

Complainants' Statement to the Executive Committee of the American Society of Civil Engineers in the Ethics Proceeding Against ASCE Member Roberto Ballarini

July 31, 2023

This statement is being provided to the Executive Committee (ExCom) of the American Society of Civil Engineers (ASCE) in advance of the disciplinary hearing to be held on August 10, 2023, for the Ethics Complaint brought against ASCE Member Roberto Ballarini (Ballarini).

Attachments: (1) Letter to Editor Ulm (necessary reading)
(2) Final Ulm Rejection (supporting documentation)
(3) Amended Ethics Complaint (supporting documentation)

I. Prayer for Relief

The Complainants are not seeking punitive action against Ballarini. Rather, they are merely seeking the enactment of a remedy by the ASCE ExCom and the Engineering Mechanics Institute Board of Governors (EMI Board) that would ensure their Discussion Paper is either published in the Journal of Engineering Mechanics (Journal) or declined on the basis of a *thorough and clearly communicated* technical explanation, to which the Complainants would have the opportunity to respond before a final decision is made.

Specifically, the Complainants ask the ASCE ExCom, upon finding that Ballarini violated the ASCE Code of Ethics, to request that the EMI Board rescind its 2013 decision on the Complainants' appeal and that the EMI Board instruct the Journal's editorial board to either publish the Complainants' Discussion Paper or provide a *thorough and clear explanation* as to why the reviewer who reviewed the Complainants' Discussion Paper is correct on the five outstanding disputed technical points summarized in the final section of this statement. The Complainants would then have the opportunity to respond before a final decision is made.

The remedy being sought by the Complainants would be simple to enact and would fully rectify the harm done to them. It would also serve the greater good by facilitating a scientific debate that has been prevented through the wrongful rejection of the Complainants' Discussion Paper.

II. Introduction

A thorough summary of the facts of this case is presented in the next section of this statement. What follows here is an analysis of the essential aspects of the case. The Complainants will provide further elaboration of their case and answer any questions the ASCE ExCom may have at the disciplinary hearing on August 10, 2023.

Essentially, four reasons have been given by different parties as to why Ballarini's actions in relation to the Complainants' Discussion Paper did not violate the ASCE Code of Ethics:

1. The Discussion Paper was actually rejected on technical grounds.
2. Ballarini was not actually involved in rendering the final decision.
3. ASCE editors should have broad discretion to determine the scope of their journals. Ethical scrutiny of an editor's decision to accept or reject content should be provided only when there is a strong indication of fraud, conflict of interest, or similar malfeasance.
4. Ballarini's objectivity was not influenced by a conflict of interest, and he did not fail to act as a faithful agent in performing his duties as editor.

Reasons 1 and 2 were put forward by Ballarini and ASCE Managing Director and Publisher Dana Compton during a review of this case by the Committee on Publication Ethics (COPE), an outside organization of which ASCE is a member. As the facts below show, the first reason is plainly false, and the second reason is contradicted by all of the available evidence.

As alleged in the Complainants' Amended Complaint submitted in March 2022, Ballarini's false statements to COPE and Compton's false statements to COPE on behalf of Ballarini constitute a further violation of the ASCE Code of Ethics by Ballarini. (The March 2022 Amended Complaint and the allegations it made were omitted from the "CPC Summary of Case.")

Reasons 3 and 4 listed above have been put forward by ASCE's Committee on Professional Conduct (CPC). These reasons are not false statements of fact as in the case of Reasons 1 and 2. However, they diverge widely from a fair and reasonable analysis of the facts for the following reasons:

In regards to the claim that ASCE editors should have broad editorial discretion:

1. Allowing editors to reject discussion papers as "out of scope" is inconsistent with COPE's core practice on post-publication discussions, which states that journals "must allow debate post publication." (See <https://publicationethics.org/postpublication>) It also violates ASCE publication policies, which impose heightened obligations on editors to facilitate "immediate publication of an errata" as well as "appropriate comments and/or papers" when errors in previously published papers are identified. (See "Publishing in ASCE Journals, p. 63) Essentially, the CPC's position empowers editors to reject any duly submitted discussion paper they wish by alleging that the paper is "out of scope," even when a discussion paper is narrowly critiquing an original paper, as is the case with the Complainants' Discussion Paper.
2. Furthermore, allowing editors to reject as "out of scope" a discussion paper that has already undergone peer review violates ASCE publication policies. As detailed on page 9 below, the option to reject a paper as "out of scope" is available to editors only upon initial review of a manuscript.
3. Furthermore, allowing editors to reject a discussion paper as "out of scope" while accepting a separate discussion paper of the same original paper (see

<https://ascelibrary.org/doi/abs/10.1061/%28ASCE%29EM.1943-7889.0000325>) is a clear violation of Canon 8 of the previous ASCE Code of Ethics, which stated: “Engineers shall, in all matters related to their profession, treat all persons fairly.” It is clearly unfair to deem one author’s discussion paper in scope but another author’s discussion paper of the same original paper “out of scope.”

