List, the OJA requested that Respondent’s Exhibit D, a letter penned by LTC [REDACTED], should be excluded. The Chair denied the OJA’s request and allowed LTC [REDACTED]’s letter to be included as an exhibit on the grounds that

the members of the UHB panel could ably assess the reliability of LTC [REDACTED]'s letter without witness testimony to accompany it.

At 8:07pm on Thursday, May 9, the hearing reconvened for the Sanctions phase. The OJA presented an opening statement that detailed the process for considering appropriate sanctions for Code violations, explained the sanctions being recommended, and argued that the documented behavior warranted the severity of the proposed sanctions. Specifically, the OJA explained the proposed length of suspension of three years by directing the members of the UHB to consider previous UHB decisions with similar fact patterns. The OJA questioned the Respondent's willingness and ability to accept responsibility for his actions, arguing that even after several semesters of formal ROTC leadership training, the Respondent still behaved as he did at the "Burning Heart" event that occurred on May 5, 2018.

The Respondent proceeded directly to providing his testimony. He accepted responsibility for his actions at the "Burning Heart" event on May 5, 2018, and began by describing the unique challenges he would endure if a three-year suspension was determined: his ROTC contract required that he complete his program within a four-year period, and if he failed to do so, he would be required to pay back the U.S. Military or to enroll as a enlisted soldier. Instead, he appealed to the members of the UHB for a one-semester suspension, explaining that Lieutenant Colonel [REDACTED] had authorized continued ROTC enrollment after a one-semester suspension provided that he could complete his studies by the end of the Spring 2020 semester. The Respondent further explained that because of his good academic standing, he could effectively complete this degree at the end of the Spring 2020 semester by dropping his minor in [REDACTED] and doubling up on his required ROTC leadership courses.

The Respondent then described his role in Sigma Phi Epsilon and his actions at the "Burning Heart" event on May 5, 2018. The Respondent explained that he had been selected to be [REDACTED], the continuing member responsible for new member activities, because he was considered sociable and kind, and that his job was to receive input from everyone in the organization, especially the [REDACTED], to create a new member program plan for the Spring of 2018. With respect to the "Burning Heart" event, the Respondent expressed regret and claimed to have offered individual apologies to each member of the 2018 new member class. He also explained that, when designing the 2018 new member program, he tried to pull back on some of activities that he himself had experienced as a new member, but he acknowledged that he could have done more, specifically that he should not just have gone along with others in at least two instances. On May 5, 2018, for instance, when the paddle and Airsoft gun were given to him by other members of the organization, he should have refused to bring or use them. He also acknowledged that, even though, it is just how its done in fraternity culture, he could have reduced risks by not allowing alcohol at the event because, he realizes now, simply having it present creates an expectation.

The OJA presented a brief closing statement, defending the proposed sanctions as appropriate given both the egregiousness of the offenses and current procedural norms, and asking members of the UHB to consider the Respondent's ability to lead at Cornell and in the U.S. Military given his lack of recognition and understanding of the inappropriateness of his actions.

In the Respondent's closing statement, the Respondent's advisor characterized the events of May

5, 2018 as thoughtless, reckless, and risky, but without evidence that anyone appeared to be harmed, or that the Respondent had acted maliciously or with intent to harm or threaten. He explained that the Respondent was pantomiming what he had witnessed and what had been done to him as a new member. The Respondent's advisor argued that, given the Respondent's reliance on the ROTC scholarship, any suspension period greater than one semester was effectively a dismissal, and asked that the members of the UHB find sanctions appropriate to the offense, to the harm actually caused, to the person, and to the material consequences of the sanctions.

The UHB determined the following sanctions are appropriate for the violations found:

1. **UHB Vote 5-0 Written Reprimand.** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be permanently reportable.
2. **UHB Vote 4-1 Suspension from Cornell University.** As required by the Code, the OJA sought and was granted permission to present suspension as an appropriate sanction in your case. The Hearing Board chair stated on March 7, 2019 that a suspension was in the acceptable range of sanctions for the conduct in this case. You are suspended from and will leave Cornell University for one semester, effective August 29, 2019. You will be eligible to return for the Spring 2020 semester only upon verification of completion for the remaining sanctions in this agreement. During this period of suspension, you will not take any classes at Cornell, on any of Cornell's campuses, or through any of Cornell's study-abroad programs. While on suspension, you may not earn academic credit at Cornell or elsewhere toward completion of a Cornell degree. You agree to participate in the OJA Circles of Support and Accountability: Suspension Reintegration Program while on suspension. A persona non grata (PNG) will be put in place during your suspension and you will contact Cornell University Police before returning to Cornell to request the PNG be amended or lifted. A transcript notation will be placed on your official transcript, consistent with the policies of the Office of the University Registrar.
3. **UHB Vote 5-0 Deferred Dismissal.** As required by the Code, the OJA sought and was granted permission to present dismissal as an appropriate sanction in your case. The Hearing Board chair stated on March 7, 2019 that a Dismissal was in the acceptable range of sanctions for the conduct in this case. However, the Dismissal will be deferred unless and/or until you fail to comply with the terms of this agreement or violate the Code before graduation. If there is full compliance with this agreement and there are no future violations of the Code, the Dismissal will not take effect. The Dismissal shall be triggered for any conduct that is a violation of the Code.

If the Dismissal is triggered, it will be imposed as follows: -The Dismissal will be permanent; -The Dismissal would commence immediately upon a finding of "Responsible" for the violation(s); -Upon Dismissal, you will not be on Cornell University property. A persona non grata (PNG) will be issued by the Cornell University Police; -A transcript notation will be placed on your official transcript, consistent with the policies of the Office of the University Registrar.

4. **UHB Vote 5-0 Disciplinary probation.** The probationary period is effective immediately and will remain in effect until you graduate from Cornell University. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes during the Spring 2020 semester. During your first full semester on probation, you agree to participate in the OJA probation meeting program.
5. **UHB Vote 0-5 Reflection Paper.** Complete a five-page reflection paper on the following topic: List all of the new member activities for the Sigma Phi Epsilon Spring 2018 New Member class. Identify the activities that would meet the definition of hazing under the Code. Identify for each of these activities an alternative activity that would accomplish the intended goal of the activity and would not constitute hazing under the Code. The reflection paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around.
6. **UHB Vote 0-5 Reflection Paper.** You agree to complete a reflection paper on the following topic: What are the values of Sigma Phi Epsilon and from where do these values originate? What do these values mean to you? How were your actions as the [REDACTED] inconsistent with the values of Sigma Phi Epsilon? How were your actions inconsistent with the values of the other organizations for which you are a member? Identify five of your personal values. Identify a role model in your life who helped shape these values. Discuss how this role model would react if they learned of your actions in this situation and how were your actions inconsistent with what this role model taught you about your values? The reflection paper must be at least ten pages, double spaced, 12-point font, Times New Roman font with one-inch margins all around.
7. **UHB Vote 5-0 Movie Discussion.** Identify an individual you believe role models characteristics of discipline. Then, watch The Stanford Prison Experiment (2015). After you do both, schedule a one-hour meeting with a representative from the OJA, the Office of Sorority and Fraternity Life, the Skorton Center for Health Initiatives, or an OJA-approved representative of Student and Campus Life to discuss the film generally, but also specifically about the leadership taken by some of the prison guards while other guards took a more passive role and the impact of their actions on the prisoners and their experience. During the conversation, be prepared to identify the hypothesis tested in the Stanford Prison Experiment and how what was learned applies to the context of a group that engages in hazing practices. Your movie discussion must be completed by March 2, 2020.
8. **UHB Vote 5-0 Restriction from joining a Cornell-affiliated Greek organization/group.** You agree to not join another Cornell-affiliated Greek organization for the remainder of your tenure as a student at Cornell University.
9. **UHB Vote 5-0 Research Paper and Personal Reflection Paper.** Complete a research paper of 10-12 pages on hazing in the military. It should include at least 10 reliable and substantive sources. In a separate personal reflection paper of at least 5 pages, consider

further the following prompt: Given that, upon graduating from Cornell University, you anticipate holding a significant leadership role in the U.S. Military, consider both 1) how you will use what you discover in your research to inform your decisions and work to resist and change any hazing-related incidents you may experience or witness, and 2) how you will use your research and experiences at Cornell to influence the kind of military leader you will become. Both papers must be presented in 12-point, Times New Roman font with one-inch margins all around. The research and personal reflection papers must be submitted by January 21, 2020.

10. **UHB Vote 5-0 Community Service and Personal Reflection Paper.** During your time away from campus, you must complete at least 80 hours of community service. Upon completing your community service, you will compose a reflection paper of at least 5-7 pages in which you describe a meaningful community-building moment from your community service experience and explain why and how it had an impact on you. The reflection paper must be presented in 12-point, Times New Roman font with one-inch margins all around. Your community service must be completed by January 1, 2020. Your personal reflection paper must be submitted by January 21, 2020.

Any sanctions listed above that require a submission to the OJA should be sent electronically to [judadmin@cornell.edu](mailto:judadmin@cornell.edu).

Please note it is your responsibility to request an extension for any sanction due dates you agreed to above prior to the sanction's due date. To request for an extension, you must e-mail the case handler you worked with in reaching this agreement to request the extension in writing. If the extension is granted, you will be notified by e-mail. The OJA reserves the right to approve or deny your request for an extension.

### **Rationale for Sanctions**

The UHB's decision regarding its sanctions determinations is based on the following:

1. The UHB members felt that the Respondent accepted Responsibility in good faith for his violations of the Code.
2. Although the UHB members realize that a three-year suspension is likely procedurally correct, they understand that, for this Respondent, a suspension period of more than one semester is essentially equivalent to dismissal. They also understand that a suspension period of more than one semester would not just impact the Respondent's academic progress; it would also significantly and materially impact his future, as the Respondent would either need to repay the U.S. Military for his scholarship expenses (a significant financial burden) or to report for active duty at a time when the U.S. Military is in great need of enlisted soldiers.
3. The UHB members further discussed the proposed sanction of a three-year sanction by considering the underlying purposes of suspension and reasoned that it serves at least two: punitive and protective. Because they did not consider the Respondent to be an ongoing danger to the Cornell community, the UHB members did not feel compelled to assign an extended suspension for his violations of the Code.

4. The UHB member who voted against the one-semester suspension argued that the Respondent should be sanctioned with the proposed three-year suspension, as he knew what he was agreeing to when he signed his ROTC contract.
5. The UHB members acknowledged how difficult it is to change a deeply embedded culture of hazing, and while they found it necessary to hold this student accountable with punitive sanctions, they consider proactive hazing-prevention efforts most essential and strongly appeal to the University to deepen and further bolster these efforts.
6. The UHB members found minimally useful the topic of the first proposed Reflection Paper. Given that the Respondent will soon begin a career in the U. S. Military, members of the UHB argued that it was not useful for the Respondent to name and reflect upon the hazing activities he witnessed and participated in as a member of Sigma Phi Epsilon. They voted unanimously against the sanction requiring the Respondent to write this Reflection Paper and proposed instead and voted unanimously for a revised educational sanction titled "Research Paper and Personal Reflection Paper" in which the Respondent will look forward to conduct research on the topic of hazing in the Military and to consider how he will work for change as a leader in the U.S. Military.
7. The UHB members also found minimally useful the topic of the second proposed Reflection Paper. Given that the Respondent will spend only one more semester at Cornell, members of the UHB voted unanimously against the sanction requiring the Respondent to write a Reflection Paper on the values of Sigma Phi Epsilon, and proposed instead and voted unanimously for a revised educational sanction titled "Community Service Paper and Personal Reflection Paper" in which the Respondent will use his time away from campus completing substantial community service to explore, through experiential learning, ways in which people create meaningful relationships within communities.

Respectfully submitted,



Tracy Hamler Carrick  
Chair of the UHB

on behalf of

██████████, Faculty

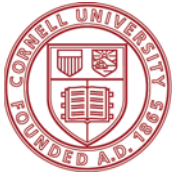
██████████, Staff

██████████, Student

██████████, Student

██████████, Student

**PUBLIC RECORD #10**  
**Maxient Case #** 



Cornell University

**INTERNAL USE ONLY:**

Maxient case #: [REDACTED]

Public record #: 2019-10

## UNIVERSITY HEARING BOARD

### COMPLAINANT

Cornell University

### RESPONDENT

[REDACTED]

Hearing on the Merits

### Procedural History

On December 3, 2018, a "Cornell University Residential & New Student Programs or West Campus House System Concern Report" was filed by [REDACTED] Resident Advisor on North Campus, describing an incident that occurred while she was doing rounds in High Rise 5 on November 30, 2018. She reported that she smelled "ganja" and followed the smell to room [REDACTED]. She had the residents of the room, including the Respondent, return to the room where the Respondent revealed that he had a bong and said that he had just finished smoking. The OJA made several attempts by email (emails dated January 16, 2019, January 22, 2019, January 28, 2019, and February 1, 2019) to schedule an appointment for the Respondent to meet with the OJA to discuss the alleged violation without response from the Respondent. The OJA determined that there was reasonable cause to believe that the Respondent had violated the following Code provision:

Title Three, Article II, Section A:

- 3.d. To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances as defined by state or federal law.

The OJA sent a letter by email on February 1, 2019 notifying the Respondent of this charge and scheduling a meeting with the Respondent for February 20, 2019, which the Respondent did not attend. On March 5, 2019, the OJA sent by email a proposed Summary Decision Agreement to the Respondent with no response. Accordingly, the OJA referred the case to the University Hearing Board (UHB) on March 11, 2019 and on March 14, 2019 a letter was sent by email from the OJA to the Respondent confirming the hearing for May 3, 2019 starting at 4:00 PM in Day Hall 163. A letter was sent by email from the OJA to the Respondent on March 19, 2019 outlining the OJA's proposed timeline for exchange of witnesses and exhibits and prehearing objections, motions, and responses by the other party prior to the hearing. Lacking any response from the Respondent, on March 22, 2019 the OJA sent a letter by email to the Respondent establishing the timeline proposed on March 19, 2019.

Accordingly, a duly constituted University Hearing Board (UHB) convened on May 3, 2019 for a Hearing on the Merits.

### Allegations

It is alleged that the Respondent possessed and/or smoked marijuana.

### **Pre-hearing Decisions**

Per the timeline established by the OJA and sent to the Respondent on March 23, 2019, the OJA submitted proposed witnesses and exhibits to the Respondent on April 29, 2019. The OJA also submitted a pre-hearing objection on April 29, 2019 to all witnesses and/or exhibits that the Respondent may have submitted in the future, based upon the perspective of the OJA that the Respondent had not submitted witnesses and/or exhibits by the noon deadline on April 29, 2019. The UHB Chair waited for the prehearing deadlines as specified by the Code for exchange and objections/motions to lapse and then denied the objection filed by the OJA based upon the opinion that the timeline established by the OJA was in advance of that specified by the Code and did not appear to have been agreed to by the Respondent; however, the issue was moot in that the deadlines for pre-hearing objections and motions as established by the Code passed without any communication from the Respondent.

### **University Hearing Board Proceedings and Decision**

The UHB panel and the AJA convened and began proceedings shortly after the scheduled start time of 4:00 PM on Friday, May 3, 2019. The Respondent did not appear for the Hearing, so the UHB panel first considered the provisions made by the Code when the accused does not appear (Title Three, Article III, Section E; 5) and determined by consensus that the OJA had made sufficient efforts to communicate with the Respondent; therefore, the Hearing would proceed without the Respondent present. At the beginning of the hearing, the AJA was provided the opportunity to renew his pre-hearing objection, which he declined to do.

