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INTRODUCTION

The Honor System is one of the University of Virginia's oldest, most cherished, and most vital traditions; indeed, it would be fair to say that for many generations of students, the Honor System has defined the essence of their experience at the University. It has served the University and the surrounding community well for 158 years, and we hope it will continue to play a central role in the life of the University for many years to come. Unhappily, there is substantial reason to believe that the Honor System no longer plays the central role it once did in the experience of most students at the University and that it is threatened by a number of forces, some beyond its control but others generated by changes in the System itself.

The Honor System serves two distinct, but related, purposes within the University community. The first is aspirational: we at the University of Virginia seek to teach our students by self-conscious example that life in a community where people behave honorably toward one another is vastly preferable to life in any other sort of community. The second is disciplinary: we recognize that, despite our best efforts, some members of the community will fail to live up to its ideals, and we must provide a means for facing and dealing with these failures. These two functions are bound together by a common educational thread: by entrusting to students the disciplinary function, we seek to teach them that only through vigilant awareness and the acceptance of major responsibility can they preserve the community of trust to which we all aspire and that the conferral of a University of Virginia degree will continue to be publicly respected as representing more than academic proficiency.

The Honor System, we recognize, is not, and never has been, a static, unchanging affair. To the contrary, it has changed greatly over the years in response to the dynamic growth and change in the University itself and the surrounding society. When the Honor System was instituted in 1842, the University had a grand total of 128 students, nine faculty members, and one staff person. Today the University is a bustling town of approximately 30,000 persons—18,000 students and 12,000 faculty and staff. In 1842 the University was all male and all white, and it was part of a state in which one substantial portion of the population was enslaved by another. Today the University's population is incredibly rich in diversity. More than half its undergraduate students are women, and it affords a hospitable environment for learning and growth to students and faculty of all backgrounds and ethnicities.

With growth and exciting change have come challenges for the Honor System. For one thing, time and the evolution of social mores have blurred, at least in some areas, what were once clearly defined rules of honorable behavior. For another, the sheer size of the University today means that vastly more human conduct is subject to the strictures of the System and that it is correspondingly more difficult to monitor that conduct for conformity to the honor code. Even if

there has been no growth over time in the percentage of enrolled students who lie, cheat, or steal, today's student body is more than 140 times as large as the one of 1842.

Changing attitudes about the consequences of dishonorable behavior have also posed serious difficulties. Since the early 1970s there has been a significant growth in the percentage of students who are reluctant to invoke the procedures of a system whose sole response to a finding of guilt is permanent expulsion. There is a widespread perception that this, combined with the recent move to trials before randomly-selected panels of students—as opposed to the traditional trials before the Honor Committee itself—has engendered significant “jury nullification”—the refusal to find guilt in honor trials in the face of overwhelming evidence.

The University's relatively recently achieved and deeply cherished diversity has also posed problems for the Honor System. This is not, in our view, because any group or groups within the University community are less deeply committed to the ideal of honorable behavior. Rather, we believe, it is because in a large, diverse community, there is a significant tendency for groups of students with similar backgrounds—including, but not limited to, minorities—to cling to each other for mutual nourishment and support, and, in some cases, to perceive that, as a sub-group, they are being singled out for Honor accusations at rates higher than their presence in the community may warrant. This in turn feeds a false, but nonetheless serious, perception that the Honor System is not for and about minority students, a perception that builds upon itself by discouraging participation in the System by minority students.

The Honor System and its disciplinary procedures have been tweaked and prodded almost continually over the course of the last thirty years or more. Indeed, one who left the University community in the late 1960s and returned two decades later could legitimately say that he recognized everything about the academical village *except* the Honor System. These piecemeal changes are in themselves evidence that the community has long been dissatisfied with the way the System has been operating, but their cumulative effect is so dramatic that it is difficult in some ways to see much continuity with the System that even relatively recent alumni knew and operated.

The changes have been both substantive and procedural. There once were four honor offenses—lying, cheating, stealing, and a failure to confront a fellow student whom one believed to have violated the honor code. Now there are three—it is no longer an offense to tolerate dishonorable conduct in others. Once any violation of one of the code's three prohibitions was automatically grounds for expulsion. Now each trial involves a determination of guilt of the offense charged and a separate determination whether the offense was “serious” enough to warrant imposition of the single sanction of expulsion.

On the structural and procedural side, the changes have been even more dramatic. The Honor Committee itself is no longer composed of the presidents of the student bodies of the various

schools, but is separately elected. Since the Committee rarely functions as a trial body any more (accused students *may*, but almost never do, elect a trial before a panel of Committee members), its function has become largely “legislative” —that is, it concerns itself mostly with the rules of the System, and its members campaign for office on legislative agendas.