In regards to Ballarini’s conflict interest:

4. Ballarini’s professional affiliation and collaborative relationship with one of the authors of the original paper, Jia-Lang Le, is a textbook conflict of interest.
5. For example, COPE representative Iraxte Puebla, in an email to Compton requesting information on the case, noted that potential conflicts of interest could include “a shared affiliation . . . with the authors of the article the submission critiqued” or “a collaboration with either group of authors within a few years prior to the publication.” Ballarini and Le were both co-workers and active collaborators. (Amended Complaint, p. 20)
6. As Puebla subsequently stated in an email to Compton (see page 13 below): “In the case of Dr Johns’ submission, it appears that a perceived competing interest may arise in relation to the Chief Editor’s prior relationship with one of the authors of the publication that Dr Johns’ submission is critiquing. As noted in earlier correspondence, the expectation per COPE guidelines would have been for Dr Ballarini to be recused from the editorial evaluation and decision for the manuscript.”
7. It does not matter — nor can it be proven one way or another — whether a potential conflict of interest influenced an editor’s decision. Merely the *appearance* of a conflict of interest is enough to make an editor unfit to be involved in deciding whether to publish a paper.
8. Canon 4 of the ASCE Code of Ethics in effect at the time Ballarini was reviewing the Complainants’ Discussion Paper stated: “Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.” Canon 4 further stated: “Engineers shall avoid all known **or potential** conflicts of interest with their employers or clients and **shall promptly inform** their employers or clients of any business association, interests, or circumstances which **could** influence their judgment or the quality of their services.” The relevant provisions of Canon 4 are reflected in today’s ASCE Code of Ethics where it states: “Engineers act as faithful agents of their clients and employers with integrity and professionalism” and “make clear to clients and employers any real, potential, or perceived conflicts of interest.” (Emphasis added.)
9. Furthermore, the document “Publishing in ASCE Journals” stated then, and states now, under “Obligations of Editors”: “An editor should avoid conflicts of interest **and/or the appearance thereof.**” (Emphasis added.)

10. The ASCE Code of Ethics and Publishing in ASCE Journals do not dictate that engineers and editors should avoid having their objectivity influenced by potential conflicts of interest (the test apparently used by the CPC). They dictate that engineers and editors *shall avoid conflicts of interest and/or the appearance thereof altogether and shall promptly inform their employers and clients of potential conflicts of interest.*
11. Ballarini clearly failed to avoid a conflict of interest and/or the appearance thereof. He also clearly failed to inform the Complainants and his colleagues at the Journal (and subsequently the EMI Board) of his potential conflict of interest. Upon getting involved in the review of the Discussion Paper, he could have easily recused himself once he realized the original paper was written by his co-worker and collaborator, but he did not.
12. On these actions alone, Ballarini violated the ASCE Code of Ethics, and his rejection of the Discussion Paper critiquing his colleague's paper must be invalidated. When combined with the unethical nature of rejecting as "out of scope" a discussion paper that had already undergone peer review, when the Journal had published a separate discussion paper of the same original paper, the case for rescinding the decision is overwhelming.

As the facts below show, the Complainants have been failed by decisionmakers at every step of the way since 2012, despite consistently acting in good faith and trusting in the available avenues of recourse to deliver a just outcome. These failures include the following:

1. After the Complainants submitted their appeal and revised manuscript in June 2012, Chief Editor Kaspar Willam failed to promptly review and publish the Complainants' revised manuscript or reject it legitimately on technical grounds.
2. Chief Editor Roberto Ballarini failed to ensure a fair review of the Discussion Paper when he became involved in the summer of 2013. In August 2013, together with Willam, he issued a final decision that was egregiously unfair to the Complainants, despite telling the Complainants one month earlier that his objective was fairness.
3. The EMI Board failed to thoroughly review the Complainants' appeal and to obtain all of the relevant facts before upholding the editors' decision to reject the Discussion Paper.
4. The CPC claimed that the editors' decision was "not an 'ethics' issue" and should not be subject to ethical scrutiny except if there was a strong indication of a conflict of interest. When the Complainants subsequently presented evidence of a conflict of interest, the CPC determined that Ballarini was not influenced by a conflict of interest. Even to this day, the CPC has not explained its reasoning for this determination to the Complainants.
5. COPE took all of Ballarini's and Compton's false statements at face value, failing to listen the Complainants' objections to Ballarini's and Compton's false statements and failing to include them in COPE's two case reports.
6. When Chief Editor Franz-Josef Ulm agreed to conduct a new review of the Discussion Paper, the ASCE Journals Department took no steps to ensure that Ulm would provide his

technical reasoning should he decide to reject the Discussion Paper. Instead of treating Ulm's review as a resolution to a multi-year ethics proceeding that might require enforcement of the terms of the Complainants' proposed remedy due to a pattern of unfair treatment by the Journal's editors, the ASCE Journals Department insisted on treating it as a normal review process.

7. Despite the Complainants' adamant pleas for Ulm to provide his technical reasoning for any decision to reject the Discussion Paper, Ulm inexplicably rejected the Discussion Paper without providing any technical reasoning, thus failing to execute the Complainants' proposed remedy.