Following the opening statement by the AJA, the AJA called [REDACTED] Resident Advisor of [REDACTED] and [REDACTED] as his only witness. She provided testimony and was asked questions by the UHB panelists.

The AJA made his closing statement. The UHB panelists were offered the opportunity to ask final questions and the UHB panel went into private session to deliberate its decision.

Following deliberation, the UHB found the Respondent **RESPONSIBLE** by a vote of 4 to 0 for the following charge under the Code:

Title Three, Article II, Section A:

- 3.d. To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances as defined by state or federal law.

### **Rationale for Findings**

The UHB's decision regarding its determination was based upon the following:

The unanimous view of the panel was that the witness provided credible testimony that supported the information contained in the original Concern Report. Furthermore, the witness indicated that she had recently (within the past several days) seen the Respondent, confirming for the panel that he indeed is on campus. The UHB panel requested that it be stated for the record in this decision that a comment that the witness made with regard to this incident not being the first involving that room was disregarded by the UHB and not considered at all in coming to its decision.

## **Sanctions phase**

The AJA presented his sanctioning arguments, referring to Sanctioning Exhibits 1 (general OJA Case Analysis procedures) and 2 (proposed Summary Decision Agreement dated March 5, 2019).

Following a final opportunity for questions from the UHB panel of the AJA, the UHB went into private session to deliberate sanctions.

## **Sanctions**

Following deliberation, the UHB determined by a 4 to 0 vote that the following sanctions are appropriate for the violation found:

- 1. Written Reprimand:** A disciplinary record will be maintained consistent with University policies. A disciplinary record for this matter will be reportable until the Respondent graduates from Cornell University.
- 2. Alcohol and Other Drug Level 1 - BASICS:** Complete Brief Alcohol Screening and Intervention for College Students (BASICS) alcohol/drug education sponsored by Cornell Health. This includes: contacting Cornell Health within seven days after receipt of this decision to schedule an appointment with a facilitator by either a) calling 607-255-5155 and press option 3 or b) scheduling an appointment through the on-line Cornell Health (CH) student portal. You agree to complete the BASICS program by September 6, 2019, including completing evaluations requested by Cornell Health. If you fail to contact Cornell Health, miss any meeting, or fail to complete your BASICS education, you may be required to pay fees according to Cornell Health's policies.
- 3. Reflection Paper:** Complete a five-page reflection paper on the following topic:
  - (1) What was most impactful to you during your BASICS session?
  - (2) What was your true objective during the incident?
  - (3) Did you consider the consequences?
  - (4) Do you feel that this incident might influence your future decision-making? If so, how?

The reflection paper should be double spaced, 12-point font, Times New Roman font with one-inch margins all around. This paper must be submitted to the OJA by September 6th, 2019. The paper should be sent via email to [judadmin@cornell.edu](mailto:judadmin@cornell.edu) and include in your email that this case was in the portfolio of AJA [REDACTED]

## **Rationale for Sanctions**

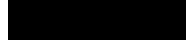
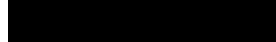
The UHB's decision regarding its sanctions determinations is based on the following:

1. The sanctions were viewed as appropriately educational and supportive of personal growth of the Respondent.

Respectfully submitted,



Thomas R. Overton, Chair (nonvoting) of the UHB, on behalf of:

 Student  
 Student  
 Student  
 Staff member  
(faculty member not available for panel)

**Cornell University Review Board**  
**June 25, 2019**

**In the Matter of** [REDACTED]

Review Board Panel:

Student

[REDACTED] (participating remotely)

Faculty

[REDACTED]

Staff

[REDACTED]

Andrea J. Mooney, Chair

Appeal from decision of a panel of the University Hearing Board, held on  
May 3, 2019, Thomas R. Overton, Chair.

**I. Background**

After several attempts to contact [REDACTED] (Respondent) with regard to an alleged incident on November 30, 2018 of smoking "ganja" in a residence on North Campus, the Office of the Judicial Administrator (OJA) determined that there was reasonable cause to believe that the Respondent had violated the following Code provision:

Title Three, Article II, Section A:

3d. To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances as defined by state or federal law.

The OJA then sent a letter scheduling a meeting, which Respondent did not attend. The OJA then sent a proposed Summary Decision Agreement (SDA), to which the Respondent did not respond. The OJA then referred the case to the University Hearing Board (UHB). Despite having notice of the hearing on May 3, 2019, the Respondent did not appear for the hearing. The UHB proceeded with the hearing in accordance with the provisions provided in the Code for when the accused does not appear and determined by consensus that the OJA had made sufficient efforts to communicate with the Respondent.

The UHB found the Respondent responsible by a vote of 4 to 0 for the charge alleged, having found that the sole witness had provided credible testimony.

The UHB provided the following sanctions:

- 1) Written reprimand
- 2) Alcohol and other drug level 1 – BASICS program
- 3) Reflection paper

The Respondent then filed an appeal request, with an email stating: “I am not filing this request to appeal the Hearing Board’s decision; rather, I am filing it to appeal that remedies that were imposed on me. Specifically, I would like to make a video reflection instead of a writing a reflection paper.”

The Judicial Administrator responded to the Respondent, informing him that she would forward the appeal to the University Review Board (URB) Chair, and asking whether he was planning to submit any additional information. The JA also provided the Respondent with information regarding the Office of Judicial Codes Counselors and informed him that this was a free resource to assist him.

Respondent replied: “I do not feel that writing a reflection paper is unjust or that I am deserving of a light punishment.” Respondent then stated that he thought that a three-minute video reflection would be more focused on the task of analyzing his behavior and how it has impacted his peers.

The Judicial Administrator responded that she does not have the authority to change the sanction but that the way to change or modify any decision of the UHB is through an appeal.

The matter was then referred to the URB and the JA filed a response brief.

## **II. The Present Appeal**

A properly constituted panel of the University Review Board met on June 25, 2019. The panel members determined that a five-page reflection paper is a proper penalty for the Code violation and upheld the UHB decision. Particularly as the Respondent himself stated that he did not feel that his punishment is unjust, there is no reason to disturb the UHB decision.

Respectfully submitted,

A handwritten signature in black ink, reading "Andrea J. Mooney". The signature is written in a cursive, flowing style.

Andrea J. Mooney  
Chair, University Review Board

## **Appendix D: Codes, Code Changes, and Procedures of the University Hearing Board and the University Review Board**<sup>22</sup>

During academic year 2019, one version of the Campus Code of Conduct governed the University community:

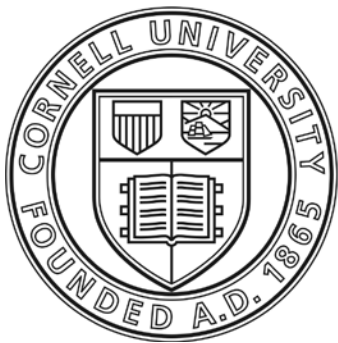
- Code (As of June 20, 2018).

In addition to the procedures of the University Assembly regarding the Code, a copy of the Code has been sent to the OJA Cornell University Archives, and will remain digitized and available in the OJA.

<sup>22</sup> While the OJA does not retain ownership or control of these documents, they were added to this report for completeness.

# Campus Code of Conduct

*As of June 20, 2018*



Cornell University



# **CAMPUS CODE OF CONDUCT**

**approved by the University Assembly on April 23, 2008**

**adopted by the Board of Trustees on May 24, 2008**

**amendments approved on 12 June 2009, 17 May 2011, 27 June 2011, 22 April 2012,  
8 June 2012, 28 August 2014, 26 September 2014, 23 January 2017, 20 June 2018**

## **Summary of Contents**

|                                                                                                                            |    |
|----------------------------------------------------------------------------------------------------------------------------|----|
| TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES.....                                                                       | 1  |
| Article I.    Fundamental Principles.....                                                                                  | 1  |
| Article II.   Supporting Policies .....                                                                                    | 2  |
| Article III.  Responsible Speech and Expression.....                                                                       | 5  |
| Article IV.  Amendment of Code.....                                                                                        | 9  |
| TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM .....                                                                | 10 |
| Article I.    Judicial Jurisdiction .....                                                                                  | 10 |
| Article II.   Judicial Offices .....                                                                                       | 11 |
| Article III.  Judicial Participants .....                                                                                  | 14 |
| Article IV.  Judicial Boards.....                                                                                          | 15 |
| TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL<br>ENVIRONMENT .....                                               | 16 |
| Article I.    Applicability .....                                                                                          | 16 |
| Article II.   Violations .....                                                                                             | 17 |
| Article III.  Procedures.....                                                                                              | 20 |
| Article IV.  Penalties and Related Provisions .....                                                                        | 34 |
| TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER.....                                                               | 37 |
| Article I.    Applicability .....                                                                                          | 37 |
| Article II.   Violations .....                                                                                             | 38 |
| Article III.  Procedures.....                                                                                              | 39 |
| Article IV.  Penalties and Related Provisions .....                                                                        | 40 |
| APPENDIX A: Additional Policies Appended To the Code.....                                                                  | 41 |
| Article I.    17 May 2011 Motion Regarding Procedures for Violations Involving Sexual<br>Violence and Sexual Assault ..... | 41 |

Latest version available online: [www.dfa.cornell.edu/policy/policies/campus-code-conduct](http://www.dfa.cornell.edu/policy/policies/campus-code-conduct)

## Table of Contents

|                                                                                               |    |
|-----------------------------------------------------------------------------------------------|----|
| TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES.....                                          | 1  |
| Article I. Fundamental Principles.....                                                        | 1  |
| A. The Essential Purpose .....                                                                | 1  |
| B. The University’s Role .....                                                                | 1  |
| C. The Principle of Freedom with Responsibility .....                                         | 2  |
| Article II. Supporting Policies .....                                                         | 2  |
| A. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement..... | 2  |
| B. Other Policies on the University’s Role in Public Law Enforcement.....                     | 3  |
| C. Limitations and Exceptions.....                                                            | 3  |
| Article III. Responsible Speech and Expression.....                                           | 5  |
| A. Public Speaking Events on Campus.....                                                      | 5  |
| B. Protests and Demonstrations on Campus .....                                                | 6  |
| C. Consultation Groups.....                                                                   | 9  |
| Article IV. Amendment of Code .....                                                           | 9  |
| A. Title Four.....                                                                            | 9  |
| B. Titles One, Two, and Three .....                                                           | 9  |
| TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM .....                                   | 10 |
| Article I. Judicial Jurisdiction .....                                                        | 10 |
| A. Jurisdiction in General .....                                                              | 10 |
| B. Jurisdiction over Students .....                                                           | 10 |
| C. Jurisdiction over Faculty and Other Employees .....                                        | 10 |
| Article II. Judicial Offices .....                                                            | 11 |
| A. Office of the Judicial Administrator.....                                                  | 11 |
| B. Office of the Judicial Codes Counselor.....                                                | 13 |
| Article III. Judicial Participants .....                                                      | 14 |
| A. Complainant and Victim .....                                                               | 14 |
| B. Defense Counsel or Advisor.....                                                            | 14 |
| Article IV. Judicial Boards.....                                                              | 15 |
| A. University Hearing Board .....                                                             | 15 |
| B. University Review Board.....                                                               | 15 |
| C. Pool of Board Members .....                                                                | 15 |
| TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT .....                     | 16 |
| Article I. Applicability .....                                                                | 16 |
| Article II. Violations .....                                                                  | 17 |
| A. Listing .....                                                                              | 17 |
| B. Interpretation .....                                                                       | 19 |
| Article III. Procedures.....                                                                  | 20 |
| A. Initial Investigation .....                                                                | 20 |
| B. Interim Measures.....                                                                      | 20 |

|                                                                                                                         |    |
|-------------------------------------------------------------------------------------------------------------------------|----|
| C. Summary Decision or No Action .....                                                                                  | 22 |
| D. Formal Charges .....                                                                                                 | 23 |
| E. Hearing Procedures .....                                                                                             | 25 |
| F. Appeal Procedures.....                                                                                               | 30 |
| G. General Procedures .....                                                                                             | 33 |
| Article IV. Penalties and Related Provisions .....                                                                      | 34 |
| A. Penalties .....                                                                                                      | 34 |
| B. Remedies .....                                                                                                       | 36 |
| C. Compliance.....                                                                                                      | 37 |
| D. Other Proceedings.....                                                                                               | 37 |
| TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER .....                                                           | 37 |
| Article I. Applicability .....                                                                                          | 37 |
| Article II. Violations .....                                                                                            | 38 |
| A. Listing .....                                                                                                        | 38 |
| B. Interpretation .....                                                                                                 | 39 |
| Article III. Procedures .....                                                                                           | 39 |
| A. Immediate Enforcement.....                                                                                           | 39 |
| B. Disciplinary Process .....                                                                                           | 40 |
| Article IV. Penalties and Related Provisions .....                                                                      | 40 |
| APPENDIX A: Additional Policies Appended To the Code.....                                                               | 41 |
| Article I. 17 May 2011 Motion Regarding Procedures for Violations Involving Sexual<br>Violence and Sexual Assault ..... | 41 |

## **TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES**

*Preamble.* Conduct of the members of the Cornell community is an appropriate area of concern for the University. This statement sets forth several basic principles and important policies regarding the scope, manner, and standards of regulating that conduct.

This Title is necessarily general. Its purpose is to inform the Cornell community of the general principles and policies upon which the Cornell judicial system operates, and to give general guidance to the judicial system as it handles specific cases arising under regulations authorized by the Board of Trustees, including legislation adopted by the University Assembly (or its successor) and approved by the President as representative of the Board.

### **Article I. Fundamental Principles**

#### **A. The Essential Purpose**

The essential purpose of the University's governing of community conduct is to protect and promote the University community's pursuit of its educational goals. The University, as an educational institution, has a special set of interests and purposes, the protection and promotion of which are essential to its effective functioning. These interests, with respect to the governing of community conduct, include the following:

1. the opportunity of all members of the University community to attain their educational objectives;
2. the generation and maintenance of an intellectual and educational atmosphere throughout the University community; and
3. the protection of the health, safety, welfare, property, and human rights of all members of the University community, and the safety, property, and reputational interests of the University itself. These general interests, of course, are also the subject matter of the public laws of the state and nation.

#### **B. The University's Role**

The University's role in regulating community conduct is distinguishable from society's. Therefore, the powers of the University's judicial boards shall be limited to the enforcement of University conduct regulations and shall not extend to the enforcement of public laws, except to the coincidental extent that such University conduct regulations are similar to provisions of the public law.

## **C. The Principle of Freedom with Responsibility**

1. The principle of freedom with responsibility is central to Cornell University. Freedoms to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully are essential to academic freedom and the continuing function of the University as an educational institution. Responsible enjoyment and exercise of these rights mean respect for the rights of all. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

2. The Campus Code of Conduct is the University community's code, and hence is the responsibility of all community members. All members have a duty to cooperate with University officials in this Code's operation and enforcement.