The change, roughly a decade ago, to randomly-selected student juries has been perhaps the most dramatic procedural change in the conduct of honor trials, but it was preceded by a series of changes that heavily analogized an honor trial to a criminal proceeding. These included an analogue to the Fifth Amendment privilege against self-incrimination, under which a student accused of an honor offense can stand mute and put the community to its proof. Thirty years ago, the responsibility for investigating the possibility of an honor violation and confronting a fellow student whom one believed to have violated the honor code rested squarely—and exclusively—with the student who came into possession of evidence giving rise to suspicion. Only those whose own conduct was at risk under the System—students—could make accusations and put others to the choice between admitting guilt and leaving the University or demanding a trial of the charges. Because of a perception of increased reluctance on the part of students to bring honor charges, the ability to initiate cases directly was extended to any person, including faculty members, merchants, and landlords. Today only about one-third of the cases initiated are brought by students. There is in place today an elaborate set of procedures and a large group of “support officers,” who conduct investigations, advise initiators and accused students, and function as counsel at trials. The intricate procedures of the Honor System and the much larger number of people involved in the processing of each case have led at times in the recent past to significant backlogs, with cases often taking a year or more to come to trial.

These many changes have taken place in the context of a society that is vastly more litigation-prone and where the stakes involved in an expulsion from the University are much higher than they used to be. In 1842 only about one-third of the students who enrolled at the University even came back for a second year, let alone pursued and obtained a degree. The return of a young gentleman from university was in the 19th century not a remarkable event, and one suspects that many students who withdrew or were expelled because of honor offenses quietly resumed their lives at home with few, if any, other persons the wiser. In the last thirty years, however, a full four-year college education has become a widespread norm, and significant sectors of the working world have been reserved to college graduates. Any deviation from the normal progression to a college degree is a subject for comment and inquiry by prospective employers. Moreover, the much higher cost of education today gives parents, as well as students, an enormous stake in the outcome of an honor proceeding. As a result, while the Honor System operated for 139 years without a single reported lawsuit seeking to overturn any of its results, there have been four suits brought and several others seriously threatened in just the last five years.

The heightened stakes, the changes in outlook, the sheer complexity of the System, and the heavy analogy to the criminal process have led, not only to perceived instances of "jury nullification," but to an emphasis on winning, marked by decreasing standards of civility and a good deal of procedural "gamesmanship," in the conduct of honor trials. A recent survey revealed that a very large segment of the faculty is disenchanted with the System, often as a result of adverse personal experiences, including unpleasant treatment by counsel and others in the course of honor proceedings. The question of faculty (and graduate student) support for the System is further complicated by the University's growing national stature, which has attracted faculty and graduate students from all over the world, many of whom have no experience with the traditions of the System and its once-central role in the life of the University community.

The vulnerability of the Honor System to litigation has, quite naturally, engaged the attention of the Board of Visitors, which has in recent years sought ways to improve the processing of cases and to avoid exposure to the expense and adverse publicity inherent in lawsuits.

All these developments, and perhaps others as well, have produced a sense within the Board, the Administration, the Honor Committee, the faculty and the student body at large that the System may be in real danger, both of successful external attack and of the serious erosion of support and participation within the University community itself. To the credit of the Honor Committee, it took the initiative to appoint this Commission and charged the Commission with conducting a thorough review of the Honor System and its processes and making whatever recommendations it deemed appropriate.

The Commission, whose members were chosen by the Honor Committee, is broadly reflective of the different constituencies with vital interests in the preservation and improvement of the Honor System. Its deliberations have been led by the current Chair of the Honor Committee, and two other Commission members are currently serving on the Honor Committee. The Commission also includes two former Chairs of the Honor Committee, the immediate past Vice-Chair for Trials, representatives of the Dean's Office and the Student Affairs Office, a faculty member who for several years also advised the Honor Committee on legal issues as a part-time member of the General Counsel's Office, and the Chair of the Board of Visitors' Committee on Student Affairs and Athletics. In addition, the Commission has benefited greatly from the non-voting participation of the President of the Alumni Association's Board of Managers and the new Legal Advisor to the Honor Committee. The Commission has received valuable legal advice from the University's General Counsel, and its work has been ably organized and guided by the Honor Committee's Administrative Assistant.

The Commission divided itself into four subcommittees. Subcommittee #1 discussed the role of the Committee and its support officers. Subcommittee #2 reviewed the investigation and Investigative Panel process. Subcommittee #3 reviewed the adjudication of cases through trials and appeals, and Subcommittee #4 focused on improving community and public relations. Each

Subcommittee met individually to discuss their topics and brought suggestions for change to the full Commission for consideration.