The Complainants are asking the ASCE ExCom to end to this astonishing and demoralizing series of failures on the part of Willam, Ballarini, the EMI Board, the CPC, COPE, the ASCE Journals Department, and Ulm. All the Complainants want and deserve is for someone at the Journal of Engineering Mechanics to either explain why the Complainants are incorrect on the five outstanding disputed technical points or else publish their Discussion Paper once and for all.

III. Summary of Facts

Discussion Paper Review Process

1. In May 2011, Complainants Richard Johns and Tony Szamboti submitted a Discussion Paper critiquing a paper by Jia-Liang Le and Zdeněk Bažant published in the Journal of Engineering Mechanics (Journal) in January 2011. The Complainants accepted the analytical methodology used in the original paper but challenged the input values used in the mathematical analysis. They argued that when the input values were corrected, it reversed the outcome of the analysis. (Amended Complaint, p. 61)
2. In May 2012, exactly one year to the day after it was submitted, Chief Editor Kaspar Willam (Willam) rejected the Discussion Paper on technical grounds. (Amended Complaint, p. 81)
3. In June 2012, the Complainants promptly appealed the Willam's decision and were asked to submit a revised manuscript, which they did before the required deadline. They made a number of minor edits to the original manuscript to address the reviewer's comments but disputed five points made by the reviewer. These points are described in more detail on pages 17 and 18 below. (Amended Complaint, pp. 85, 95, and 97)
4. In October 2012, the Journal published a separate discussion paper of Le and Bažant's paper, together with a closure by Le and Bažant.
(<https://ascelibrary.org/doi/abs/10.1061/%28ASCE%29EM.1943-7889.0000325>)
5. In August 2013, 14 months after the revised manuscript was submitted, Co-Editors in Chief Willam and Ballarini (the latter had become a co-editor in July 2012) rejected the Discussion Paper. The decision letter sent to the Complainants plainly stated that the decision was reached "by the Co-Editors in Chief" and that the Discussion Paper was rejected "because it is out of scope." The co-editors' comments were as follows (Amended Complaint, p. 129):

“Your appeal of the decision on EMENG-1013 has been declined. This decision has been reached **by the Co-Editors in Chief** after a careful review of the original discussion, the review that recommended the discussion be declined, and your rebuttal to the review. **The Journal of Engineering Mechanics is not a forum for on-going and potentially never-ending forensic opinions associated with a specific case study (in this case the collapse of the World Trade Center towers),** but instead it is a journal for fundamental contributions to engineering mechanics. The Co-Editors stand by their previous decision to decline your discussion **because it is out of scope.**” (Emphasis added.)

6. Email correspondence between Ballarini and the Complainants during the three months prior to the final decision plainly shows that Ballarini was involved in making the final decision and that the final decision reflected his stated editorial agenda of no longer publishing papers on the World Trade Center collapses.

Ballarini stated in two separate emails to the Complainants in July 2013 (Amended Complaint, p. 126):

“last week I requested and received from the Journal office all papers, discussions and reviews it received and published that were associated with the World Trade Center. These hopefully will provide me with a better perspective on your submission. **My objective is fairness,** but as I stated previously, **with the intention of ending what could potentially be a never ending discussion on this topic (the Journal is not the appropriate venue for such on going discussions).**

“I will do my best to read through what I have received over the next week or so. **Then I will talk one more time to Dr. Willam to hear his opinion before making a decision.**” (Emphasis added.)

“On August 4 I will travel to Evanston for the ASCE EMI Conference. There will be an Editor/Associate Editor meeting at that conference that will be attended by Dr. Willam and some representatives from the Journals office. I will take this opportunity to meet person to person with Dr. Willam to discuss the appeal to your (declined) discussion, and **determine whether the appeal has sufficient merit to overturn the original decision.**

“I agree with you that this process has taken too long, but I hope you will patient for a few more weeks. I prefer meeting with individuals face to face instead of carrying on multiple email conversations that can lead to confusion and delay.

“**I assure you that I will get back to you by the end of the first week of August.**” (Emphasis added.)

The decision letter was sent on August 9, 2013, two days after the EMI Conference ended.

Engineering Mechanics Institute Board of Governors Review

7. In September 2013, the Complainants appealed the decision to the EMI Board.
8. The EMI Board's review of the Complainants' appeal was devoid of due process, violating several aspects of due process outlined by ASCE General Counsel Tara Hoke (Hoke) in her presentation for COPE in April 2019 (https://youtu.be/u_dhX_UHRws?t=1723). A slide from Hoke's presentation is shown below.



These due process violations included the following:

- **Adequate Notice:** The Complainants did not understand the process to be followed. The document “Publishing in ASCE Journals” merely states the following regarding appeals of final editorial decisions: “If the manuscript is again declined, the decision can next be appealed to the appropriate division, council, or institute. The division, council, or institute’s decision is final.”