## **Article II. Supporting Policies**

### **A. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement**

The following basic policies will apply in situations where misconduct violates both a University conduct regulation and the public law:

1. The following kinds of offenses are adjudicated in the public courts: all felonies, controlled substance offenses, motor vehicle moving violations, assaults upon a peace officer or resisting arrest, refusals by persons to identify themselves, as well as cases in which the complainant wishes to proceed in the courts and cases involving accused persons who are not members of the University community. Still, the Judicial Administrator has discretion to pursue even serious breaches of the law under the Campus Code of Conduct. Timely dealing with alleged misconduct is vital. Nevertheless, the Judicial Administrator should consider whether justice counsels withholding the exercise of University jurisdiction until public officials have disposed of the case by conviction or otherwise.

2. When the Judicial Administrator determines that misconduct does not constitute a serious breach of the law and that the interests of justice would be served by handling such misconduct within the University jurisdiction, he or she shall:

- a. attempt to exercise jurisdiction in a manner to avoid dual punishment for the same act;
- b. cooperate with public officials so that the exercise of University jurisdiction ordinarily will not be followed by public prosecution of the individual's misconduct; and
- c. withhold the exercise of University jurisdiction, when prompt public prosecution is anticipated or is under way, until public officials have disposed of the case by conviction or otherwise.

3. Policies covering conduct that violates both a University conduct regulation and the public law, where feasible, should be based on jurisdictional understandings and procedures jointly developed and periodically reviewed by University and local officials. To the maximum extent feasible, jurisdictional understandings shall be made known to the University community.

## **B. Other Policies on the University's Role in Public Law Enforcement**

1. When public officials apprehend an individual for a violation of the public law, whether or not the misconduct is also a violation of a University conduct regulation, the University shall neither request nor agree to specially advantageous disposition of an individual's case by police, prosecutors, or judges solely because of that individual's status as a member of the University community. Nonetheless, the University stands ready to assist student defendants and to cooperate with public officials to promote equitable application of the law. Should a student charged with law violation request assistance from the University, a representative of the Office of the Dean of Students or Office of the University Ombudsman will meet with such student and may advise him or her and, if requested, may facilitate the student's retention of suitable counsel. If the law violation does not also constitute a violation of a University conduct regulation, and if the student defendant consents, the University ordinarily will cooperate with the request of appropriate law enforcement officials for programs of probation or rehabilitation. Notwithstanding the above provisions, if the prosecution, the complainant, and the accused all consent, minor breaches of the law may be handled exclusively within the University jurisdiction, except in case of repeat offenses.

2. The University's cooperation with law enforcement, at the request of public officials, shall be exercised in each particular case with a view to safeguarding the interests of the educational community, especially that community's confidence in the University.

## **C. Limitations and Exceptions**

### **1. Overriding Laws**

a. It is understood that the Board of Trustees, under sections 5708 and 5709 of the New York Education Law, is responsible for the protection of the grounds, buildings, and property of Cornell University, including state property under its supervision and control, and for the prevention of crime and the enforcement of law and order. These and other statutory provisions regarding law enforcement led to the creation of the Cornell Police, staffed by peace officers who are deputy sheriffs of the county. Under section 6430 of the New York Education Law, adopted in 1969, the Board must also adopt regulations for the maintenance of public order and provide penalties in addition to those for the same misconduct under the New York Penal Law. State law makes the trustees responsible for the enforcement of such rules and regulations as the Board makes from time to time. These state laws cannot be superseded by actions of the Board, nor may the Board evade its legal responsibilities by delegation.

b. Under state law, public servants who knowingly refrain from performing a duty imposed upon them by law, or a duty clearly inherent in the nature of their office, may be guilty of a criminal offense. Accordingly, any inflexible internal rule that precludes a peace officer from making an arrest when a crime has occurred would be contrary to law. It is understood, however, that as to minor offenses, law enforcement authorities are permitted a degree of discretion in determining whether to prosecute an offender or to pursue some other appropriate remedy when an alternative disposition would further the interests of justice. Accordingly, the policies enumerated above are understood to constitute policy guidelines to be applied in good faith, and not prohibitions upon the exercise of the law enforcement responsibilities vested in the Board of Trustees and exercised by its authorized peace officers. That is, such peace officers must retain the sole discretion to determine the circumstances in which the public laws must be enforced.

## 2. Presidential Overrides

### a. Public Disorder

The President may alter or suspend the implementation of the policies enumerated above when the President finds that the Regulations for Maintenance of Public Order, constituting Title Four hereof, are insufficient to maintain public order and when there is an imminent and sufficient threat to the University community's pursuit of its educational goals to warrant such action. Any such action of the President shall be subject to and consistent with the applicable laws of the state and nation.

(1) Should the President exercise such authority, such action shall be made known to the University community immediately, together with a statement explaining the basis of such action. Such deviation from the implementation of said policies should last no longer than necessary to alleviate any pending threat.

(2) It is not intended that the President will seek to suspend the general application of said policies except in cases in which the President finds a threatened imminent and general breakdown in the University's capacity to enforce law and order. It is not intended, therefore, that the President will exercise such authority in cases involving individual misconduct.

### b. Grave Misconduct

An individual's exceptionally grave misconduct, particularly misconduct that threatens or attempts to cause physical or mental harassment, may demonstrate such flagrant disrespect for the basic integrity and rights of others as to call into question continuance of the individual's membership in the University community, because (1) his or her presence would adversely affect the ability of others to pursue their educational goals or (2) his or her misconduct grossly violated standards of behavior requisite to the maintenance of an educational community. In the event of such conduct, if the conduct is not covered by any specific provision of a University regulation or statement regulating conduct or if the relevant regulation does not provide a sanction adequate to protect the safety of the University community, nothing in this Code shall preclude the President or his or her

designee, under the authority of the Board of Trustees as expressed in the University Bylaws, from taking appropriate and lawful action. But such authorization constitutes a procedure parallel to this Code, not an authority to review or revise a decision made under this Code.

### **Article III. Responsible Speech and Expression**

#### **A. Public Speaking Events on Campus**

##### **1. Arrangements for Invited Speakers**

Any recognized campus organization is free to invite a speaker to address its own membership in a private, closed meeting under ground rules set by the inviting organization. A closed meeting can serve many legitimate purposes, including creation of a more informal atmosphere, maximizing the opportunity of organization members to ask questions, allowing the speaker to talk “off the record,” and ensuring a particular kind of discussion because of advance preparation by the organization’s membership. If a speaker is likely to attract widespread interest among nonmembers, however, the group would often be wise to open the meeting to nonmembers, including those with views contrary to those of the speaker. Nevertheless, the University does not insist that the group do so.

If the group chooses to open the event to the University community, it should seek to arrange adequate space to accommodate the reasonably expected audience. In such a public event, the inviting group may also decide whether there is to be a question-and-answer period and, if so, its length and general format. The speaker or moderator should also be allowed reasonable discretion in requiring questioners to be concise, not to abuse the speaker, and not to monopolize the proceedings or otherwise interfere with their purpose. If a question-and-answer period is held, however, neither the speaker nor the moderator should be allowed in recognizing speakers to discriminate on such grounds as ethnicity, gender, national origin, political persuasion, race, religion, sexual orientation or affectional preference, or other suspect or invidious categories. By the same token, at a public event, the sponsoring organization should not be allowed to bar attendance or give preferred seating on the basis of such suspect or invidious categories.

Only members of the Cornell community may hold or host events on Cornell-owned property. External groups must be sponsored by a member of the Cornell community and the sponsor must have a representative present during the actual event. For these purposes, appropriate Cornell sponsors are: registered student organizations, departments and units of the university, and university-sponsored organizations and offices (e.g., Dean of Faculty, Faculty Senate, University Assembly, etc.).

##### **2. Disruption of Invited Speakers**

Freedom of speech, within commonly accepted limits of safety and civility, is a paramount value in a university community. In a university community, as in society as a whole, freedom of speech cannot be absolute. Speech that is libelous, or that incites a crowd to riot, deserves no protection. Perhaps no one, in real life, has ever falsely shouted “Fire!” in a crowded theater, but surely no one has a right to do so. Within such commonly accepted limits, however, freedom of speech should be the paramount value in a university community. Because it is a special kind of community, whose purpose is the discovery of truth through the practice of free inquiry, a university has an essential dependence on a commitment to the values of unintimidated speech. To curb speech on the grounds that an invited speaker is noxious, that a cause is evil, or that such ideas will offend some listeners is therefore inconsistent with a

university's purpose. One may argue against inviting a speaker on the grounds that the speaker has nothing of importance to say. But once members of the university community extend an invitation, others may not disrupt the speech on the grounds that they find it stupid, immoral, or dangerous.

Those who dislike what an invited speaker is saying also have rights. The rights include distributing leaflets outside the meeting room, picketing peacefully, boycotting the speech, walking out, asking pointed questions, and, within limits set by the moderator, expressing displeasure with evasive answers. Those who oppose a speaker may thus make their views known, so long as they do not thereby interfere with the speaker's ability to be heard or the right of others to listen. Name-calling and the shouting of obscenities, even when they are not carried so far as to abridge freedom of speech, are nevertheless deplorable in a community devoted to rational persuasion and articulate controversy. Civility is a fragile virtue, but one upon which a university ultimately depends.

The American conception of academic freedom includes the principle that professors may participate in political demonstrations and speak out on controversial issues without jeopardizing their employment. In a campus setting, however, academic freedom carries with it certain responsibilities. Scholars not only should respect the professional demands of their discipline and the pedagogical requirements of the teacher-student relationship, but also should not encourage efforts to abridge the free expression of controversial viewpoints. As citizens, professors may or may not be especially solicitous about freedom of speech; as scholars, they are morally bound to defend it. Professors traduce their calling by any deliberate action demonstrating contempt for freedom of speech.

Civil disobedience is not a ground for exonerating one from penalties for violating conduct regulations regarding free expression, nor should it be a circumstance mitigating the penalty. Although nonviolent civil disobedience can be an honorable way of expressing moral outrage, in a university community where the free flow of ideas is paramount, it is contradictory and misguided to employ it to deny that very right of expression to another.

## **B. Protests and Demonstrations on Campus**

### **1. Protected Expressive Conduct in General**

The University will treat as within the basic protection of a right to free expression such lawful conduct as satisfies the following tests, where lawful means not in violation of state or federal law. The conduct should (a) be intended for expressive purposes, (b) be reasonably understood as such by the University community, and (c) comply with such reasonable time, place, and manner restrictions as are consistent with the other provisions of this Article and as may be authorized from time to time by the President.

Even in regard to conduct that is intentionally expressive and perceived as such, the University may impose reasonable time, place, and manner restrictions on such conduct to preserve other important values and interests of the University community. An accused charged with such conduct may assert as a defense that he or she has complied with such time, place, and manner restrictions.

All protection and regulation of expressive conduct should be content-neutral. A group's persuasion or point of view should have no bearing on the grant of permission or the conditions regulating that group's expressive conduct.

## 2. Symbolic Structures

Symbolic structures will be allowed in accordance with an express permit issued by the Vice President for Student and Academic Services or other presidential designee. Such structures must be temporary and must conform to the conditions contained in the permit. In regulating by permit the duration, size, location, and other features of symbolic structures, the administration will be guided by attention to the following, or similar, kinds of University community interests that such structures could infringe upon:

- (a) protecting health and safety;
- (b) preventing damage and risk of damage to University grounds and property;
- (c) preserving unimpeded mobility on pathways and streets, entrance to and departure from buildings, and unimpeded mobility within buildings;
- (d) providing for competing uses of campus grounds and property;
- (e) avoiding interference with other University activities;
- (f) reasonably limiting costs to the University of increased campus police protection, potential University liability, insurance coverage, and cleanup and repair after an event; and
- (g) preserving campus aesthetic values.

In addition to such limits, other restrictions on symbolic structures may also be imposed. For example, depending on experience and context, the President may impose any of the following restrictions: requiring portability so that structures do not remain overnight; prohibiting overnight sleeping in structures; and requiring continual daytime physical presence of persons responsible for the expressive activity.

## 3. Demonstrations Not Involving Structures

Outdoor picketing, marches, rallies, and other demonstrations are traditional and legitimate forms of self-expression and dissent on campus. Such activities are allowed so long as demonstrators do not disrupt other functions, including, without limitation, regular and special curricular activities, extracurricular activities, academic processions and events, conduct of University business, and employment interviews. The right to free expression here, as in other contexts, requires respect for the rights of others. Outdoor picketing, marches, rallies, and other demonstrations generally pose no threat of long-lasting exclusive use of University grounds or property. No university permit is required for such outdoor activities. The presence of a counter-protest does not itself constitute a disruption to a University function or

authorized event. Moreover, those who oppose a speaker may thus make their views known. Everyone has the right to be heard and to listen to others.

Use of public address systems and amplified sound will be permitted without prior approval during the hours of 12:00 p.m. and 1:00 p.m., at Ho Plaza and in front of Day Hall. Public address systems and amplified sound will be permitted in other outdoor locations only with prior approval. Approval may be obtained using the Event Registration Form located at: <https://activities.cornell.edu/EventReg/>.

As to indoor demonstrations such as sit-ins, owners of private property, and even the administrators of public property, are not required to permit the occupation of buildings by those who are not present to transact the business or pursue the other purposes that the offices in the building are intended to serve. Classrooms, libraries, laboratories, living units, and faculty and administrative offices are dedicated to specific purposes, which the University must be free to pursue without disruption. The law of trespass and the right of free speech are not mutually exclusive and, indeed, have always coexisted in our legal system.

Accordingly, the President may authorize regulations permitting the use of specific portions of University buildings, provided that such regulations shall not permit the disruption of classrooms, libraries, laboratories, living units, or offices and shall ensure the continuing conduct of University business. No such use shall be permitted beyond 5:00 p.m. or the close of normal business hours, whichever is earlier. Nevertheless, as pointed out elsewhere in this Article, University rooms set aside for the purpose of gatherings involving speech and expression should not be licensed in a manner to deny access to groups sponsoring an unpopular point of view.

Deans, directors, or other heads of each college, school, or other academic unit described in Article I, section 7, of the University Bylaws may submit proposals to the President on the promulgation of such regulations for the use of University buildings assigned to the use of such college, school, or unit. No such regulation shall take effect or continue in effect without the approval of the President.

The President may promulgate regulations governing the use of Day Hall or any other University building not otherwise governed by such regulations. As a practical matter, although demonstrations inside virtually any University building would be disruptive, the working space within Day Hall is especially compact. Almost any assemblage of demonstrators inside the building could be disruptive to Day Hall staff and to others, especially students, seeking access to a Day Hall office for normal business purposes.

#### 4. Disruption of Recruiters

As long as a recruiter is on campus in accordance with ordinary University processes, a demonstration or protest that intentionally disrupts recruitment activity should be and is a violation of University conduct regulations and should not be tolerated.

The right to express one's views should not extend so far as to infringe upon another University community member's right to participate in a recruitment interview or information session with a recruiter who is on campus in accordance with ordinary University processes.

## **C. Consultation Groups**

The President is authorized and encouraged to appoint a standing committee to study and report to the President on significant policy issues concerning the protection of freedom of expression on campus. The committee should study any issue presented to it by the President. It should also receive petitions or inquiries from members of the University community, but should limit its attention to issues that involve important matters of a policy nature. Thus, the committee could study an individual's charge that University officials are not adequately enforcing the policy against disrupting public speakers or that they are imposing unreasonable constraints upon the right to protest or demonstrate peacefully and lawfully on campus. The committee should not function as an adjudicatory body, or receive any complaint about or continue considering any issue arising from a campus incident after a disciplinary proceeding growing out of that incident and involving the same or similar issues has been initiated, until any such disciplinary proceeding has been completed. Any report issued by the committee should go to the President and should be available thereafter to the University community. The report would be advisory only.