The early deliberations of the Commission and its subcommittees were devoted to an effort to articulate goals and visions for the Honor System for the foreseeable future and to identify real and perceived problems that need to be addressed. Each subcommittee put forward proposals to address problems and improve the System in its assigned area. The full Commission carefully considered and debated the subcommittee proposals—and others that arose in the Commission's own sessions—in an effort both to craft and put forward those with the greatest merit and to knit the various proposals into a coherent and cohesive whole. The Commission's vision for the future and its proposals for the achievement of that vision are set forth in some detail in this Report.

We have taken the Committee's charge seriously. We have attempted, at least, a comprehensive review of the Honor System in today's world, and we offer in this report what we believe to be a comprehensive and systematic set of recommendations. While we realize that perhaps no one will agree with all of our recommendations—indeed, we recognize that some of them will inevitably be controversial—we put them forward with a sense of urgency reflecting the genesis of our appointment. We do *not* think all is well with the Honor System. We agree with many in the community that the System is in grave danger and that without substantial reform it may succumb in the relatively near future to pressure, external, internal, or both.

We believe very strongly that students can be trusted to run a vital University System that is both aspirational and disciplinary. But we have concluded that many of the changes of the last twenty to thirty years have had the effect of loosening student accountability and have undercut the willingness of the students collectively to take charge of the System. The alumni members of the Commission have resisted—successfully, we hope—the temptation to try to turn the clock back and rely on a retrospective vision better suited, perhaps, to a simpler time. At the same time, the current student members have resisted—again, we hope successfully—the temptation to oppose any major alterations in a System with whose workings they are both familiar and relatively comfortable.

A final note on the Commission's proposals is in order. As the reader will see, a number of the Commission's proposals take on complex and controversial issues and, in some cases, reflect multi-faceted proposed solutions. Each issue (and each corresponding reform) addressed in this Report was vigorously and thoroughly debated, often across several meetings of the relevant Subcommittees and the full Commission. As would be expected with any approach to complex and difficult issues by committee, reasonable people could differ—and we sometimes did. Although there was unanimity regarding some proposals, there was a range of disagreement regarding some others. The airing and careful consideration of disagreements and dissenting views aided the work of the Commission in attempting to understand all of the nuances of the

relevant issues and, in some cases indirectly, the concerns underlying dissenting viewpoints are reflected in these proposals as well. In sum, although (as would be expected in any undertaking by committee) there were some disagreements and dissenting views as to particular proposals, this Report represents the views of the Commission as a whole on the important issues addressed here.

The Commission wishes to thank the University's Alumni Association for its support and for its commitment to raise a \$2 million endowment for the Honor Committee. This endowment will, among other things, provide the financial support necessary to implement reforms.

We offer our proposed reforms in the hope that the Committee, the students, and the other interested constituencies within the University community will share our sense of urgency and act to save the System before it is too late.

THE ROLE OF THE COMMITTEE AND ITS SUPPORT OFFICERS

In considering the role of the Committee and its support officers, the Commission examined the following question. **What should the role of the Honor Committee be?**

The examination began by reviewing the Basic Tenets of the Honor System, the Committee Objectives and the Historical Structure. Following is a summary of the review.

BASIC TENETS

Student self-governance: The Honor System is run entirely by students with minimal administration/faculty guidance.

Accountability: The Honor Committee should be ultimately responsible for the actions of all of its members and support officers.

Competence: Honor Committee members and support officers must have the basic education necessary to serve effectively, professionally, and competently.

Inclusiveness: All students should feel ownership of the Honor System; the System should not be the exclusive province of any particular group.

HONOR COMMITTEE OBJECTIVES

1. Efficient processing of around 100 cases per year.
2. Effective educational programming for 3000 entering students per year and programming for other students beyond their first year.
3. Maintaining and updating the Committee's Constitution and By-laws to reflect current student opinion.