Secondly, EMI President Roger Ghanem’s decision letter to the Complainants did not clearly communicate the EMI Board’s decision. It provided no explanation for why the EMI Board concluded that the Complainants “were treated fairly and all ASCE Publication processes were properly followed.” (Amended Complaint, p. 132)

- **Opportunity to Be Heard:** The Complainants did not have the ability to make their case, either in writing or verbally. Barriers were imposed upon their participation such that they were not invited to attend any portion of the EMI Board’s discussion and they were not asked to submit a statement. Meanwhile, Ballarini was treasurer of the

EMI Board, so he may have been given the opportunity to make his case while the Complainants were not. Indeed, the Complainants have no record of the EMI Board's deliberation. Also, evidence was not properly shared with the Complainants. According to the decision letter from President Ghanem, "The ASCE Journals Director provided a timeline, all submissions, and correspondence to review." These materials were not shared with the Complainants. Sharing these materials with the Complainants would have allowed them to at least ensure that a complete record was provided to the EMI Board.

- **Fair Judgment:** Based on the lack of explanation given in President Ghanem's letter, there is no indication the EMI Board's decision was evidence-based. To the contrary, as noted below, it appears the EMI Board was unaware of key facts of the case. Moreover, there is no reason to trust that the decision was made neutrally. Ballarini was not only the treasurer of the EMI Board, but he had just been appointed by the EMI Board that summer to serve as EMI president starting in FY 2014 (the very next month). He was evidently held in high regard by the EMI Board and likely had close professional relationships with other board members.
9. Post-decision communications from ASCE Journals Director Angela Cochran and President Ghanem in September and October 2013 demonstrate that the EMI Board evaluated the case as if the Discussion Paper had been finally rejected on technical grounds on the basis of the reviewer's comments rather than for being "out of scope."

Cochran stated in an email to the Complainants (Amended Complaint, p. 133):

"The reviewers did not agree with your position as stated in your submitted discussion. The editors and the board **stand by the initial review.**" (Emphasis added.)

But the editors did not cite the initial review as the basis for rejecting the revised manuscript nor did they provide any technical basis for rejecting the revised manuscript.

In a subsequent email to the Complainants, President Ghanem stated (Amended Complaint, p. 136):

"**While your paper may very well be within the scope of the Journal,** the Board's review of your case was concerned with whether or not the submission was treated fairly and in a manner that is consistent with the policies of the Journal of Engineering Mechanics." (Emphasis added.)

President Ghanem's statement indicates he was not aware that the Discussion Paper was rejected as "out of scope" or that this was the central issue to be evaluated. Also, just as in his decision letter, President Ghanem gave no explanation for the EMI Board's conclusion that the Complainants' submission "was treated fairly and in a manner that is consistent with the policies of the Journal of Engineering Mechanics."

10. Ultimately, there is no indication that the EMI Board was aware that the Discussion Paper had been rejected as “out of scope” and that the Journal had published a separate discussion paper of Le and Bažant’s paper. If the EMI Board was aware of these facts, then the EMI Board did not explain to the Complainants why it was consistent with ASCE Publication processes for the Journal to reject an already-reviewed Discussion Paper as “out of scope” when “out-of-scope” determinations are provided for only upon the initial review of submissions. “Publishing in ASCE Journals” stated at the time (and states similarly today):

“**Upon initial review** of a submitted manuscript, the editor is permitted to take the following actions:

- Send the paper out for review.
- Return the paper without review and suggest a transfer of the paper to another ASCE journal.
- **Return the paper without review because the paper is outside the scope of the journal.**
- Return the paper without review because the grammar is substandard.
- Return the paper without review because the technical content is insufficient.
- Return the paper without review because the paper grossly exceeds the length limitations.

“Reviewers are experts who critically read and provide detailed reviews to improve the paper. Editors review the comments and will often provide a summary for the authors. **The decisions available after review are:**

- Accept the paper as submitted
- Revise the paper for review by the editor only
- Full re-review required after revisions
- Decline”

(Emphasis added.)

Secondly, if the EMI Board was aware that the Journal had published a separate discussion paper of Le and Bažant’s paper, then the EMI Board did not explain to the Complainants why it was fair for one discussion paper to be considered within the Journal’s scope but for the Complainants’ Discussion Paper of the same original paper to be deemed “out of scope.”

There is also no indication that the EMI Board was aware of or considered Ballarini’s relationship with Le.

Ethics Complaint

11. In September 2018, the Complainants, together with 10 ASCE members, filed the present Ethics Complaint alleging that Willam and Ballarini violated the ASCE Code of Ethics in effect at that time by rejecting the Discussion Paper as “out of scope.” (Amended Complaint, p. 39)