The President may consult with the Executive Committee of the University Assembly, or appoint an ad hoc committee to advise the President, concerning appropriate administrative policy in the face of protest and demonstrations.

## **Article IV. Amendment of Code**

### **A. Title Four**

The Regulations for Maintenance of Public Order were adopted by the Board of Trustees and may be amended only by action of the Board of Trustees, upon the recommendation of or after consultation with the University Assembly.

### **B. Titles One, Two, and Three**

All other Titles of this Code may be amended by the University Assembly, subject to the approval of the President.

## **TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM**

### **Article I. Judicial Jurisdiction**

#### **A. Jurisdiction in General**

All violations of the Campus Code of Conduct by a student, member of the University faculty, other employee of the University, or University-registered organization shall be processed through the campus judicial system, consistent with the principles stated in Article II of Title One, except as otherwise provided in Section C below.

#### **B. Jurisdiction over Students**

1. The term student shall be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as:

- a. a degree candidate in any of Cornell's undergraduate or graduate divisions;
- b. a special student in the undergraduate divisions; or
- c. a non-degree-candidate in the graduate school.

2. The term student shall be interpreted to mean also persons not officially registered, and not faculty members or other University employees, if they are:

- a. currently enrolled in or taking classes at the University;
- b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities; or
- c. currently on leave of absence or under suspension from being a student of the University.

#### **C. Jurisdiction over Faculty and Other Employees**

1. Faculty members and other University employees include those who are incidentally taking classes at the University.

2. The procedures of this Code shall not apply to faculty members or other University employees who are accused of employment-related misconduct. Instead, the applicable administrative process shall apply, such as that described in Cornell University Policy 6.11.3.

a. Should any accusation or complaint of a Code violation be made to or by a department head, dean, supervisor, or the Judicial Administrator and involve conduct by a faculty member or other University employee clearly arising in the course of employment, then the department head, dean, or appropriate University administrative authority shall determine whether there was a Code violation and shall also assess penalties and/or remedies where appropriate.

(1) The accused may make a jurisdictional appeal to the Judicial Administrator, i.e., raise a question whether the alleged conduct arose in the course of employment and so call for rechanneling into the judicial system.

(2) The accused may make an appeal on the merits of the administrative disposition through appropriate faculty channels or the employee grievance procedure, but not through the judicial system.

b. If an accusation or complaint of a Code violation comes before a department head, dean, or supervisor about conduct by a faculty member or other University employee not arising in the course of employment, or there is uncertainty whether it does, the accusation or complaint shall be referred to the Judicial Administrator for channeling into the administrative process or the judicial system.

c. The criterion on which the Judicial Administrator shall channel between the administrative process and the judicial system is whether the conduct is employment-related. In reaching such a decision, the Judicial Administrator shall consult with the Dean of the Faculty if the case involves a faculty member or the Vice President for Human Resources if the case involves a nonfaculty employee. The Judicial Administrator shall make his or her own decision after such consultation.

d. Upon imposition of a penalty of suspension or dismissal upon a faculty member by the University Hearing Board, the faculty member may choose to appeal to an arbitration committee (as described in Cornell University Policy 6.2.10) in lieu of appeal to the University Review Board. Any penalty imposed on a nonfaculty employee is subject to review either pursuant to the applicable grievance process (such as that described in Cornell University Policy 6.11.4) or by appeal to the University Review Board, as the employee may choose.

## **Article II. Judicial Offices**

### **A. Office of the Judicial Administrator**

1. The Office of the Judicial Administrator receives, investigates, and pursues accusations of violations of the Campus Code of Conduct, or of any other regulation as the University Assembly or Board of Trustees may direct. Anyone can direct such accusations, or any questions about the judicial system, to that office.

2. No employee of the Office of the Judicial Administrator shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of a judicial board. The Judicial Administrator may hire students who have had some legal training to act for the Judicial Administrator.

3. The Judicial Administrator shall be appointed by the President with the concurrence of the University Assembly. Upon the University Assembly chair's receipt of notice of the Judicial Administrator's resignation or removal, the chair shall convene a search committee, composed of no more than four members appointed by the University Assembly and no more than two members appointed by the President, to propose two or more nominees to the President. A chair for the search committee shall be jointly selected by the President and University Assembly Executive Committee from one of the appointed members. The President shall appoint a candidate with the concurrence of the University Assembly. The President may ask the search committee to present additional candidates if he or she does not feel that any of the nominees presented merit hire. In the event of an unexpected vacancy, the President shall, with the concurrence of the University Assembly, appoint the Associate Judicial Administrator or other qualified person to serve in an interim capacity until a permanent Judicial Administrator is appointed.

4. The Judicial Administrator shall undergo an annual review, overseen by the Chair of the University Assembly (or designee) and a designee of the President with full participation by the following representatives of the University Assembly and the administration: the Judicial Codes Councilor or their designee, the Chair of the University Assembly's Codes and Judicial Committee or their designee, two additional members of the University Assembly, and one appointee from the Division of Human Resources. The review shall include both public and private components.

a. The public component shall afford a general opportunity for the University Community to provide feedback on the performance of the Judicial Administrator. It shall include opportunities for individuals and groups to privately share experiences in specific areas, if any, needing improvement, specific concerns, or instances of dissatisfaction as well as positive experiences and areas of praise. The evaluation process shall also include the opportunity for a reasonable number of those with interactions with the Campus Judicial System such as, but not limited to: chairs and members of the judicial boards, complainants and respondents, other members of the Office of the Judicial Administrator, and Office of the Judicial Codes Councilor to provide feedback in addition to general members of the public. This feedback shall be conveyed privately to the Chair of the University Assembly (or designee) and the President's designee who shall communicate it as needed to relevant parties such as the Judicial Administrator.

b. Performance feedback shall be given to the Judicial Administrator by the Chair of the University Assembly and the President's designee, consistent with the University's regular system of annual evaluation.

5. The Judicial Administrator shall be solely responsible for the Office of the Judicial Administrator. The Judicial Administrator shall be independent, although an administrative relationship should exist with the University administration that will support that office. He or she shall be subject to removal only by action of the University Assembly or the President

with the concurrence of the other.

a. The University Assembly may take steps to remove the Judicial Administrator by a majority vote of its seated membership taken at a regularly scheduled meeting. Should the President agree with the action of the University Assembly, the termination of the Judicial Administrator will be implemented. Should the President not agree, and no mutually agreeable resolution is found, the University Assembly may recommend the removal of the Judicial Administrator to the Board of Trustees. The Board of Trustees' decisions and actions in response to the University Assembly's recommendation are final.

b. The President may take steps to remove the Judicial Administrator by notifying the Chair of the University Assembly. Should the University Assembly agree with the action of the President via a majority vote of its seated membership taken at a regularly scheduled meeting, the termination of the Judicial Administrator will be implemented. Should the University Assembly not agree after taking a formal vote at a regularly scheduled meeting, and no mutually agreeable resolution is found, the President may recommend the removal of the Judicial Administrator to the Board of Trustees. The Board of Trustees' decisions and actions in response to the President's recommendation are final.

6. The Judicial Administrator shall annually report to the President, the University Assembly, and its Codes and Judicial Committee on the operation of the office and the judicial system as a whole.

## **B. Office of the Judicial Codes Counselor**

1. The Office of the Judicial Codes Counselor provides free assistance and representation within the judicial system to those charged with violations of the Campus Code of Conduct and to students charged with violations of the Code of Academic Integrity.

2. To the extent permitted by law, the Judicial Codes Counselor shall not reveal any information provided by the accused, unless the accused expressly requests that the information in question be confided to another person. Although the Judicial Codes Counselor traditionally has had some legal training and is frequently a law school student, the services are not meant to be a substitute for professional legal advice or for the legal assistance provided by an attorney. The Judicial Codes Counselor primarily explains how the judicial system works, and assists the accused in the selection of counsel or an advisor. With the consent of the Judicial Codes Counselor, an accused may choose the Judicial Codes Counselor as the accused's advisor, in which case the Judicial Codes Counselor may participate fully on behalf of the accused in any hearing.

3. No employee of the Office of the Judicial Codes Counselor shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of a judicial board.

4. The Judicial Codes Counselor shall be appointed for a two-year term. A Judicial Codes Counselor can be reappointed for additional terms. The President shall appoint the Judicial Codes Counselor with the concurrence of the University Assembly, following the procedures

for the appointment of the Judicial Administrator.

5. The Judicial Codes Counselor shall be solely responsible for the Office of the Judicial Codes Counselor. The Judicial Codes Counselor shall be independent, although an administrative relationship should exist with the University administration that will support that office. He or she shall be subject to removal during the term of office only by action of the Board of Trustees upon recommendation of the University Assembly.

### **Article III. Judicial Participants**

#### **A. Complainant and Victim**

1. Any student, member of the University faculty, or other employee of the University can allege a violation of this Code, of which he or she was the victim, by filing a complaint with the Judicial Administrator.

2. In cases in which such formal complaint is made by one or more individuals, such individuals shall be designated as the complainants. In cases in which no such formal complaint has been made or pursued, and an investigation is initiated by the Judicial Administrator, the University community shall be designated as the complainant. However, in cases concerning violations against the interests of the University, "Cornell University" (the corporation) may be named as complainant.

3. The complainant and the victim, whether or not he or she is a member of the University community, each shall have the right to be present at any relevant hearing. Each shall have the right to be accompanied at every stage by a personal advisor of that person's choice, but that advisor shall not be a witness and shall not participate in a hearing in the capacity of counsel. The Judicial Administrator shall provide to the complainant and the victim information about the University's Victim Advocate and other relevant resources, including information about how to file a police complaint.

#### **B. Defense Counsel or Advisor**

1. When an accused appears before the Judicial Administrator, the University Hearing Board, the University Review Board, or other University officials acting in a judicial capacity, the accused has the right to be advised and accompanied at every stage by an individual of the accused's choice. Such counsel or advisor for the accused may be any member of the University community or general public, but shall not be a witness and, except for the Judicial Codes Counselor, shall not normally participate in a hearing in the capacity of counsel. However, for suspension or dismissal to be imposed, such counsel or advisor must have had a reasonable opportunity to participate fully in the hearings.

2. The accused shall have the right to act as his or her own counsel.

3. The accused person shall also have the right to be accompanied at every stage by a

personal supporter of that person's choice, but that supporter shall not be a witness and shall not participate in a hearing in the capacity of counsel.

## **Article IV. Judicial Boards**

### **A. University Hearing Board**

A five-person panel of the University Hearing Board shall adjudicate cases under the Campus Code of Conduct. The President shall name at least one person, who is a member of the faculty recommended by the Dean of the Faculty and not a member of the University administration, to be a Hearing Board Chair presiding over five-person Hearing Panels' proceedings but having no vote; that chair shall be appointed for a two-year term, but can be reappointed for additional terms.

### **B. University Review Board**

A three-person panel of the University Review Board shall hear appeals under the Campus Code of Conduct. The President shall name one person, who is a member of the faculty recommended by the Dean of the Faculty and not a member of the University administration, to be the Review Board Chair presiding over three-person Review Panel's proceedings but having no vote; that chair shall be appointed for a two-year term, but can be reappointed for additional terms.

### **C. Pool of Board Members**

1. The University Hearing Board and University Review Board pool shall comprise 55 members confirmed by the University Assembly: 25 students, 15 faculty members, and 15 nonfaculty employees. Faculty members are nominated by the Dean of the Faculty. For other candidates, the Office of the Assemblies will solicit written applications, and the Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly. The University Assembly Executive Committee may make emergency appointments on a temporary basis.

2. No person shall serve on the University Hearing Board and University Review Board pool who is at the same time a member of the University Assembly or its Codes and Judicial Committee or is an employee of the Office of the Assemblies.

3. Members of the University Hearing Board and University Review Board pool shall serve terms of office as follows:

a. All members shall be appointed for two-year staggered terms.

b. Terms of office shall begin June 1 of the year appointed. Any appointment to fill a vacancy or to address an emergency shall become effective immediately.

c. The Chair of the Hearing Board or Review Board shall have the authority to remove a member of the pool if the member is not honoring his/her commitment to the university to

communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process.

4. All the members of the University Hearing Board and University Review Board pool shall annually elect one Administrative Chair from among those members.

5. Although the judicial boards decide cases and appeals when sitting in panels, the pool as a group, convened by the Administrative Chair, shall perform the following functions:

a. The judicial boards shall be responsible for establishing their own internal rules and procedures not specified elsewhere, and making them available through the Offices of the Judicial Administrator and the Judicial Codes Counselor.

(1) Such rules and procedures must be published in the Cornell Chronicle before going into effect.

(2) Any changes in rules and procedures must be published in the Cornell Chronicle at least 30 calendar days before taking effect.

b. Upon request, the judicial boards shall report on their operations to the Codes and Judicial Committee of the University Assembly.

6. Training of the members of the University Hearing Board and University Review Board pool will include special training in handling complaints of sexual harassment, abuse, assault, or rape.

### **TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT**

#### **Article I. Applicability**

This Title shall apply to all students, members of the University faculty, other employees of the University, and University-registered organizations, except that those of the Medical College and the Graduate School of Medical Sciences shall be governed by separate regulations with respect to property and facilities of the Medical College and the Graduate School of Medical Sciences.

This Title shall apply to conduct on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area.

This Title shall also apply to conduct elsewhere if the Judicial Administrator—with the approval of the President or his or her designated representative in the person of the Dean of Students for conduct by students, the Provost for conduct by faculty, or the Vice President for Human Resources for conduct by other employees—considers the conduct to constitute a serious

violation of this Title, in that the conduct poses a substantial threat to the University's educational mission or property or to the health or safety of University community members.

## **Article II. Violations**

### **A. Listing**

1. It shall be a violation of this Title, as an offense against another person or the university:

a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.3<sup>1</sup>.

b. To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public place.

c. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable<sup>2</sup>.

d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

e. To assault or cause any physical injury to another person on the basis of disability, ethnicity, gender, national origin, race, religion, or sexual orientation or affectional preference.

f. To haze another person, regardless of the person's consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.

g. To (1) endanger another person, including but not limited to such acts as: introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations; theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.

h. To endanger or to cause damage to or loss of property of another person.

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<sup>1</sup> This Code section is subject to the provisions in Appendix A, Article I.

<sup>2</sup> This Code section is subject to the provisions in Appendix A, Article I in cases of sexual harassment.

i. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.

j. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.

k. To intentionally invade privacy or misappropriate property rights, by means of videotaping, photographing, audiotaping, or otherwise making any picture or sound recording.

l. To prevent a person from leaving a location (including part of the location, such as one part of a room) or to force a person to go to a location against his or her will. This is a violation whether accomplished through physical or psychological means.