HISTORICAL STRUCTURE

Judicial: Founding to 1950

- elected representatives from each school.
- almost exclusive function to confront alleged violators and hold trials
- minor educational role to conduct first year orientation and limited faculty orientation
- student population: small, all male and white
- University administration and faculty support high through deference

Judicial and Educational: 1960s to early 1980s

- elected representatives from each school
- introduction of student jurors
- newly created roles for support officers (e.g. advisors, educators, and counsel)
- centralized management and oversight in Honor Committee
- multiple student referenda on single sanction
- first material presence of minorities and women in student body
- beginning voicing of concern regarding disproportionate application of System to minorities
- handful of public cases
- University administration interaction through Student Affairs support with minimal contact with Board of Visitors and growing dissatisfaction by faculty

Judicial, Educational, and Legislative: 1980s to Present

- elected Honor representatives from each school
- growth of enormous support apparatus with decentralized operations
- multiple student referenda regarding single sanction
- increased public discussion and concern over disproportionate impact on minorities
- increased use of litigation and threat of litigation by students against Honor Committee
- increased alienation/tension between Honor Committee and University administration (e.g. Board of Visitors and faculty)

Throughout its history the Committee has varied greatly on the amount of time that it spends on the judicial, educational or legislative areas. This change appears to be more circumstantial than intentional. A consultation was held with Mr. James Clawson, Darden Business School, to discuss recommendations that the Honor Committee might consider over time to remain effective. Mr. Clawson discussed and offered his technical note, Organization Charters: Mission, Vision, Values, Strategies, and Goals, for consideration in establishing an Organizational Charter for the Honor Committee.¹ With this information in mind, the following proposal was developed.

PROPOSAL #1

Debate and adopt the "Organizational Charter: The Honor Committee and its Support Officers" into the transition and training of new Committee members and support officers on an annual basis.

¹ Clawson, James G. "Organization Charters: Mission, Vision, Values, Strategies and Goals." Copyright 1996 by the University of Virginia Darden School Foundation, Charlottesville, VA UVA-OB-0600

DISCUSSION

Organizational Charter: The Honor Committee and its Support Officers

Mission: To exercise student self-governance and protect and maintain a community of trust and integrity.

Values: In the spirit of its mission, the Honor Committee should conduct its business with the highest levels of integrity, honor, and uprightness. Second, considering the seriousness of its role, the Committee and its support officers should hold themselves to the highest standards of professionalism and competence. Finally, the Committee should remain dedicated to the concept of student self-governance; that is, an Honor System run by students for students is the path most likely to engender student support.

Vision: The Honor Committee should be a balanced amalgamation of its judicial, legislative, and educational roles. Instead of focusing purely on procedure, the Committee should return to its original focus: reinforcing the importance of the Honor System to the community at large and finding the truth when Honor cases are brought to it. The Committee should also be accountable for its decisions; that is, it should have a role in making decisions on cases and see directly the effects of its legislative role on individual cases.

Strategic Path: The implementation of the recommendations of the Honor System Review Commission should go a long way toward realizing the vision espoused in this organizational charter. By increasing the judicial role of the Committee as suggested later in this report, the Committee will become more accountable for its decisions. In addition, the Committee's role will return to a balance between its judicial, legislative, and educational functions.

This Proposal includes the above Organizational Charter as a discussion point for the transition period to assure communication from Committee to Committee on the Mission of the Honor System. It is hoped that a thorough discussion would occur during the time of transition and then again during the training period. This discussion would create a time when Committee members and support officers could discuss the purpose and ideals of the Honor System. This philosophical discussion is intended to set a framework from which the Committee will work all year.

PROPOSAL #2

Support further efforts to exploit the aspirational ideal of honor by identifying and developing ways for students to experience and reflect on living honorably within the University of Virginia community and beyond.

DISCUSSION

The Introduction discussed many factors that have led to the System being threatened and no longer the central focus of a student's experience at the University. It is critical in the next few years that this deterioration be taken seriously and a method(s) of rebuilding the ideal of honor be placed as the highest priority within the University community. The importance of a sense of community built on the foundation of the Honor System cannot be understated. Development of this community must begin before students arrive on Grounds and must continue long after they have graduated.

The Commission does not have the answer to all the means that should occur to reestablish honor as a central focus of University life. It does, however, encourage the Honor Committee and the University community as a whole to strongly consider collaboration toward the goal of integration of the ideal of honor throughout a student's curricular and co-curricular experience. Recommendations from the Virginia 2020 project, organized to design and improve the student experience into the 21st century, address this issue and we urge that the Honor Committee be consulted and included regarding their proposed efforts.

PROPOSAL #3

Expand and perfect training for Honor Committee members and support officers.

DISCUSSION

The Honor Committee should continue to expand and perfect training procedures to ensure that new and current members of the Honor Committee and support officers are adequately trained to perform their functions with their responsibilities. The role of the Committee and its support officers is a very difficult one at times, and only adequate training can prepare Committee members and support officers for their roles.

Generally speaking, moot cases and realistic simulations should continue to be integral parts of the training process for all Committee members and support officers, as this is one of the most effective ways to become comfortable with the numerous honor Hearings. The Honor Committee should also hold several mandatory meetings with support officers (at their meeting times) to discuss Committee issues. Not only is it important that they be aware of these issues as Honor

representatives in the community, but it also empowers them and encourages future leaders early-on.