12. Specifically, the Complainants alleged that Willam and Ballarini violated:

- i. Canon 3, which stated: “Engineers shall issue public statements only in an objective and truthful manner.” Canon 3 further stated: “Engineers shall be objective and truthful in professional reports, statements, or testimony.” Canon 3 was violated primarily because the Discussion Paper was plainly within the scope of the Journal since it was critiquing a paper in the Journal and both the original manuscript and the revised manuscript were submitted by the applicable deadlines. The relevant provisions of Canon 3 are reflected in the current ASCE Code of Ethics where it states: “Engineers express professional opinions truthfully and only when founded on adequate knowledge and honest conviction.” (Amended Complaint, p. 50)
- ii. Canon 6, which stated: “Engineers shall act in such a manner as to uphold and enhance the honor, integrity, and dignity of the engineering profession and shall act with zero-tolerance for bribery, fraud, and corruption.” Canon 6 further stated: “Engineers shall not knowingly engage in business or professional practices of a fraudulent, dishonest or unethical nature.” Canon 6 was violated because the “out of scope” decision violated multiple provisions of ASCE publication processes that must have been known to the editors. The relevant provisions of Canon 6 are reflected in the current ASCE Code of Ethics where it states: “Engineers uphold the honor, integrity, and dignity of the profession” and “have zero tolerance for bribery, fraud, and corruption in all forms, and report violations to the proper authorities.” (Amended Complaint, p. 51)
- iii. Canon 8, which stated: “Engineers shall, in all matters related to their profession, treat all persons fairly and encourage equitable participation without regard to gender or gender identity, race, national origin, ethnicity, religion, age, sexual orientation, disability, political affiliation, or family, marital, or economic status.” Canon 8 further stated: “Engineers shall conduct themselves in a manner in which all persons are treated with dignity, respect, and fairness.” Canon 8 was violated primarily because the Journal published a separate discussion paper of Le and Bažant’s paper but rejected the Complainants’ discussion paper as “out of scope,” thus treating the Complainants unfairly and also, frankly, without dignity and respect. The relevant provisions of Canon 8 are reflected in the current ASCE Code of Ethics where it states: “Engineers treat all persons with respect, dignity, and fairness, and reject all forms of discrimination and harassment.” (Amended Complaint, p. 52)

13. In early October 2019, Hoke, acting on behalf of the CPC, notified the Complainants of the CPC’s finding that a violation of the ASCE Code of Ethics had not occurred. Hoke’s letter to the Complainants stated (Amended Complaint, p. 167):

“Ultimately, the CPC feels that the concerns you raised are not an ‘ethics’ issue. They felt that editors should have broad discretion to determine the scope of their journals, and they were not supportive of providing ethical scrutiny for an editor’s decision to

accept or reject content in the absence of a strong indication of fraud, conflict of interest, or similar malfeasance—which they did not see in this case.”

14. In response, in late October 2019, the Complainants submitted a Supplement to their Original Complaint. (Amended Complaint, p. 170)
15. The Supplement disputed the CPC’s position that ASCE journal editors should have such broad discretion so as to be permitted to reject duly submitted discussion papers as out of scope and argued that such actions should be subject to ethical scrutiny even in the absence of a strong indication of fraud, conflict of interest, or similar malfeasance. As noted below, one of the core practices of the Committee on Publication **Ethics** (COPE) — of which ASCE is a member — states that journals “must allow debate post publication.” (Emphasis added.) The decision to prevent duly submitted criticism of a scientific paper from being published is inherently ethical in nature, as evidenced by COPE’s core practice on post-publication discussions.
16. Nevertheless, the Supplement provided a 63-page appendix of documentation illustrating that Ballarini and Willam did indeed have conflicts of interest. The most notable of those conflicts of interest was the close professional relationship between Ballarini and Le during the time that Ballarini was involved in reviewing the Discussion Paper (May to August 2013).

Firstly, Le was hired as an associate professor in the Department of Civil, Environmental, and Geo-Engineering at the University of Minnesota in September 2010 while Ballarini was the chair of the department (presumably Ballarini was involved in Le’s hiring). Ballarini remained at the department and was a superior/co-worker of Le’s throughout the entire period that the Discussion Paper was under review.

Secondly, Ballarini and Le co-authored three papers between 2013 and 2014. The first, “Effect of stress singularities on scaling of quasibrittle fracture,” *Proceedings of 13th International Conference of Fracture*, was published in June 2013. This was during the time that the Complainants’ Discussion Paper was under review and that Ballarini was personally looking into the review process. The second, “A finite weakest link model of failure statistics of polycrystalline silicon MEMS devices,” *Proceedings of ASME International Mechanical Engineering Congress and Exposition*, was published in November 2013, three months after the Journal rejected the Complainants’ Discussion Paper as “out of scope.” The third, “Effect of stress singularity magnitude on scaling of strength of quasibrittle structures,” was published in the *Journal of Engineering Mechanics* in January 2014, less than six months after the Complainants’ Discussion Paper was rejected as “out of scope.”

The Supplement ultimately argued that “Ballarini’s professional relationship with Le was so close during the time that Johns and Szamboti’s Discussion Paper was under review that Ballarini should have recused himself from reviewing the Discussion Paper, as required by the fifth provision under “Obligations of Editors” in Publishing in ASCE Journals: “An editor should avoid conflicts of interest **and/or the appearance thereof.**” (Emphasis added.)

17. In July 2020, Hoke notified the Complainants via telephone calls with Scott Grainger (an ASCE member and co-signer of the Complaint) and Johns that the CPC stood by its original position. The Complainants found the CPC's explanation confusing and never received an explanation in writing. For example, on July 7, 2020, Johns stated in an email to his advisor and representative, Ted Walter:

“I just spoke to Tara Hoke, and the news is disappointing. Tara apologized for not getting back to me, and said that she "owes me a letter" updating me on recent events. During the call she promised to get me the letter soon. I asked for a summary over the phone, and she said that the CPC met again and reviewed our extra material about conflicts of interest, but decided to stick to their original decision. Apparently they talked to various staff at the JEM, and think that the potential conflicts of interest were "taken care of" somehow. It doesn't make a lot of sense to me, but perhaps the letter will clarify things.”