2. It shall be a violation of this Title, as an offense against the University:

a. To endanger or to cause damage to or loss of property of the University.

b. To misappropriate University funds.

c. To bribe a University official.

d. To (1) forge, fraudulently alter, willfully falsify, or otherwise misuse University or non-University documents (including computerized or noncomputerized records, parking permits, dining cards, identification cards, other permits or cards, reserve books, or other property), or (2) possess such forged, altered, or falsified documents, or (3) unlawfully possess the identification of another person if that identification has a date of birth that would make the person legal to consume alcohol at a time the accused is not of a legal drinking age.

e. To furnish false information to the University with intent to deceive.

f. To claim falsely to represent the University or a University-registered organization.

g. To enter upon or make use of University or private property or facilities without authorization.

h. To fail to leave a University building after a fire alarm has sounded or other notice of fire has been given, whether or not a drill.

i. To commit a violation of Article II of Title Four.

3. It shall also be a violation of this Title:

- a. To engage in disorderly conduct. Disorderly conduct means intentionally causing, or recklessly creating a risk of, disruption to the University community or local community, including by such acts as (1) violent, tumultuous, or threatening behavior, (2) unreasonably loud or belligerent behavior, or (3) obstruction of vehicular or pedestrian traffic.
- b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possessing alcohol with the intent to consume it while under the age of 21.
- c. To traffic, for profit or otherwise, in goods or services in a manner incompatible with the interests of the University community or local community.
- d. To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances as defined by state or federal law.
- e. To defraud, including by such acts as failure to redeem a bad check.
- f. To publicly urinate or defecate.
- g. To destroy evidence or otherwise obstruct the application of this Code.
- h. To assist another person to violate this Title.
- i. To incite another person toward a likely and imminent violation of this Title.
- j. To attempt to violate this Title.
- k. To refuse to participate, without a substantial reason, as a witness in the campus judicial system, as outlined in Title Three, Article III.E.3.b(6)(c).
- l. To enter any waters of Fall Creek, Cascadilla Creek, or Beebe Lake that are on or traverse the campus (within the City of Ithaca) for the purpose of swimming or bathing, except in those waters officially designated as swimming or bathing waters.

## **B. Interpretation**

Because the judicial system utilizes the decisions of the University Hearing and Review Boards to define or interpret violations, public records of all decisions of those boards shall be kept on file in the Office of the Judicial Administrator, including a brief summary that describes the nature of the case and its disposition but with names of individuals and other identifying information redacted.

## **Article III. Procedures**

### **A. Initial Investigation**

1. The Judicial Administrator shall promptly cause an investigation to be made:
  - a. upon receiving a complaint alleging a violation of this Code by a student or University-registered organization or a non-employment-related violation by a faculty member or other University employee;
  - b. upon determining that a complaint referred to him or her by a department head, dean, or supervisor, or by means of a jurisdictional appeal, is non-employment-related; or
  - c. upon receiving information that a violation of this Code may have occurred when no formal complaint has been made or pursued.
2. During the course of an investigation, the Judicial Administrator, before filing formal charges, may interview the persons involved. Prior to any such interview the Judicial Administrator shall, in writing, inform the person of:
  - a. the matter to be discussed and the person's alleged relationship to it; and
  - b. the services of and contact information for the Office of the Judicial Codes Counselor.

### **B. Interim Measures**

1. The Judicial Administrator shall work with Campus Life, in cases in which the victim and the accused live in the same residence hall and there is a substantial danger of future harm or misconduct, to determine whether Campus Life should relocate the victim or the accused to another residence hall.
2. No-Contact Directive
  - a. In cases involving allegations of harassment, abuse, assault, rape, or other menacing activity, the Judicial Administrator, after making a reasonable effort to meet with the accused if appropriate to do so, may issue a No-Contact Directive.
  - b. The Judicial Administrator shall make available to the accused the exact terms of the No-Contact Directive, as soon as it is issued.
  - c. In the event the Judicial Administrator is notified of a violation of the terms of the No-Contact Directive, the accused shall be provided with an opportunity to review the matter with the Judicial Administrator within two business days. If the Judicial Administrator determines, based upon the information available, that the No-Contact Directive has been violated, he or she may suspend the accused temporarily, pending resolution of the underlying case.

d. In the case of such suspension, the accused may petition the University Hearing Board in writing for a review of the decision. That board shall meet to consider the petition as soon as possible, but no later than five business days after it receives the petition. However, that board may grant a postponement upon the request of the accused, to a date not later than 21 calendar days after the petition is received. If that board determines that the No-Contact Directive was not violated or the suspension was improper or is no longer necessary, it shall lift the suspension immediately.

e. The Judicial Administrator may, in his or her discretion, rescind a No-Contact Directive or lift such a suspension if he or she determines that the circumstances no longer require such action.

### 3. Temporary Suspension Pending Resolution

#### a. Suspension of an Individual

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or her designee.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion.

#### b. Suspension of a University-Registered Organization

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative, after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate, shall have discretionary power to suspend the activities of a University-registered organization pending resolution of the underlying case.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate.

c. When the President or his or her designee exercises this power to suspend temporarily, these procedures shall be followed:

(1) In the case of such suspension, the accused may petition the University Hearing Board in writing for a review of the suspension. That board shall meet to consider the petition as soon as possible, but no later than five business days after it receives the petition. However, that board may grant a postponement upon the request of the accused, to a date not later than 21 calendar days after the petition is received.

(2) If the University Hearing Board determines that (1) good cause has not been shown for the exercise of the President's suspension power or (2) that circumstances have changed so that suspension is no longer necessary, the suspension shall be lifted immediately.

(3) If the suspension remains in effect after the University Hearing Board's initial meeting, that board may decide to reconvene, upon motion by any member or the chair of the panel or upon the request of the suspended person or University-registered organization, to determine whether circumstances no longer require suspension.

### **C. Summary Decision or No Action**

1. The Judicial Administrator shall determine, without undue delay, whether to offer a summary decision, to file formal charges, or to take no action.

2. The Judicial Administrator and the accused may agree, in writing, to a summary decision at any time, but typically prior to a matter going to a hearing before the University Hearing Board. If a Summary Decision Agreement is reached, the Judicial Administrator shall:

a. send a notice of formal accusation and of the provisions of the summary decision to the accused; and

b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

3. In the event that this summary procedure is employed:

a. All penalties and remedies listed in Article IV may be assessed via summary decision. In the case of suspension or dismissal, however, the Judicial Administrator must obtain the approval of a Hearing Board Chair, to insure against the possibility of intimidation or coercion in the negotiations; the Judicial Administrator must do so prior to reaching agreement, but may address the Hearing Board Chair without the participation of the accused.

b. The accused may withdraw approval of the summary decision by written request to the Judicial Administrator within the two business days following receipt of the notice described in item 2(a) of this section.

4. In the event the Judicial Administrator determines to take no action, the Judicial Administrator shall notify the accused of such decision.

5. Except as noted below, the Judicial Administrator shall notify the complainant no more than five business days after the deadline for the accused to revoke the summary decision or after the Judicial Administrator otherwise decides not to file charges. If the Judicial

Administrator notified the complainant at a time the summary decision may still be revoked by the accused, this information must be provided to the complainant. For University complainants, the Judicial Administrator need notify the complainant only:

- i. in a case where the University complainant submitted a written request for notification at the time the complaint is lodged; and
- ii. in specific cases, limited to cases involving any violence or threatened violence against another person, violations of the Financial Irregularities Policy, and fraud or theft against the University in an amount exceeding \$100.

6. If the complainant is dissatisfied with the summary decision or with the decision of the Judicial Administrator not to file charges, he, she, or it may petition the Judicial Administrator in writing to show cause for the decision before the University Hearing Board. This petition must be received by the Judicial Administrator within eight business days after the complainant's receipt of the Judicial Administrator's notice of the nonaction or within three business days after the deadline for the accused to revoke the summary action. The Judicial Administrator shall promptly forward the petition to a Hearing Board Chair. The University Hearing Board shall meet to consider the petition within 21 calendar days of receipt of the petition by the Judicial Administrator. That board can:

- a. uphold the decision of the Judicial Administrator in whole or in part;
- b. order the Judicial Administrator to reopen the investigation; or
- c. order the Judicial Administrator to file charges so that the case can be adjudicated by the University Hearing Board.

## **D. Formal Charges**

### **1. Notification of Charges**

a. If, as a result of an investigation, the Judicial Administrator determines that there is reasonable cause to believe that a violation has been committed, and a Summary Decision Agreement has not been reached, then the Judicial Administrator shall promptly refer the case to the University Hearing Board by filing charges with a Hearing Board Chair.

(1) The Judicial Administrator shall make a good faith effort to serve notice of the charges on the accused (or on an officer of record of an accused University-registered organization) within seven calendar days of the filing of charges:

- (a) by personal service; or, if personal service is impossible to effect after diligent effort,
- (b) by certified mail, return receipt requested, to the accused's last known local or permanent address; or, if such mailed notice is impossible to effect,

(c) by a means reasonably calculated to result in actual notice.

(2) Notice of the charges shall contain:

(a) the charges in the form of a formal accusation;

(b) instructions to contact the Judicial Administrator within four business days of the accused's receipt of notice, so that a time for appearance of the accused before the Judicial Administrator may be agreed upon;

(c) notice of the nature of the evidence to be used against the accused; and

(d) a brief summary of the services of and contact information for the Office of the Judicial Codes Counselor.

b. The Judicial Administrator shall provide a copy of charges made against the accused on request of University officials, the Judicial Codes Counselor, or any other officer or board of the judicial system.

2. If the accused does appear, the Judicial Administrator shall again advise the accused of access to the Office of the Judicial Codes Counselor, and shall refer the accused to this Code and available supplementary information so that the accused can learn of:

a. the procedures of the Office of the Judicial Administrator and the judicial boards;

b. the accused's right to be accompanied by counsel or an advisor of the accused's choice;

c. the alternative administrative process provided for employment-related cases; and

d. other rights and options that may be available to the accused.

3. If the accused fails to respond within the four-day period or to agree to appear within a reasonable time, the Judicial Administrator may, in his or her discretion, forward the case to the University Hearing Board. In the alternative, deeming the accused to have waived the right to a hearing, the Judicial Administrator may proceed to find the accused to have violated this Code and directly impose a penalty in the form of oral warning, educational steps, community work, or fine as listed in Article IV. Unless the Judicial Administrator, in his or her discretion, decides to set aside such default for good cause shown, such direct penalty will stand as the equivalent of a decision of the University Hearing Board, subject only to appeal to the University Review Board.

#### 4. Limitations Period

Any charge of a violation of this Code must be initiated by the filing of charges by the Judicial Administrator within one calendar year of the date of the alleged violation. Exceptions to this policy that extend the period beyond one year are:

a. In cases where the charge involves fraud, the period shall be one calendar year from

the alleged fraud or 60 calendar days from the filing of a complaint alleging fraud, whichever is longer, but in any event no more than three calendar years from the alleged fraud.

b. In cases where the individual to be charged is absent from the University because of either (1) a leave of absence, (2) a termination of employment, or (3) a withdrawal as a student, a charge may be brought within one calendar year of the alleged violation or within 60 calendar days of his or her return to the jurisdiction of the University judicial system, whichever is later.

c. In cases where the individual to be charged is facing public prosecution involving the same matters, a charge may be brought within 60 calendar days of the final disposition of such prosecution. Should it appear that the individual will leave the University before such time, the President or his or her designee may cause the individual's degree to be withheld for the period in which the Judicial Administrator may file charges.

d. The Judicial Administrator may request a Hearing Board Chair to extend any limitations period by up to an additional six calendar months, without required notice to any other person but upon a showing of special circumstances justifying such an extension, provided that the Judicial Administrator delivers such written request to a Hearing Board Chair prior to the expiration of that period.

## **E. Hearing Procedures**

### **1. Circumstances Requiring Hearing**

a. The complainant may petition in writing for a review of the nonaction or summary action by the Judicial Administrator on the complaint.

b. The accused may petition in writing for a review of his, her, or its temporary suspension imposed by the Judicial Administrator or by the President or his or her designee.

c. The offender may petition in writing for readmission from indefinite suspension.

d. The Judicial Administrator may request a hearing by filing charges.

e. The offender may petition in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance with a prescribed penalty or remedy, or for violation of probation.

### **2. Preparations for Hearing**

a. The University Hearing Board shall hold a hearing within 21 calendar days of receipt of charges or petition by the Hearing Board Chair, unless otherwise provided by the Code, postponed by agreement of the parties, or postponed by the Hearing Board Chair for good cause shown.

b. In any case referred to the University Hearing Board for a hearing:

(1) The Judicial Administrator shall make a good faith effort to give notice of the hearing no later than seven business days in advance of the hearing, unless the accused agrees to a shorter time:

(a) to the accused in the manner for notification of charges;

(b) to the complainant by regular United States mail or by e-mail; and

(c) to the Judicial Codes Counselor by campus mail, e-mail, or telephone, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

(2) This notice shall contain:

(a) the time and place of the hearing;

(b) specification of the charges against the accused; and

(c) statement of the accused's rights to be accompanied by counsel or an advisor of the accused's choice, to hear the evidence against the accused, to question witnesses, and to give evidence in the accused's own behalf.

c. Names and written statements of any witnesses to be called at the hearing by the Judicial Administrator or by the accused, if known at the time, shall be exchanged no later than three business days prior to the hearing. The University Hearing Board, in its discretion, may exclude a witness's testimony if it determines that the Judicial Administrator or the accused has failed to comply with this provision as to that witness.

d. Copies of exhibits to be used at the hearing by the Judicial Administrator or by the accused, if known at the time, shall be exchanged no later than three business days prior to the hearing. Any objections to exhibits shall be made to the Chair for his/her ruling in advance of the hearing. Copies of the exhibits shall be made available to board members prior to the commencement of the hearing. The University Hearing Board, in its discretion, may exclude an exhibit if it determines that the Judicial Administrator or the accused has failed to comply with this provision.

### 3. University Hearing Board

#### a. Composition

(1) In cases involving complaints against students or University-registered organizations, a Hearing Panel shall be composed of three students, one faculty member, and one nonfaculty employee, all drawn from the University Hearing Board and University Review Board pool, except that in cases of sexual harassment, abuse, assault,

or rape the complainant, victim or the accused may opt for a Hearing Panel composed of three faculty members and two nonfaculty employees drawn from that pool.

(2) In cases involving complaints against faculty members, a Hearing Panel shall be composed of three faculty members, one student, and one nonfaculty employee, all from that pool.

(3) In cases involving complaints against nonfaculty employees, a Hearing Panel shall be composed of three nonfaculty employees, one student, and one faculty member, all from that pool.

(4) Selection of a Hearing Panel, whenever one is needed, shall be made randomly by the Administrative Chair of that pool.

(5) A member of the Hearing Panel may voluntarily withdraw from participation in any case by reason of a conflict of interest or any other good cause. Knowledge of the events at issue shall not disqualify a member, unless he or she has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the member shall be excused by vote of the Hearing Panel. Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Board Chair. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Administrative Chair.

#### b. Panel Procedures

(1) The Hearing Board Chair shall have the right to convene the Hearing Panel. The Hearing Board Chair shall conduct the proceedings and maintain order in the hearing room.

(a) He or she shall make procedural rulings before or at the hearing, applying these procedures and the procedures developed by the University Hearing Board, so as to assure fairness and to avoid undue delay.