Honor Committee: The weekend-long training and transition retreat is a valuable way for the Committee to work together and learn the procedures of the System and should be expanded and improved. Instituting a mandatory Investigative Panel and Hearing observation program during the time leading up to transition would ensure that all Committee members are prepared for their role. Refresher courses during Committee meetings throughout the year and at the beginning of the fall semester should help newer Committee members maintain and update their knowledge of Honor Committee policies and procedures.

Support Officers: Much has been done to improve support officer training in recent years. The Orientation Week has greatly improved and a six-to-eight-week training program added to some of the pool's training programs. The Commission recommends that such extended training should be added to all of the support officer divisions in order to achieve continued improvement in performance. The Commission further recommends that the Committee consider adding refresher courses during the course of the year and competency testing for all support officers to further refine their skills and identify where improvement may be needed.

Finally, all training should be updated and intensified to reflect what, if any, changes proposed by the Review Commission are adopted by the Honor Committee and the student body.

DIVERSITY AND THE HONOR SYSTEM

DEFINING THE PROBLEM OF RACE

Although the Honor Committee has struggled to address effectively issues of diversity, serious racial tensions have plagued the Honor System since the mid-1980s. Indeed, the 1990 study conducted by James W. Lyons of the Stanford Institute for Higher Education Research titled, The University of Virginia Honor System Study, 1990-1991, notes that, in both the adjudication of cases and the perceptions students of color have about the System, "there is unmistakable evidence of a problem (p. 6)."² Citing both quantitative and qualitative evidence, Lyons attributes these problems to "spotlighting," a phenomenon in which students of color tend to stand out and receive more than the usual amount of attention, and the ineffectiveness of efforts to increase racial diversity among the Committee and its support officers. He concludes that, while the Honor System is vital to the University's sense of community, there are significant areas of concern regarding the impact of race on and in the System.

The problem is not just that minority students are accused of honor offenses at a higher rate than white students. It is also that minority students do not participate in the governance of the System in anything like the numbers or with the same enthusiasm as do white students. In fact, distrust of the System among many, if not most, minority students runs quite deep. It is indeed not too strong a statement to say that the Honor System has the potential for racial polarization.

In its deliberations, the Commission has searched for a solution to the problems outlined above. Although recent statistics compiled by the Committee reflect to small a sample to support broad conclusions, they do indicate that students of color are accused of honor offenses at rates far higher than their numerical presence at the University would reasonably predict and comport with the conclusions Lyons first put forward 10 years ago. The persistence of this racial dynamic in the System raises a number of questions about the fairness of the process that need to be pursued vigorously by the Honor Committee. In fact, the Commission strongly believes that until the issues associated with race in the Honor System are addressed candidly and directly, the System will never achieve the credibility that is crucial to its aspirational and disciplinary roles.

PERCEPTIONS OF RACIAL BIAS

The seemingly intractable problem of diversity and the Honor System is further complicated by very different perceptions of the System across racial lines. It is critical to state with clarity the

² Lyons, James W., et al. "University of Virginia Honor System Study, 1990-1991." (unpublished).

differences in those perceptions, for they operate in powerful ways to inhibit full integration of the System.

As a result of the racial imbalances in the cases that come before the Honor Committee and of the fact that students accused of honor violations see an adjudicatory process run almost entirely by white students, students of color have developed a great deal of skepticism about the Honor System. Not only do they exhibit widespread distrust of the System, but they also express a fundamental sense of feeling cut off from the Committee and its support officers and cut out of important decision-making processes. These feelings of mistrust and alienation are exacerbated by the belief of many students of color that, on the whole, the actions of white students are scrutinized less closely by the System than their own. This perception is closely related to the problem of spotlighting outlined in the Lyons' report. Continued de facto segregation of fraternities and sororities, institutions that significantly shape student life at the University, further exacerbate these feelings. The combination of disproportionate accusations against students of color and the perception that the honor code is applied differently to white students than to minority students only deepen the negative—and in many cases hostile—attitude students of color have toward the Honor System.

The deepening sense of alienation that minority students feel regarding the Honor System contributes significantly to their low level of participation in the System. Many view the System's stated ideals and the flexible application of those ideals as incongruent and, consequently, opt out of participating in it. For others, the lack of meaningful reform efforts to address racial bias, whether real or perceived, has undermined the System's credibility. In both instances, these sentiments reinforce the general perception of students of color that the Honor System is run by and for the benefit of white students, particularly members of fraternities and sororities.