18. The “CPC Summary of Case” is the first written document the Complainants have received that addresses the conflict-of-interest allegation against Ballarini. It provides no explanation for the CPC's conclusion, merely stating:

“The CPC reviewed the additional information but felt that the additional information did not support a conclusion that Dr. Ballarini failed to act as a faithful agent in performing his duties as editor of JEM and/or that his objectivity was influenced by a conflict of interest.”

Whatever case and/or evidence the CPC may present during the hearing to justify its position will be the first such case and/or evidence the Complainants are being presented with.

Committee on Publication Ethics (COPE) Review

19. In July 2020, with ASCE's agreement, the Complainants submitted a “concern” to the COPE Facilitation and Integrity Subcommittee in hopes of obtaining advice for how ASCE should handle this case, and in hopes of reaching a resolution without the need for a disciplinary proceeding. (Amended Complaint, p. 11)

20. According to COPE's website, “The primary role of the Facilitation and Integrity Subcommittee is not to adjudicate complaints, but instead to facilitate the resolution of disputes in a manner that is consistent with COPE's mission.”

21. As detailed in the Amended Ethics Complaint subsequently submitted by the Complainants in March 2022, Ballarini — and ASCE Managing Director and Publisher Dana Compton, acting on Ballarini's behalf — made false statements to COPE that materially affected the outcome of COPE's review, which was intended to provide constructive advice to ASCE and to facilitate a resolution to this matter. (Amended Complaint, pp. 1-37)

22. Ballarini's false statements and Compton's false statements on behalf of Ballarini led COPE to believe falsely that the Discussion Paper was finally rejected on technical grounds —

when in fact it was rejected for being “out of scope” — and that Ballarini was not involved in rendering the final decision to reject the Discussion Paper — when all available evidence indicates that Ballarini was involved in rendering the final decision.

23. The Amended Ethics Complaint thus alleged that Ballarini further violated Canon 3 (truthfulness and objectivity) and Canon 6 (honor and integrity) of the previous ASCE Code of Ethics as well as three responsibilities set forth in the new ASCE Code of Ethics, adopted on October 6, 2020. (Amended Complaint, pp. 33-34)
24. The March 2022 Amended Ethics Complaint and its allegation that Ballarini violated the ASCE Code of Ethics by making false statements to COPE (and by not correcting Compton’s false statements made on his behalf) are omitted from the “CPC Summary of Case” but must be considered as part of this proceeding.
25. Ballarini’s false statements to COPE were made in an email dated October 13, 2020, in which he stated (Amended Complaint, pp. 15, 261):

“Note that as I explained in previous replies related to this issue, **I became involved with dr John’s’ submission at the end of the affair when Dr Willam had made a decision to reject it.** He is the one who was involved with its review (he sent it out for review etc), not me. I explained this numerous times. **My involvement wad [sic] limited to the co-signing of the decision letter,** which includes **our decision** that the Journal will not continue being a venue for detailed forensic analyses of the twin towers collapse.” (Emphasis added.)

26. Compton’s multiple false statements to COPE on behalf of Ballarini — which Ballarini was copied on and failed to correct — are exemplified in an email to COPE on October 15, 2020, which stated (Amended Ethics Complaint, pp. 17, 249):

“**Dr. Willam rendered a decision on the appeal in August 2013.** The letter advised the authors that there had been a review and **the Co-Editors were standing by the technical comments of the original reviewer** and the original decision.”

27. On October 31, 2020, COPE representative Iraxte Puebla emailed Compton to ask about the potential conflict of interest involving Ballarini, advising that Ballarini should have been recused from evaluating the Discussion Paper. Puebla stated (Amended Complaint, pp. 23, 254):

“In the case of Dr Johns’ submission, **it appears that a perceived competing interest may arise in relation to the Chief Editor’s prior relationship with one of the authors of the publication that Dr Johns’ submission is critiquing. As noted in earlier correspondence, the expectation per COPE guidelines would have been for Dr Ballarini to be recused from the editorial evaluation and decision for the manuscript.** Could you please comment on this, and clarify what steps the journal took, or will take, to address this concern?” (Emphasis added.)

28. On November 2, 2020, Compton responded to Puebla as follows, copying Ballarini and the Complainants (Amended Complaint, pp. 23, 254):

“Again, per our earlier replies, **Dr. Ballarini was not involved in handing the discussion, nor rendering a final decision.** Dr. Willam was the handling Editor for the discussion as described below. The review, in retrospect, should have been written in clearer language that made clear which co-Editor took responsibility for the decision.” (Emphasis added.)

As email correspondence between Ballarini and the Complainants during the three months prior to the final decision plainly shows, this statement by Compton was false.

29. On November 29, 2020, Puebla emailed the Complainants COPE’s report, copying Compton and Ballarini. Puebla’s email to the Complainants stated as follows (Amended Complaint, pp. 23-24, 283):

“Based on the information we received, we consider that the journal followed an adequate process to follow up on the issues raised, **as they provided further clarification on the grounds for the rejection and on the editor involved in the handling of the submission.**” (Emphasis added.)