(b) However, all procedural rulings of the Hearing Board Chair, other than a decision to postpone the initial convening of a hearing, shall be subject to the approval and concurrence of the Hearing Panel as a whole. The Hearing Panel may overrule the procedural rulings of the Hearing Board Chair by ordinary majority vote.

(2) At least four members of a five-person Hearing Panel must sit for a given case, in addition to the nonvoting Hearing Board Chair, and at least three votes shall be required for any decision.

(3) Cases that present common questions of law or fact and that would come before a panel of like composition may be joined for hearing.

(a) For joint hearing, the Judicial Administrator must affirm in writing that each accused performed acts sufficiently similar that the facts presented in evidence would not differ materially from one accused to another. In such case, the Hearing Board Chair may order joinder of such cases for hearing.

(b) Any accused, whose case is joined, may request in writing to be excluded from the joint hearing on the ground that (i) the accused is not charged with the same offense, at the same time and place, or (ii) that the facts relevant to the accused would differ materially from the facts relevant to the others. Such case, with the consent of the Judicial Administrator or at the direction of the Hearing Board Chair, may be severed from the joint hearing.

(c) The Hearing Panel may permit any accused tried jointly and found to have violated this Code to submit either a written or oral statement regarding mitigating circumstances, and must permit such a statement before imposing a penalty of dismissal or of suspension for the balance of a term or longer. The Hearing Panel shall consider differences among the conduct and circumstances of each accused before imposing any penalty.

(4) At the hearing, the case shall be presented by the Judicial Administrator in the name of the complainant. But failure of an individual complainant to appear at the hearing, unless excused by the Hearing Panel for good cause shown, shall result in a loss of his or her right to the assessment in his or her favor of a remedy (which means restitution to the complainant or order to the offender, as opposed to a penalty) by the Hearing Panel.

(5) The failure of the accused to appear at the time and place designated for the accused's appearance before the Hearing Panel empowers the Hearing Panel to:

(a) impose a temporary suspension, pending the accused's appearance;

(b) find the accused to have violated this Code and impose appropriate penalties and/or remedies, but the Hearing Panel may do so only if the Judicial Administrator shows that the accused received notice of the hearing, or that the procedures for notifying the accused were followed, and submits information sufficient to establish the allegations in the charges; or

(c) excuse the failure to appear for good cause shown, in which case the accused shall have the option of having the case heard in absentia, with the privilege of submitting written evidence, or of having a new date set for a hearing.

(6) The Hearing Panel shall endeavor to evaluate all relevant facts of a given case at the hearing. It shall receive relevant information that is reasonably reliable, but need not accept as evidence accounts of the accused's statements by the Judicial Administrator. Strict rules of evidence shall not apply, and the Hearing Panel shall have the power to establish its own rules of evidence, subject to the following exceptions:

(a) Confidential relationships currently protected under state or federal law shall be protected.

(b) Evidence of a victim's sexual conduct shall not be admissible unless fairness to the accused requires consideration of such evidence, consistent with practice under section 60.42 of the New York Penal Law.

(c) Members of the Hearing Panel may question witnesses and adduce evidence, but this shall not preclude parties to the hearing from questioning witnesses or introducing evidence. No accused person shall be denied the opportunity to question witnesses or to confront his or her accusers. However, the Hearing Board Chair shall control the hearing. For example, to avoid the risk of intimidation, the Hearing Board Chair may require certain questioning to be conducted by written questions read aloud to the witness by the Hearing Board Chair. In particular, to avoid the risk of intimidation in cases of sexual harassment, abuse, assault, or rape, the Hearing Board Chair shall require cross-examination of the complainant or victim to be conducted by written questions submitted in advance or in real time, including follow-up questions, and read aloud to the witness by the Hearing Board Chair, if the witness so requests. If an individual complainant does not testify, the Hearing Panel may proceed to decision only if it finds that the complainant's interests in not testifying outweigh the accused's interests in confronting his or her accuser. In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement. If a witness critical to the proof of the charges or to the defense against those charges indicates to the Judicial Administrator or the accused that he or she refuses to testify, the Judicial Administrator or accused may ask the Hearing Board Chair to order the witness to testify. The Hearing Board Chair shall, in his or her sole discretion, grant or deny the request based on the balance of equities for the witness, the complainant, the accused, the victim, and the University. If a witness does not appear for a scheduled hearing, the Hearing Board Chair may decide whether to delay the hearing pending the witness's testimony.

(d) No accused person shall be denied the right to present evidence and witnesses in his or her own behalf.

(e) No accused person shall be compelled to testify against himself or herself. The hearing can proceed even if he or she chooses to remain silent.

(7) All hearings shall be private unless (a) the accused notifies the Judicial Administrator, no later than two business days before the hearing, that he or she wishes a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in undue intimidation of the complainant, the victim, or the witnesses. In cases of sexual harassment, abuse, assault, or rape, all hearings shall be private, with the accused having no option of requesting a public hearing; and in such cases, if either the accused, the complainant, the victim, or the Judicial Administrator requests that the proceedings be conducted in a fashion such that the accused and the complainant or victim

be separated or such that the intimidation of the complainant or victim be otherwise reduced, the Hearing Board Chair, after determining appropriateness, shall make suitable arrangements to accomplish this. In the event of a public hearing, the Hearing Board Chair shall convene it in quarters that accommodate a reasonable number of the public, but may limit the number in the interest of preserving the decorum and dignity of the proceedings. Witnesses shall be excluded from all hearings, except for the period of their questioning. Witnesses shall not see or hear other evidence presented at the hearing, such as any police report, except as the Hearing Board Chair determines to be appropriate. All deliberations by the Hearing Panel and Hearing Board Chair shall be private.

(8) A verbatim record shall be kept of all hearings, but not of deliberations, and made available to the complainant within the allotted time for filing an appeal, and to the accused at any time.

(9) The Hearing Panel shall proceed to a decision as expeditiously as possible, and then shall notify the Judicial Administrator of its decision without delay. All decisions by the Hearing Panel shall be in writing, including a rationale and any dissenting opinions. The burden of proof on violation shall rest on the complainant, and the standard of proof on violation shall be clear and convincing evidence<sup>3</sup>, which is a higher standard than the civil law's more-likely-than-not standard but a lower standard than the criminal law's beyond-a-reasonable-doubt standard. After hearing, the Hearing Panel can:

(a) sustain a defense of lack of jurisdiction or other inapplicability of this Code, including that off-campus conduct did not meet the requirement of being a serious violation of this Title, and dismiss the case, although any such defense shall be deemed waived if not raised by the conclusion of the hearing;

(b) find the accused did not violate this Code and dismiss the case; or

(c) find the accused violated this Code and impose a penalty and/or remedy.

(10) The Judicial Administrator shall serve written notice of the decision of the Hearing Panel on the accused and the complainant within five business days of the Judicial Administrator's receipt of the written decision. The accused shall be provided with a full copy of the decision. The complainant shall be provided a copy of the decision with names of individuals and other identifying information redacted.

## **F. Appeal Procedures**

### **1. University Review Board**

#### **a. Composition**

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<sup>3</sup> For some violations, a different standard of evidence is required. See Appendix A, Article I.

(1) A Review Panel shall consist of three voting members: one student, one faculty member, and one nonfaculty employee.

(2) The members of the Review Panel, for any one appeal, shall be selected in the same manner as the members of a Hearing Panel from the University Hearing Board and University Review Board pool. But no person who served on the Hearing Panel shall sit on the Review Panel in the same case.

#### b. Panel Procedures

##### (1) Right to Appeal

(a) An accused against whom a penalty has been imposed or a remedy assessed by a Hearing Panel shall have the right to appeal the decision to the Review Panel.

(b) Any complainant, other than the University community as defined in Article III.A.2 of Title Two, shall have the right to appeal a Hearing Panel decision to the Review Panel if remedies were sought or if other laws or regulations require allowing such appeal<sup>4</sup>.

(c) The Judicial Administrator shall have the right to appeal the penalty imposed by a Hearing Panel.

(2) Appeals may be grounded only upon the complainant's belief that the remedy awarded the complainant is not commensurate with the injury<sup>5</sup>, upon the Judicial Administrator's belief that the penalty is not commensurate with the violation, or upon the accused's belief that:

(a) the Hearing Panel violated the fair application of the procedures established by the Board of Trustees, the University Assembly, or the University Hearing Board, and such violation may have had a prejudicial effect upon the outcome of the hearing;

(b) the Hearing Panel committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence;

(c) new evidence was discovered after the hearing and could not have readily been discovered before the hearing, and such evidence might have had an effect upon the outcome of the hearing; or

(d) the penalty and/or remedy imposed upon the accused is unjust.

##### (3) Notification of Appeal

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<sup>4</sup> For some violations, the complainant must have the same rights of appeal as the accused. See Appendix A, Article I.

<sup>5</sup> For some violations, the complainant must have the same rights of appeal as the accused. See Appendix A, Article I.

(a) The appellant shall file written notice of appeal with the Judicial Administrator within ten business days of the appellant's receipt of the notice of the decision. The Judicial Administrator shall refer the notice of appeal to the Review Board Chair without delay.

(b) The appellant and the respondent (if there is one other than the Judicial Administrator) shall be notified by the Judicial Administrator of the time of the appeal's hearing no later than seven business days after the notice of appeal is filed, and no fewer than seven business days in advance of the appeal's hearing.

(4) The Review Board Chair shall have the right to convene the Review Panel and shall conduct the appeal in a manner similar to a Hearing Panel proceeding. The Review Panel shall meet to hear an appeal within 21 calendar days after the notice of appeal is filed, unless a postponement is granted by the Review Board Chair for good cause shown.

(5) Decision of the Review Panel shall be rendered by a majority vote of the members present, and the majority of the members, in addition to the nonvoting Review Board Chair, shall constitute a quorum for any hearing of the appeal.

(6) The Review Panel shall determine whether its hearings shall be conducted in public or in private. However, all deliberations of the Review Panel and Review Board Chair shall be private.

(7) Disposition of Appeal

(a) Any decision of the Review Panel shall be based solely on the record and, in appropriate cases, upon a showing of new evidence relevant to the grounds for appeal. All decisions shall be in writing, including a rationale and dissenting opinions. Findings of fact shall not be set aside unless clearly erroneous, and harmless errors shall be ignored.

(b) The decision shall be affirmance unless the Review Panel sustains one of the above-specified grounds for appeal, in which case the Review Panel can:

(i) reverse a finding of violation;

(ii) alter a penalty or modify a remedy, if necessary and appropriate in the interests of justice;

(iii) remand a case to the Hearing Panel from which it originated for a new hearing; or

(iv) remand a case to a newly composed Hearing Panel if there were procedural violations.

(c) If the Review Panel calls for new evidence, it shall remand the case to the Hearing Panel from which it originated for a new hearing.

2. No final decision of this judicial system shall be reviewed by any other authority within the University, except that either the Judicial Administrator or the accused may appeal the penalty imposed by the Review Panel for violations involving acts or threats of violence, including sexual assault. Such appeal shall be to the President within fifteen business days of the appellant's receipt of the Review Panel's decision. The appeal shall be a written petition with the opportunity for the other party to respond; no oral argument shall be heard. The President may alter the penalty only by a written and reasoned opinion.

## **G. General Procedures**

### **1. Deadlines**

a. In computing any time period specified in this Code, the day of the event, act, or default that initiates the period shall be excluded.

b. The Judicial Administrator and other parties to the hearings must make good faith efforts to meet the deadlines for conducting hearings outlined by this Code. If the deadlines cannot be met, however, the hearings must be held as soon as practicable.

### **2. Legal Advisor**

The Hearing Panel or the Review Panel may appoint an independent legal advisor who shall advise that board on all legal matters relating to the performance of its responsibilities, and who may be present during any hearings and, upon the invitation of that board, during deliberations.

### **3. Witness Immunity**

The Judicial Administrator, the Hearing Panel, or the Review Panel may grant to witnesses transactional immunity from proceedings within the judicial system.

### **4. Confidentiality**

a. All who are involved in the complaint, investigation, hearing, appeal, and reporting processes are obliged to maintain confidentiality of the proceedings, except as otherwise specifically provided in this Code. They shall protect the confidentiality of all judicial records, except those records specifically referred to in Article II.B. Copies of judicial records shall not be released to outside sources without written consent of the subject of such record, except as provided in subsection (b) below.

b. The University will take reasonable measures to ensure the confidentiality of the proceedings and records; however, the University cannot and does not guarantee that confidentiality can or will always be maintained. Additionally, the University may disclose judicial records or otherwise confidential information:

i. when required by law; or,

ii. when authorized by law and necessary to protect the safety or well-being of the University community members, or to preserve the integrity of proceedings under this Code; or,

iii. with respect to the judicial records of University registered organizations only, when deemed necessary to educate the University community or to provide information to the University community about the organization's conduct.

c. Notification of the offender's violations, penalties, and remedies shall be sent as directed by the Hearing Panel or Review Panel to the University officials necessary to make the penalties and remedies effective, and to other persons who might provide counseling assistance to the offender.

## **5. Record Keeping**

a. The Office of the Judicial Administrator shall retain records of all complaints, orders, charges, proceedings, and decisions in accordance with that office's internal records management practices and Cornell University Policy 4.7.

b. Violations, penalties, and remedies shall be recorded in the Office of the Judicial Administrator and/or Director of Cornell Police in all cases arising under this judicial system. However, only a penalty of written reprimand, probation, suspension, or dismissal creates a disciplinary record.

## **Article IV. Penalties and Related Provisions**

### **A. Penalties**

1. The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision, provided that no person shall endure cruel and unusual punishment. In situations where an individual is both taking classes and on the University payroll, appropriate penalties may come from either or both Subsections a and b.

#### **a. Students**

(1) Oral warning.

(2) Appropriate educational steps (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(3) Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Judicial Administrator.

(4) Fine of not less than \$20 nor more than \$500 payable to the University Treasurer.

(5) Restriction or loss of specified privileges for a stated period not to exceed one year, including for example:

(a) in cases of misconduct in connection with University services or facilities, the student being prohibited from further use of those services or facilities other than in the course of his or her work or study; or

(b) in cases of misconduct in connection with University-owned or University-operated housing, the student being ordered to vacate such housing.

(6) Written reprimand.

(7) Probation for a stated period.

(8) Suspension from the University for a stated period not to exceed five years, or indefinitely with the right to petition the University Hearing Board in writing at any time for readmission after the academic term following the academic term in which the suspension occurred. Such petition shall be submitted no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester. If the Judicial Administrator agrees with the petition of the accused, he or she may permit the readmission without the petition being considered by the University Hearing Board, after consulting with appropriate professional colleagues and receiving approval of a Hearing Board Chair. If the University Hearing Board denies the petition, the accused may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the University Hearing Board. While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree.

(9) Dismissal, i.e., expulsion from the University.

b. Faculty and Other Employees

(1) Oral warning, educational steps, community work, and fine, as provided for student offenders.

(2) Written reprimand.

(3) Suspension from University duties for a stated period not to exceed one month, with loss of salary but without loss of other rights or privileges.

(4) Dismissal from University employ, with termination of any contract or tenure.

c. University-Registered Organizations

(1) Appropriate educational steps for members of the organization (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(2) Community work performed by members in a manner acceptable to the Judicial Administrator.

(3) Fine of not less than \$25 nor more than \$500 payable to the University Treasurer.

(4) Restriction or loss of specified privileges for a stated period not to exceed one year.