Conversely, white students who support and are active in administering the Honor System have very different perceptions about basically the same issues. Since the Honor Committee, for the most part, plays little or no role in the initiation of cases, its members and support officers are understandably frustrated at being criticized for the disproportionate percentage of accusations brought against minority students, which they see as a problem not of their own making. Moreover, in their view there is nothing blocking the participation of minority students in the running of the System, and indeed, there have been repeated efforts to recruit minority students to act as support officers and to be candidates for membership on the Honor Committee. The involved white students tend to feel that they are not to blame for latent racism in our society and that if students of color have problems with the System, they should get involved.

The irony, of course, is that there is more than a grain of truth in both sets of perceptions. For students of color, the quantitative and qualitative data cited by both Lyons and the Committee itself serve to confirm their strong feelings of persecution; this sense of persecution substantially

inhibits their desire to meaningfully participate in a system they view as racially insensitive and largely the preserve of white students. At the same time, the Honor Committee and its support officers, who have made repeated but unsuccessful efforts to recruit students of color and address issues of race, are understandably frustrated by implicit and, in some cases, explicit accusations of racism. Jointly, these distinct perceptions fuel a cycle of mistrust and frustration that prevents meaningful conversations about real solutions to these long-standing problems.

We must find a way to break this ugly cycle. Students of color must be willing to suspend their skepticism and actively engage in shaping and participating in the Honor System; the Honor Committee must recognize the subtle but serious impact of race on its proceedings and continuously strive to insure fair and equitable treatment for all members of the University community. Fundamentally, the Honor System must be reflective of our collective commitment to high ideals of honorable behavior. The Commission strongly urges the Honor Committee to seek the help of the University administration and faculty in this effort. Education—hard, intensive, and ongoing—is the only thing that can sensitize all members of the University community to the unique ways in which race operates in the System and to the need for a system that appeals to and serves the interests of all members of the University community. The Honor Committee must explore and exhaust the University's deep resources to achieve the kind and level of awareness that alone can reduce the dimensions of the problem, if not eliminate it entirely.

We hasten to make two points, lest we be misunderstood. We do not believe—and there is absolutely no evidence to suggest—that students of color behave less honorably or are less committed to the ideals that the Honor System embodies than their white counterparts. Moreover, it is not the case that there is no minority participation. There are, and have long been, African American, Asian, and members of other minority groups, who have served with distinction in the Honor System, including more than one Honor Committee Chair. Nonetheless, a profound problem exists that must be addressed.

PROPOSAL #4

The Honor Committee must take active steps to address valid concerns and negative perceptions regarding diversity and the Honor System.

DISCUSSION

1. SURVEY THE VIEWS AND ATTITUDES OF STUDENTS OF COLOR ABOUT THE HONOR SYSTEM.

The Commission strongly recommends that the Honor Committee, perhaps with some financial and design support from the administration, undertake a systematic survey of the views and

attitudes of students of color about the Honor System. In this undertaking, we also encourage the Honor Committee to solicit input from minority alumni as a means of incorporating a historical perspective into its investigation.

2. CONTINUE AND EXPAND EFFORTS TO COLLECT AND ANALYZE DATA .

The Commission recommends that the Honor Committee continue and expand its efforts to collect and analyze data on the treatment of minority students relative to honor accusations and adjudications, with a view to finding ways to understand the causes of—and hence eliminate—long-standing disparities in these areas.

3. WORK IN COLLABORATION WITH THE ADMINISTRATION TO INCREASE MINORITY PARTICIPATION IN THE ADMINISTRATION OF THE HONOR SYSTEM.

The Commission urges the Honor Committee to work closely with the administration to devise initiatives to increase the participation of students of color in the System. To this end, the Office of the Dean of Students, the Office of the Vice President for Student Affairs, and the Office of African-American Affairs can be, we believe, vital forces in developing programs of education and outreach to students of color as well as helping the Committee identify and eliminate internal structural or procedural barriers that inhibit significant minority student participation. Moreover, through orientation and enrichment programs, these administrative units can emphasize the positive aspects of the Honor System for all students and, hopefully, encourage students of color to take greater interest in and ownership of the Honor System while also pushing the Honor Committee to continually monitor its racial sensitivity and awareness. It is our hope that this kind of interaction and cooperation between the Honor Committee and the administration will be a positive step toward a system that cannot even inferentially be accused of discrimination from any standpoint.

In addition, the Honor Committee itself must constantly rededicate itself to—and institutionalize in a meaningful way—the self-conscious recruitment of support officers and candidates for membership on the Committee itself among minority students, through direct appeals and outreach both to individual students and to organizations containing significant numbers of minority student members.