In addition, COPE’s report stated (Amended Complaint, pp. 24, 255):

“The journal provided a detailed timeline of the handling of the submissions and clarified that **the rejection of the resubmission was handled by Dr Willam as Chief Editor and not by Dr Ballarini.**”

“The journal undertook a review of the submission history and of potential competing interests on the part of the editors, and confirmed that **the Chief Editor with potential competing interests did not handle the decision for rejection.**” (Emphasis added.)

As is evident in Puebla’s email and in the COPE report, COPE’s conclusion “that the journal followed an adequate process” hinged on Ballarini’s and Compton’s false statements.

30. In December 2020, the Complainants asked COPE to extend its review, stating that they disputed some of the key facts presented by Ballarini and Compton and that they believed the decision to reject the Discussion Paper as “out of scope” was procedural rather than technical in nature, and thus COPE was well-positioned to provide important advice on it. COPE subsequently agreed to extend its review. (Amended Complaint, pp. 25, 286)
31. In response to a new set of questions from COPE, Compton doubled down on the claim that the Discussion Paper was not rejected as “out of scope,” stating in an email on February 8, 2021 (Amended Complaint, pp. 27, 321):

“This is not a matter of change in editorial scope, but rather upholding on appeal the decision of the original technical review. Further, since Dr Ballarini has taken the helm as sole Editor of JEM, he has held fast to the philosophy that JEM is not an appropriate forum for back-and-forth forensic debate but rather is a journal for fundamental contributions to engineering mechanics. As such, he has chosen not to consider submissions on this topic. **However, that was not the reason for the decline of the appeal—the appeal was declined because, after further review, the Editor upheld the technical decision on the initial submission.**” (Emphasis added.)

32. The following day, on February 9, 2021, the Complainants wrote to Puebla to correct the false statements in Compton’s latest submission to COPE. The Complainants wrote (Amended Complaint, pp. 28-29):

“The text does mention carefully reviewing the technical documents, but does not say that our discussion was rejected on this basis. Instead, in the final sentence the editors state explicitly "The Co-Editors stand by their previous decision to decline your discussion because it is **out of scope**." [Emphasis added by Johns.] Perhaps Ms Compton wishes that the editors had said something else, but wishing doesn't make it so. It's also clear that the part about the JEM not being a forum for forensic opinions is intended to support the "out of scope" decision. If our discussion were being rejected for technical reasons, this sentence would have no relevance at all, and I cannot imagine why the editors would include it.

“Finally, a rejection for technical reasons is almost always justified by pointing out errors in the manuscript. As a journal reviewer myself, after spending a significant amount of time to analyse someone's work, and find mistakes in it, it would be ridiculous not to share these with the authors. It doesn't take any extra effort, and it's of enormous benefit to them. And the rebuttal we wrote in this case was not saying anything very complicated -- mostly just showing that data we used is indeed provided by the relevant NIST reports, as well as Bazant's previous work, and we were using standard engineering formulas. A mistake of this sort would be very easy to point out, whereas if a manuscript is out of scope then there is no need to do so.

“Looking at all the evidence, then, it is very clear that the rejection of our discussion was on the (supposed) basis of being out of scope.”

33. Nevertheless, COPE took Compton’s claims at face value, and the handful of emails the Complainants sent to COPE disputing Compton’s false claims were somehow omitted from both COPE reports. On April 8, 2021, Puebla emailed the Complainants COPE’s amended report, stating (Amended Complaint, pp. 30, 307):

“Upon consideration of the appeal per the journal’s process, **the editor decided to uphold the initial decision for rejection, due to the technical concerns outlined in the initial rejection and which the editor considered remained in the version of the manuscript considered on appeal.**” (Emphasis added.)

Puebla further stated in her email:

“An important aspect of the concerns about the case relate to the reasons behind the rejection of the appeal. **The subcommittee considers that this may have been prevented by clearer language in the editorial decision** issued in response to the appeal request, we recommend the journal reviews their process for editorial decisions to **ensure that the letters for authors are as clear as possible in the future, particularly regarding decisions for rejection.**”