(5) Written reprimand.

(6) Suspension of all privileges for a stated period not to exceed one year.

(7) Dismissal, i.e., rescission of permission to operate on University property.

2. An offender's prior record of violations under this Code should be considered in the imposition of a penalty.

a. Ordinarily, the penalty for a second violation, whenever such violation occurs, should be more severe than for a first violation.

b. Ordinarily, the penalty for a third violation by a student within a twelve-month period should be probation or suspension from the University for a stated or indefinite period and denial of academic credit for the term in which the suspension occurs. The penalty may be reduced if a lesser penalty would more appropriately serve the interests of justice and if, in addition, the offender expressly agrees not to engage in misconduct of specified kinds in the next twelve months. In such a case of indefinite suspension, the offender may petition the University Hearing Board in writing for readmission, but no application for readmission for the academic term following the academic term in which the suspension occurred will be permitted.

3. Without intending to limit the assessor's ultimate discretion, certain types of violations are so fundamentally inconsistent with the University's educational mission that, absent unusual mitigating factors, a sanction of substantial suspension or dismissal ordinarily should be imposed. Such violations include acts of violence, including sexual violence; violations that are motivated by bias based on disability, ethnicity, gender, national origin, race, religion, sexual orientation or affectional preference, or any other suspect or invidious category; or any other violation that substantially threatens the University's educational mission or property or the health or safety of University community members.

## **B. Remedies**

The following remedies may be imposed:

1. Restitution to the University or to the victim of the violation.

2. Order to the offender to perform, or to cease and desist from, stated actions.

## **C. Compliance**

1. An official transcript issued during the pendency of charges shall indicate that charges are pending, accompanied by a complete recitation of the pending charges. The University, upon request of the person seeking the transcript, shall notify that person of the final judgment in the case. The University may withhold awarding a degree otherwise earned until the completion of proceedings, including compliance with a prescribed penalty or remedy.

2. If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator shall notify the University Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation.

3. No official transcript or degree will be granted to any person who has been found in violation of this Code and who has not fulfilled any condition or requirement fixed as a penalty or remedy, but such official transcript or degree shall be granted upon fulfillment of all such outstanding obligations.

## **D. Other Proceedings**

1. Any Title of this Code and the penalties and remedies imposed thereunder shall not be deemed exclusive of and shall not preclude resort to any applicable state, federal, or local law or ordinance or other University regulations and procedures. They shall not be deemed to limit the right of the University or of any person to take such additional action as may seem appropriate or necessary to maintain public order and safety and to protect legal rights.

2. Imposition of any penalty or remedy under any Title shall not preclude the imposition of any other penalty or remedy under this Code.

# **TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER**

## **Article I. Applicability**

This Title shall apply to all persons and organizations, including visitors and other licensees and invitees, on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the

Ithaca or Geneva area, except that students, members of the University faculty, other employees of the University, and University-registered organizations of the Medical College and the Graduate School of Medical Sciences shall be governed by separate regulations with respect to property and facilities of the Medical College and the Graduate School of Medical Sciences.

## **Article II. Violations**

### **A. Listing**

It shall be a violation of this Title:

1. To disrupt or obstruct or attempt to disrupt or obstruct any instructional, research, service, judicial, or other University operation or function or to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual, by any action including but not limited to the following:

a. by intentionally using or threatening physical force or violence to harass, endanger, injure, abuse, intimidate, or coerce another person, or to cause damage to or loss of property;

b. by intentionally obstructing or causing to be obstructed the lawful use of, access to, or egress from University premises or portions thereof, or by making unauthorized entry upon or use of a University property or facility or by unlawfully remaining in or on the same;

c. by intentionally obstructing or restraining the lawful movement of another person or obstructing or restraining his or her lawful participation in an authorized activity or event, such as regular and special curricular activities, extracurricular activities, and employment interviews; or

d. by intentionally inciting another person toward a likely and imminent violation of this Subsection 1.

2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format.

3. To possess, carry, or use firearms (including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instruments, or substances in or upon University premises, except by law enforcement officers or except as specifically authorized by the University.

4. To engage in any action or situation that intentionally or recklessly endangers mental or physical health or involves the forced consumption of alcohol or drugs, for the purpose of initiation into or affiliation with any group or organization.

5. To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a criterion for admission or seating at public speaking events advertised as open to the University community.

6. To disrupt or obstruct or attempt to disrupt or obstruct any speaker invited to appear on the campus by the University or a University-recognized organization.

7. To build a structure on the campus without a permit or in violation of the conditions of a permit, and to refuse to dismantle it or discontinue the nonconforming feature upon the lawful direction of an authorized University official.

8. To disrupt or attempt to disrupt intentionally any recruitment activity of a recruiter who is on campus in accordance with ordinary University processes.

9. To fail to comply with any time, place, and manner regulation authorized by Article III of Title One.

## **B. Interpretation**

Consistent with these regulations making it an offense “to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual,” this Title shall not be interpreted to permit the unlawful interference with such rights, as protected by the constitutions and laws of the United States and the State of New York. Nothing in this Title or any other University regulation, however, shall be interpreted to limit or prevent the University from seeking, without unlawfully interfering with any of the rights described, (1) to enforce the laws respecting trespass or (2) to regulate lawfully the use of University property. Nothing shall be deemed to impair the right of the University to take such action as may be necessary or appropriate for the purposes of construction and repair of facilities, of regulating vehicular and pedestrian traffic, and of maintaining public order and safety. And nothing shall be deemed to impair the right of the University to take such nondisciplinary administrative action as may be necessary or appropriate to maintain public order and safety.

## **Article III. Procedures**

### **A. Immediate Enforcement**

The President or a designated representative shall be responsible for initiating and ensuring the prompt enforcement of this Title. For conduct that violates this Title, individuals and organizations may be ejected from the University campus, property, or facility, or any part thereof by the President or his or designee acting in the following manner:

1. When the continued presence of an individual poses a clear and present danger to the public order or to the security of any property or the safety of any person, the individual may be ejected, but only until a hearing before the University Hearing Board.

2. In the case of an organization that authorizes conduct posing such a clear and present

danger, the President or his or designee may rescind permission for that organization to operate on University property and rescind the registration of the organization, but only until a hearing before the University Hearing Board.

3. The University Hearing Board shall meet to review such action within five business days after the day on which the alleged offense occurred.

## **B. Disciplinary Process**

For procedures, this Title adopts the provisions of Titles Two and Three prevailing at the time of the violation, except in the following particulars:

1. The President or his or designee shall perform the functions of the Judicial Administrator. In the case of service upon the President of any notice, including a notice of appeal, delivery to the office of the President or his or her designee shall constitute sufficient service.

2. In the event that a violation of this Title should also constitute a violation of other University regulations, including Title Three, the President or his or designee may, in his or her discretion, determine to handle the hearing and appeal of all such violations in one proceeding pursuant to the procedures of this Title.

3. Additionally, the President or his or her designee shall have the right to appeal a Hearing Panel final decision to the Review Panel on the grounds that the Hearing Panel committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence, by filing written notice of appeal with the Review Board Chair within five business days of receipt of the notice of decision.

## **Article IV. Penalties and Related Provisions**

For penalties and related provisions, this Title adopts the provisions of Article IV of Title Three prevailing at the time of the violation.

## **APPENDIX A: Additional Policies Appended To the Code**

### **Article I. Procedures for Violations Involving Sexual Violence and Sexual Assault**

Offenses involving sexual violence and sexual harassment, while still violations of the Campus Code of Conduct, will be investigated and adjudicated under Cornell University Policy 6.4 until such time as the Code is amended to fulfill requirements of Title IX.

To assist readers in interpreting the Campus Code of Conduct (the Code), references to this language have been made by footnotes throughout the Code; however, the text may apply to other sections of the Code even if no explicit footnote reference is provided.

**Procedures of the University Hearing Board  
Adopted by the University and Hearing Boards on  
October 22, 2013**

**I. Overriding Principles.**

**II. Procedures That Apply to All Hearings.**

**III. Types of Hearings and Unique Procedures for Each.**

**IV. Dates of Acceptance of Procedures, Publication in the *Chronicle* and When Procedures Effective.**

**V. Miscellaneous.**

**I. Overriding Principles.**

A. Every person involved in Cornell University's disciplinary system is expected to follow the procedures and policies of the Cornell University Campus Code of Conduct (Code) and the procedures articulated in this document (UHB Procedures).

B. The UHB Procedures explain and interpret the Code. To the extent the UHB Procedures, or any individual procedure, is determined to be inconsistent with the Code, it is null and void.

**II. Procedures That Apply to All Hearings.**

**A. Selection of the Five-person Panel.**

**1. Random selection of panel members.** The Administrative Chair<sup>1</sup> shall, in the presence of the Judicial Administrator or his/her designated representative, randomly select the members and alternates for a hearing panel from the pool of qualified University Hearing and Review Board members. The Judicial Administrator or his/her designated representative and the Administrative Chair shall certify in writing the random selection of hearing panels and alternates.

**2. Unavailable panel members.** Should a panel member be unable to attend a hearing, he/she shall notify the Judicial Administrator of the reason for his/her inability to attend as far in advance of the hearing as possible so that another panel member may be selected. The UHB Chair may remove from the pool any UHB member if the member is not honoring his/her commitment to the university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process. *Code*, Title

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<sup>1</sup> The Code provides, "All the members of the University Hearing Board and University Review Board pool shall annually elect one Administrative Chair from among those members." *Code*, Title Two, Article IV, Section C.4.

### **3. Removal of panel members.**

#### **a. Name recognition; certification of being fair and impartial.**

Each panel member will contact the JA prior to the hearing to learn the names of the parties and the general nature of the hearing. The panel member must certify to the JA that she or he will be able to be fair and impartial at the hearing, even if she or he knows one of the parties or has some indirect knowledge of the underlying incident.

**b. Removal of panel member by himself or herself.** If a panel member knows she or he has a conflict of interest, cannot be fair and impartial, or has any other good cause, she or he may voluntarily remove herself or himself from the panel. While it is preferable that this would be determined prior to the commencement of the hearing and communicated to the JA, if the panel member determines this during the hearing, she or he should ask for a break in the proceedings, speak to the UHB Chair about the situation and remove herself or himself at that time. The Chair, in his or her sole discretion, will determine whether to proceed with the remaining panel members or to recommence the hearing with a new panel at a later date.

**c. Removal of a panel member at the request of a party.** As noted in the Code, “Knowledge of the events at issue shall not disqualify a member, unless he or she has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome. . .” (*Code*, Title Three, Article III., E.3.a.(5) ) If the JA, the complainant, or the accused person believes one or more of the panel members would be unable to serve based on this criteria, he or she will bring a pre-hearing motion to the Chair (via electronic mail) and copied to the other party stating the basis for the concern and requesting the Chair to interview the panel member regarding his/her ability to serve. The opposing party must respond promptly to allow the Chair to take the next steps.

The Chair may recommend to the panel member that she or he voluntarily withdraw from the panel. If the panel member continues to wish to serve, the Chair will contact the remaining panel members, inform them of the information gathered by the Chair, and ask the remaining panel members to vote on the pre-hearing motion. A majority or a tie vote will result in disqualification of the panel member.

The JA will endeavor to provide notice to the parties of the names and

constituency of panel members 48 hours in advance and the moving party will bring its pre-hearing motion to the Chair 24 hours in advance, unless good cause is shown why the motion was brought less than 24 hours in advance. Additionally, it is acknowledged that panels are sometimes not established until right before a hearing, in which case the JA and parties will operate in good faith to accomplish these things as soon as practicable to avoid the necessity of a continuance.

**d. Replacement of removed panel member.** If a panel member is removed, the next eligible and available UHB member of that constituency group chosen by the Administrative Chair will serve on the panel instead.

**B. Pre-hearing motions.** If the JA or a party has a pre-hearing motion, it must be submitted to the Chair (via electronic mail) and copied to the opposing party no later than 48 hours before the hearing, unless good cause is shown why the motion was brought less than 48 hours in advance. The opposing party must respond promptly to allow the Chair the opportunity to rule on the motion prior to the hearing.

**C. Appropriate decorum.** All hearings shall be conducted in an orderly manner. No smoking, photography, or tape recording is permitted during the hearing. All persons involved in the process must be treated with dignity and respect and are expected to treat others in the process with dignity and respect. The Chair may request that anyone disrupting the decorum refrain from further disruption or leave. If that person shall continue to be disruptive, he/she may be excluded from the hearing. If the Chair excludes a person from the hearing, any rights attendant to his/her presence at the hearing will be deemed to have been waived.

**D. Decisions of the UHB Panel.** Decisions of a panel shall be based solely on the information gathered at the hearing, not information learned through media, gossip or other sources prior to the hearing. The Chair does not have a vote and shall remain neutral, but may lead the discussion of the panel members, including but not limited to: ensuring that all panel members have a chance to be heard; offering information about the Code, precedent and procedures; and reminding the panel of the availability of counsel. Three panel members must agree on any particular decision; the Chair may not break a tie.

**E. Confidentiality.** Members of the panel of the hearing board and all participants in the hearing shall consider all information at the hearing to be of a confidential nature and shall in no way divulge the information. In public hearings, only members of the panel shall consider all information at the hearing to be of a confidential nature and shall in no way divulge the information. All deliberations of the panel shall be held in a closed session and shall at all times be strictly confidential. The confidentiality described in this paragraph must be maintained even from other members of the hearing and review boards who were not on the panel at the hearing.

**F. Written Decision.** The UHB Chair will write the decision with input from the panel, and sign it on behalf of the panel. All decisions shall include:

1. the Code sections charged and the final disposition of each charge;
2. the panel's bases for each decision;
3. the penalty and/or remedy (if any) imposed with respect to each charge;
4. names and constituencies of panel members; and
5. any panelist who intends to file a separate opinion (dissenting or concurring), must notify the Chair within (48) hours of the conclusion of the hearing;
6. the dissenting or concurring opinion must be filed within (72) hours of the circulation of the majority opinion.

### **III. Types of Hearings and Unique Procedures for Each.**

**A. Hearings based on written petitions.** The Code references several types of hearings that are based on the written petition of one of the parties, including request by the complainant for a review of the nonaction or summary action by the Judicial Administrator (JA), appeals of temporary suspensions, request to return from an indefinite suspension, and review of penalty imposed by JA for noncompliance or violation of probation. (*See, Code*, Title Three, Article III, E.1.).

1. The format for these hearings will be: motion, reply, response. Typically, this means the accused person or the complainant writes to the UHB to explain what it wants to happen.<sup>2</sup> The JA has forms available that the party may fill out to guide its request.<sup>3</sup> The JA replies in writing. Then the party responds to the issues the JA raised that he/she did not anticipate in his/her motion.

2. The UHB Chair will determine due dates for the various written documents described above.

3. While it is anticipated that these hearings will be exclusively in writing, the panel of the UHB may request live argument if needed to reach a decision. At its initial meeting, the panel would consider whether it needs oral argument and, if so, would pick a date and time (typically a few days later) to hear from the parties. Or, the panel may simply have some questions and ask the parties these questions via telephone conference call on the same day. Any oral arguments or questioning of parties must be recorded.

4. The UHB Chair will then issue a written decision on behalf of the panel.

**B. Hearings on the Merits of a Case.** The most common type of hearing is a hearing on the merits of a case. (*See, Code*, Title Three, Article III, E.1.d.).