4. DIVERSITY TRAINING.

The Honor Committee should institute regular and ongoing diversity training for all its members and support officers, with a view to alleviating the sense of alienation felt by minority students when confronting the System.

5. DIVERSITY ADVISORY BOARD.

The Honor Committee should establish an independent advisory board of students, faculty, administrators, and alumni to monitor and assist it in improving its programs and performance

THE DISCIPLINARY FUNCTION – AN OVERVIEW

The method of processing accusations of dishonorable conduct has been the largest and most persistent source of dissatisfaction with the Honor System for many years, at least if the number and scope of changes are any indication. After considerable study and deliberation, the Commission was convinced that there are major problems with the current adjudicatory System, and that significant reforms are necessary to restore a sense of mission, a balanced approach to the achievement of the System's goals, and community-wide confidence in the fairness and accuracy of the System's results.

In our judgment, the adjudicatory System as it has evolved to date suffers from three major flaws.

First, it has become far too complicated, with burgeoning and ever-changing By-laws. This makes it daunting to students caught in its toils, distracts from the main mission of discovering the truth concerning accusations of dishonorable conduct, contributes to deleterious and unnecessary scheduling delays, creates myriad opportunities for "gamesmanship" by student counsel bent on winning trials at all costs, and renders the System vulnerable to legal challenges based on what may be innocent and inconsequential failures to comply with every procedural requirement.

Second, the System has become far too heavily analogized to the process of criminal adjudication. Granted, the stakes are high, especially in a system that adheres to the concept of a single sanction of expulsion, and accused students should be afforded an opportunity to be heard in connection with accusations against them. But as numerous courts have observed, student disciplinary proceedings are administrative in nature, and the criminal trial analogy is ill-suited to the effort to achieve accuracy and fairness in such proceedings. Among other faults, it contributes to an excessively adversarial atmosphere that often discourages faculty members and others with important information from coming forward, fosters an emphasis on procedural rights rather than a pursuit of the truth, and makes it much more likely that an honor proceeding will be but the first step in protracted and bitter litigation, rather than a healing resolution of charges.

Third, the existence of persistent resistance to the single sanction among a significant percentage (though not a majority) of the student body and the faculty, coupled with the recent move to trials before randomly-selected student juries and the uncertain contours of the "seriousness" requirement, has arguably led many in the community to refrain from initiating potentially meritorious cases and has resulted in a significant amount of "jury nullification" in trials where evidence of honor violations is overwhelming.

These three flaws are not mutually independent, but instead work together to undermine consistency, accuracy, fairness, and community confidence in the output of the adjudicatory System.

The Commission gave consideration to the single sanction, but decided not to recommend any change in it, in view of (a) repeated student referenda defeating proposals to abandon it, (b) the perception that support for the single sanction is widespread among the alumni body, and (c) support for the continuation of the sanction among a significant majority of members of the Commission. Nonetheless, the Commission is sensitive to the distortions in System design and practice that have resulted from the existence of significant opposition to the single sanction and the reluctance of many to invoke a process with no other alternative in the event of a finding of guilt.

Our recommendations are discussed individually and in detail below, but in broad outline, the Commission strongly suggests (1) significantly simplifying and streamlining the entire adjudicatory process; (2) eliminating insofar as possible the analogy to the criminal trial process and toning down the adversary nature of honor proceedings, in favor of a less formal, plainly administrative model of adjudication that is focused throughout on determining the truth regarding accusations of honor violations; (3) placing principal responsibility for the preparation and conduct of the defense on the accused student himself or herself, with appropriate assistance from one trained in the System where needed; (4) fostering consistency in results by placing on each hearing panel a significant number of Honor Committee members and by having the issue of “seriousness” decided at the threshold by the Investigative Panel; and (5) promoting essential academic integrity by eliminating any separate need for a finding of “seriousness” in academic dishonesty cases—stating, in effect, that there is no such thing as “non-serious cheating.”

It is our hope that these changes will elevate respect for and comfort with the Honor System among all its constituencies; foster among students and faculty alike the belief that the System affords a fair, consistent, and comprehensive method of determining the truth of accusations of dishonorable conduct; and give all members of the community a renewed sense of “ownership” of a vital and responsive System for preserving the community of trust.