34. It is clear from (1) the language of the decision letter, (2) the lack of technical basis given in the decision letter, and (3) Ballarini’s July 2013 email stating his editorial agenda that there was no lack of clarity in the decision letter. The decision letter states plainly: “The Co-Editors stand by their previous decision to decline your discussion because it is out of scope.”
35. Moreover, the CPC’s own position on this case that editors should have broad discretion to determine the scope of their journals is at odds Ballarini’s and Compton’s false statements. Effectively, CPC’s position accepts that the Discussion Paper was rejected as “out of scope.”
36. Neither Ballarini nor Compton has produced any actual evidence supporting the claim that Ballarini was not involved in rendering the final decision. As shown above, all of the available evidence plainly shows that Ballarini was involved in, if not chiefly responsible for, rendering the final decision
37. It is abundantly clear that Ballarini and Compton made these false statements because they knew that COPE would have found it inconsistent with COPE’s core practices for Ballarini to have been involved in rendering the final decision and for the Discussion Paper to have been rejected as “out of scope.” The fact that they made these false statements in order to mislead COPE is further evidence that the ASCE Code of Ethics and publication ethics in general were violated.
38. As a result of Ballarini’s and Compton’s false statements to COPE, the ASCE and all who manage and use its journals still lack clear guidance from COPE on the simple question of whether it is consistent or inconsistent with COPE’s core practices to reject a discussion paper submitted within the appropriate window as “out of scope.” This lack of clear guidance has enabled the CPC to maintain its position that an editor’s decision to reject a duly submitted discussion paper as “out of scope” does not warrant ethical scrutiny, even in cases where the discussion paper has already undergone peer review and where a separate discussion paper on the same original paper has been published. Had Ballarini and Compton not made these false statements to COPE, this matter very likely would have been resolved more than two years ago, and this disciplinary hearing would have been unnecessary.

Review of Discussion Paper by New Journal Editor

39. In April 2022, following the March 2022 submission of the Amended Ethics Complaint and the Complainants’ simultaneous request for the new editor of the Journal, Franz-Josef Ulm,

to perform a review of the Discussion Paper in-lieu of holding a disciplinary proceeding, the CPC approached Ulm about conducting a new review, and Ulm agreed to do so.

40. The Complainants' proposed remedy set forth in the Original Ethics Complaint and the Amended Ethics Complaint asked for the Journal editor or an associate editor to either publish the Discussion Paper or provide a *technically reasoned decision* not to publish the Discussion Paper. (Amended Complaint, pp. 2, 36, 41, 55)
41. Despite the Complainants' best attempts to ensure that the review would be treated as a special situation where the editor would be required or at least urged to provide a technically reasoned decision for rejecting the Discussion Paper, ASCE Executive Editor Michelle English, who managed the review process, insisted on treating the review as a normal review, where apparently an editor is not obligated to provide a technical basis for rejecting a manuscript.
42. Despite the Complainants' adamant pleas for Ulm to provide his technical reasoning for any decision to reject the Discussion Paper, Ulm subsequently rejected the Discussion Paper twice without providing a technically reasoned decision, thus failing to execute the proposed remedy. **Rather than restating how Ulm failed to provide technically reasoned decision, the Complainants ask the ASCE ExCom to read the attached documents entitled "Letter to Editor Ulm_06.15.22" and "Final Ulm Rejection_07.20.22."**
43. In essence, the full extent of the technical basis communicated in Ulm's initial decision letter was as follows: "We have read the earlier editorial review and concur with its arguments on scientific grounds." Ulm provided no technical basis whatsoever for concurring with the earlier editorial review.

Five Outstanding Disputed Technical Points

44. Ulm claimed in his initial decision letter that "no major changes" were made in the revised manuscript, but as detailed in the Complainants' "Letter to Editor Ulm," the Complainants made seven edits to their manuscript to address the comments of the original reviewer.
45. Besides those seven edits, the Complainants disputed five points made by the reviewer, which concern simple factual matters that any editor of the Journal should be able to evaluate with relative ease and communicate their conclusion on. A simple evaluation of these five disputed technical points is all that is required to either accept the Discussion Paper or legitimately reject it on technical grounds, but editors Willam, Ballarini, and Ulm all failed to do this.
46. The five outstanding disputed technical points are as follows:
 - i. The reviewer claims that Le and Bažant's $m_c = 0.627 \text{ Mkg}$, the "mass of one floor slab," is actually the mass of the entire floor assembly and contents, not just the 11cm-thick concrete slab. The Complainants maintain that the correct mass of the entire floor assembly and contents is 3.87 Mkg. The Complainants calculated that the

- mass of the concrete slab itself is about 0.7 Mkg. Also, the reviewer doesn't address the fact that Bažant and Le (2008) give the mass of one story as 3.87 Mkg.
- ii. The reviewer claims that Le and Bažant do not assume that $F_y = 0.25 \text{ GN/m}^2$. The Complainants showed that this assumption is implicit in Le and Bažant's Equation (3), and also that Bažant and Le explicitly gave this value in their 2008 closure to G. Szuladzinski's discussion.
 - iii. The reviewer claims that the formula used $M_p = 1.5 b^2 \cdot t \cdot F_y$ is not the usual formula for M_p . The Complainants derived this formula from one in a standard textbook, using the fact that $t=w$ and $t \ll b$ for the upper-story columns of WTC 1.
 - iv. The reviewer claims there is no basis for the Complainants' assertion that $A = 4\text{m}^2$. The Complainants showed clearly how this number was calculated.
 - v. The reviewer claims the Complainants don't provide sufficient evidence that the mass of the descending portion of the building was 33 Mkg, rather than the 54.18 Mkg assumed by Le and Bažant. The Complainants pointed out that NIST gives the weight of the descending portion as 73,143 kips, which converts to 33.18 Mkg. Also, Le and Bažant give no source for their value.
47. Any legitimate decision to reject the Discussion Paper must include a *clear and thorough technical explanation* as to why the reviewer is correct on these points and the Complainants are incorrect.