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<sup>2</sup> Drop this off at the JA's Office or send it via electronic mail to [judadmin@cornell.edu](mailto:judadmin@cornell.edu). The JA's Office will deliver it to the UHB members.

<sup>3</sup> These forms are available from the JA's Office or on line at [judicialadministrator.cornell.edu](http://judicialadministrator.cornell.edu).

**1. Bifurcated hearing.** The panel of the UHB must first determine whether there is clear and convincing evidence that the accused violated the Code. The panel will typically hear testimony, receive exhibits and hear arguments before reaching this conclusion; other times the parties may have stipulated to facts or to the fact of a violation. If, at the conclusion of the “violation stage” the panel determines there is not clear and convincing evidence, the hearing ends. If it determines that there is clear and convincing evidence of a violation, the hearing will resume to the “sanction stage” and the panel will consider what the appropriate sanction should be. Information about the prior misconduct of the accused will be reserved for the sanction stage of the hearing, except if the accused or other witness testifies at the violation stage, and if the prior misconduct is relevant with respect to credibility (for example, if the prior offense dealt with dishonesty or if the accused person asserts he/she has no prior disciplinary record, etc.), then the opposing party may have the option to examine the witness on this testimony or present rebuttal evidence. In such circumstance, only directly relevant prior misconduct may be addressed, and the examination or rebuttal should be specific and relevant. Whenever a party intends to use such evidence, the issue of relevancy should be addressed in the pre-hearing motions, to the extent practicable, in an attempt to determine the issue before the hearing.

**2. Order of the hearing.** The UHB Chair runs the hearing as would a Chair of a meeting. The order of the hearing, like an agenda, typically follows this format, subject to changes by the Chair as needed:

1. Call to order.
2. State constituency of panel members for record.
3. State names of accused, complainant, counsel and others present for the record.
4. Cite case and accused's name.
5. Be assured that accused is aware of the protections afforded to him or her by the Code, Title Three, Article III (for example, the ability to be represented by the Judicial Codes Counselor, to refuse to comment on the matter, to confront accusers and to produce his or her own witnesses and evidence).
6. Ask Judicial Administrator to read charge against the accused.
7. Ask the accused if he or she understands the charge. Ask whether the accused believes he or she violated the Code.
8. Request Judicial Administrator to present opening statement.
9. Request accused to present opening statement.
10. Request Judicial Administrator to present case and witnesses, allowing questions from accused (or his/her advisor) and board.
11. Request accused to present case and witnesses, allowing questions from the Judicial Administrator and board.
12. Any final questions?
13. Judicial Administrator presents summation.
14. Accused presents summation.
15. Final and concluding questions?
16. Panel deliberation in closed session.
17. Read decision into minutes.

18. If accused is found in violation, request the Judicial Administrator to present arguments and/or witnesses regarding sanction.
19. Accused may present arguments and/or witnesses regarding sanction.
20. Any response from the Judicial Administrator?
21. Any response from the accused?
22. Any final questions?
23. Closed session -- panel deliberation on sanction.
24. Read decision into minutes.
25. Inform accused of the right to appeal.
26. Close case if there are no further comments.

**3. Common procedural issues.** Following are a list of procedural issues that are common in hearings on the merits of cases. These particular procedures are documented here to provide comparable treatment of issues regardless of composition of the panel or who is the Chair.

**a. Panel overruling the Chair.** As noted in the Code, the Chair makes initial rulings on procedural issues that are subject to being overruled by the UHB panel. *Code*, Title Three, Article III. E.3.b.(1). For matters determined by the Chair prior to the hearing, the Chair will state the pre-hearing motion and his/her ruling on the record at the outset of the hearing. Other rulings will be made during the course of the hearing. Any party has the right to ask the panel to overrule the Chair's procedural rulings. Any panel member has the right at any time to request a closed session to discuss a procedural or substantive point material to the hearing. For purposes of this provision, a procedural point shall include all action taken by the Chair.

**b. Panel asking questions.** Panel members may direct questions to the complainant, witnesses, and accused at any time, subject only to the Chair's responsibility of maintaining an orderly hearing.

**c. Exhibits.** Exhibits are exchanged by the parties three days before a hearing and objections are heard by the Chair the day before the hearing, pursuant to *Code*, Title Three, Article III.E.2.d. If there are no objections to an exhibit, it is admitted into evidence prior to the hearing and provided to the board at the outset of the hearing. If there is an objection to an exhibit and the Chair overrules the objection, the party who wishes to keep the exhibit out of evidence may request that the exhibit be withheld from the panel to allow the party to ask the panel to overrule the Chair. If there is an objection to an exhibit and the Chair sustains the objection, the party who wishes to submit the exhibit may propose its admission into evidence at the appropriate time in the hearing, allowing the Chair to reconsider his/her prior ruling or the panel to overrule the Chair. The parties must provide at least 10 hard copies of each documentary exhibit to the JA's Office.

**d. Affirmative defenses.** The JA has the burden of proof and persuasion to prove a violation of the Code. The accused, however, shall have the burden of proof and persuasion for any affirmative defenses asserted. An affirmative defense is a new matter that constitutes a defense to the complaint; for example, an accused charged with theft could raise a prior payment as an affirmative defense.

**e. Evidence.** While the strict rules of evidence do not apply, the panel may admit all of the relevant evidence of a given case that is not unduly prejudicial or unfair. A hearing panel shall, in every case, admit evidence it considers necessary to make a fair decision. The Chair should make the initial determination of whether a particular piece of evidence (particularly hearsay) is relevant and not unduly prejudicial. For example, while the notes taken by a party or the JA of a conversation are not automatically admissible (and JA notes should not be used during the presentation of the JA's case), they may be used on cross examination to demonstrate a prior inconsistent statement of a witness; a statement of a non-testifying witness may serve as corroborating evidence; or business records may be used to establish details witnesses cannot remember.

**g. Use of screens.** When measures are taken to separate the parties (most commonly a screen that prevents them from seeing each other) (*see, Code, Title Three, Article III, E.*), efforts will be made to allow the accused person's advisor and the JA to see all witnesses. The advisor and the JA will maintain a respectful distance from opposing parties and witnesses.

**h. Use of cross-examination through UHB Chair.** When cross-examination is conducted through the UHB Chair (*see, Code, Title Three, Article III, E.*), efforts will be made to ensure a full and speedy cross-examination. For example, technology such as "Instant Messaging" might allow more flexibility and speed.

**i. Limitations on testimony.** The Chair may fix a limit to the length of a witness' testimony should it appear to belabor the point or become too repetitious.

**j. Need for additional or clarifying information.** In the event the panel feels the need for additional or clarifying information, whether prior to or after entering a closed session, the Chair may:

- order a continuance of the hearing and re-opening the investigation for good cause shown;
- recall a witness immediately for the purpose of clarifying

specified points of that witness' testimony, if s/he is still available and the information is desired;

- order a continuance until a witness may be recalled if the witness has departed and the clarifying information is necessary. This privilege shall not impair the right of the accused, complainant, or Judicial Administrator to question the witness; or

- allow the panel to interrupt its closed session prior to reaching a decision, for the purpose of clarifying specific aspects of testimony heard or other matters on which the panel feels the need for further information, from any parties to the hearing who might be present. The specific reasons for interrupting the closed session shall be stated for the record. The panel shall not ask questions or receive responses, which, in the opinion of the Chair, are not germane to the stated reason for interrupting the closed session. All parties must be present for these discussions and the discussions shall be held on the record.

**k. Continuance, including based on the late hour.** The Chair may adjourn the hearing until another day for good cause shown, including lateness of the hour. Typically, hearings should not go past midnight on any given night to allow parties sufficient rest for their work and classes the following day. The Chair shall consult all interested parties before fixing the rescheduled date. The JA and the accused shall be notified of the new date.

**l. Joinder of cases.** When cases are joined pursuant to *Code*, Title Three, Article III. E.3.b.(3), it is contemplated that the joinder will be for the violation stage of the hearing, not the sanction phase of the hearing. The parties, the JA, the Chair or a member of the panel may request joinder of the sanction phase, however, if it serves the interests of justice. Once all parties have opined on the issue, the decision is left to the Chair, subject to being overruled by the panel.

**m. No jurisdiction.** In cases in which the panel of the UHB finds there is no jurisdiction, the Chair shall notify the Codes and Judicial Committee of the rationale of the panel.

**4. Procedural Issues Unique to Public Hearings.** The procedures for a public hearing shall be the same as for a regular hearing, except that:

- a. The accused and the JA shall submit to the Chair and opposing party (i.) a list of witnesses who will be called at the hearing and (ii.) a designation of advisor. The list and designation shall be presented no later than 48 hours prior to the commencement of the hearing. The JA will provide both lists to the panel 24 hours in advance of the hearing.

- b. A reasonable effort shall be made to accommodate an expected

audience.

c. Those directly involved in the hearing (parties, counsel, etc.) shall be located separately from the public.

d. The Chair must exclude witnesses from the hearing so that witnesses may not listen to the testimony of other witnesses who testify prior to them.

e. Either the JA, the complainant, the accused student or a witness may request that some testimony remain private. The panel, in its sole discretion, may grant this request, removing the public during such testimony. Such private testimony will be summarized for the benefit of the public at its conclusion, deleting the witness' name.

#### **IV. Dates of Acceptance of Procedures, Publication in the *Cornell Chronicle* and When Procedures Effective.**

These procedures were approved by a majority of the University Hearing and Review Board pool on October 22, 2013. They were published in the *Cornell Chronicle* on \_\_\_\_\_, and became effective thirty days later, that is on \_\_\_\_\_.

#### **V. Miscellaneous**

A. The University Hearing Board should meet at least once each academic year for the purpose of reviewing and updating these procedures of the University Hearing Board. Amendments shall be made by majority vote of the membership of the Board.

B. The term of office of the Administrative Chair shall be one (1) academic year. Elections shall be held as early in the academic year as possible.

C. These Procedures have been developed in accordance with the Cornell Campus Code of Conduct and augment the procedures outlined therein. Any current or future Code provisions that contradict these Procedures shall supersede these Procedures or sections thereof.

D. A copy of these Procedures of the University Hearing Board shall be made available as follows:

1. to all parties - at the time the Office of the Judicial Administrator notifies the parties of the charge and date of hearing, or upon request;
2. to other interested parties - in the offices of the Judicial Administrator and Judicial Codes Counselor upon request.

**Procedures of the University Review Board**  
adopted by unanimous vote of the URB

I. General Rules and Guidelines

- A. Members of the URB shall consider all information and material coming before the Review Board to be of a confidential nature and shall in no way divulge the proceedings of a hearing—public hearings excepted. All deliberations of the Review Board shall be held in Executive session and shall at all times be strictly confidential.
- B. No new evidence may be introduced into the record on appeal. New evidence discovered after the hearing below shall be considered by the URB only to the extent necessary to decide whether to remand the case to the University Hearing Board (UHB) for a new hearing.
- C. A case heard privately by the UHB shall be heard privately by the URB, unless no party to the case objects to a public hearing and the URB approves of it. A case heard publicly by the UHB may be heard privately by the URB, if no party to the case objects and the URB approves.
- D. All Grounds upon which an appeal is based must be introduced through the Appeal Request Form which must be filled out and submitted to the Office of the Judicial Administrator. The decision shall be based solely upon such grounds.
- E. The URB may arrive at any of the following decisions regarding any appeal before if:
  - 1. uphold the Hearing Board decision;
  - 2. reverse or modify the Hearing Board decision, however, the URB may not increase a penalty;
  - 3. remand the case to the Hearing Board—either to the same panel that heard the case below or to new panel.
- F. URB members may request that legal counsel be retained to advise the URB. Should a URB member request legal counsel, such request shall not necessarily halt the hearing of the case, unless the Board so moves. However, in no case shall the panel proceed to consideration of a decision until counsel has been consulted or a Board member withdraws his/her request.

II. University Review Board Hearings

- A. The URB chairperson shall preside at all hearings of the Board. The chair shall cause the written record of the UHB panel's hearing and other pertinent documents to be circulated before the hearing.
- B. All hearings shall be conducted in an orderly manner. The chair of the Review Board may request that anyone disrupting the decorum either refrain from further disruption

or leave. If any person shall continue to be disruptive, s/he may be excluded from the hearing. Any rights attendant on her/his presence at the hearing will be deemed to have been waived.

- C. The appellant (person who filed the appeal) will present his/her case first, followed by the appellee. The parties may present the cases themselves, or by and through their advisor. Normally, the cases presented to the URB will be in the form of appellate argument based upon the record of the proceedings before the UHB.
- D. Those cases where new evidence is presented to the URB in the form of witnesses, the URB chair may at his/her discretion, fix a limit to the length of the witness' testimony, should it appear to belabor the point or become too repetitious.
- E. The URB chair may adjourn the hearing until another day under exceptional circumstances. The Board shall consult all interested parties before fixing the date for reconvening the Board.
- F. Prior to entering executive session, the URB shall reserve privilege of recalling witnesses who are still present for the purpose of clarifying points of those witnesses' testimony. This privilege shall not impair the right of the parties to the appeal to question the witnesses.
- G. The URB may interrupt the executive session for the purpose of clarifying specific testimony or specific arguments.
- H. The appellant shall be informed without delay of the decision of the Board. Such decision shall be read into the verbatim record of the hearing by a member of the URB.

### III. Public URB Hearings

- A. The procedures for a public hearing shall be the same as for a private hearing, except that:
  - 1. the appellant and the appellee shall submit a list of witnesses, if any, who will be called at the hearing. The list shall be presented to the Review Board chair prior to the commencement of the hearing. The chair may, at his/her discretion, allow witnesses to testify whose names are not on the list;
  - 2. those directly involved in the hearing (witnesses, counsel, etc.) shall be located separately from the public.
- B. All deliberations of the Board shall be held in executive session.

### IV. Appellant's Failure to Appear

It is to the appellant's advantage to appear in person. However, the hearing may proceed in his/her absence, or with his/her designated advisor, unless the appellant applies in writing to the chairperson of the URB for a postponement. The Review Board may either grant or deny the petition for postponement.

V. Records of Decisions

- A. Pursuant to the University Assembly legislation, a verbatim record shall be kept of all hearings of the URB.
  - 1. The record shall indicate the names of the members of the URB who are hearing the appeal.
  - 2. The record shall include the names of the appellant and all others appearing before the Board, including their status in relation to the hearing.
  - 3. Any member of the URB may append a separate opinion (dissenting or concurring) to the record within two weeks of the conclusion of the hearing.
  - 4. The record shall be signed by the URB chair to certify the record as an accurate report of the proceedings.
- B. A written record of the decision of the URB, including rationale and dissenting opinions, shall be filed with the chairperson as well as with the Judicial Administrator. This report, with the exclusion of the names of individuals involved, shall be made available to the public upon request.

VI. Miscellaneous

- A. The URB shall review and update its procedures as needed. Amendment shall be by a majority vote of the membership of the Board.
- B. These Procedures have been developed in accordance with the Campus Code of Conduct. To the extent that these Procedures are inconsistent with the Code, or any amendments thereto, they are null and void.
- C. A copy of these Procedures of the University Review Board shall be made available to all appellants and appellees, as well as to other interested parties, in the offices of the Judicial Administrator and Judicial Advisor.