PROPOSAL #5

Changes to the Investigation and Investigative Panel Process

DISCUSSION

1. CHANGE THE STRUCTURE OF THE INVESTIGATION PROCESS.

Currently under the By-laws, honor investigations proceed in the following order:

1. Interview with the initiator
2. Interview with all witnesses associated with the initiator
3. Interview with the investigated student
4. Interview with all witnesses associated with the investigated student

The Commission proposes that honor investigations take place in the following revised order:

1. Interview with the initiator
2. Interview with the investigated student(s)
3. Interviews with all remaining witnesses

This change allows for investigators to ask more probing questions to witnesses because they have already heard from the initiator and the investigated student before going into the interview. Additionally, this change will aid investigators in scheduling interviews because all relevant witnesses will be identified at an early point in the two-week investigation period.

Note: This recommendation is meant to be a guideline, which may be departed from depending on case circumstances.

2. ELIMINATE THE CONCEPT OF CONFRONTATION.

Currently under the By-laws, the interview with the investigated student is termed, "confrontation." However, this word has undue connotations of guilt. The Commission proposes that the term "confrontation" should not be used, but rather the interview should simply be called the "interview with the investigated student."

3. CHANGE THE STRUCTURE OF THE INVESTIGATIVE PANEL.

Currently under the By-laws, Investigative Panels proceed in the following order:

1. Opening remarks by the Investigative Panel chair
2. Statement from the initiator (10 minutes)
3. Investigative synopsis (15 minutes)
4. Statement from the investigated student (10 minutes)
5. Posing of additional questions
6. Deliberations and disposition

The Commission proposes that the events of the Investigative Panel proceed in a revised order. The investigative synopsis should be delivered prior to the initiator's statement. This change allows for less repetition of content in the presentation.

PROPOSAL #6

Replace the current legalistic and adversarial model for honor trials with an administrative model.

DISCUSSION

This proposed reform would affect Article V of the Honor Committee Constitution, which affords an accused student the right "[t]o be represented by counsel of his choosing from the student body," and would also affect many of the procedural provisions of Article IV of the Honor Committee By-laws.

As the introduction to this section of this Report indicates, the Commission has identified three important flaws in the Honor Committee's current System of adjudication: excessive complexity, inappropriate analogy to criminal procedure, and the phenomenon of jury nullification. The Commission's response to the first two of these important concerns is the subject of this Proposal. (The issue of jury nullification is addressed elsewhere in this Report.)

In an effort to address the important problems of excessive complexity and the System's inappropriate analogy to the process of criminal adjudication, the Commission proposes a crucial reformulation of the roles of "counsel," "investigators" and "advisors," with a view to moving the System away from its current preoccupation with procedure and a tendency towards gamesmanship and toward a streamlined and straightforward administrative model in which the highest premium is placed on the pursuit of truth. Taken as a group, the proposals, which are described in some detail below, aim to recapture and emphasize the truth-finding function which is the essence of any student disciplinary system—particularly any academic *honor* system—and which was at one time the dominant concern of this System.

For ease of understanding, the essential elements of this proposed reform are listed separately, below. They are, however, intended to be taken as a whole. It should be noted, initially, that the two most important dimensions of the cluster of proposals set forth below are (1) an expectation that, to the extent possible, accused students would take an active role in their own defense and, directly and in their own words, tell their own stories, and (2) although accused students could elect to make closing statements, there would be no opening statements, no legalistic arguments or exchanges, and no closing statements on behalf of the initiator or the community. Taken as a group, the proposals are intended to produce a more relaxed, less confrontational proceeding (the Commission even discussed the possibility of reconfiguring the Trial Room to this end) in which

the Committee and its support officers provide neutral support in the pursuit of a fair and honest outcome, but have no investment in any particular outcome. It should also be noted that the effect of these proposals would be significantly amplified by the adoption of the evidentiary standard, discussed at Proposal #12, below, which, among other things, is designed to defuse conflict and simplify the adjudicatory process by reducing the need for protracted and complex legalistic arguments over evidentiary matters.

The following, in no special order, are the major elements of this proposed reform:

- “Trials” would be referred to instead as “Hearings,” a less intimidating term and one which better describes the process envisioned by this proposed reform. (For purposes of consistency, the term “Hearing” will be used in place of “Trial” throughout the rest of this Report.)
- The role of “counsel,” as advocate, would be eliminated. This is the centerpiece of the Commission’s vision of a Hearing in which the accused student assumes an active and direct role and, wherever, possible, speaks for him or herself.
- Investigators would be assigned at case initiation, in accordance with current practice, but would later (after Investigative Panel) be known as “Community Representatives.” The role of the Community Representatives would be to attend the pre-Hearing conference and the Hearing and to ensure that information deemed critically material to the case is made available. They would, in effect, “fill in the blanks.” The Community Representatives would not “represent” the initiator and would have no personal stake in the outcome of the Hearing.
- Advisors would be assigned at case initiation, to the investigated student and the initiator, respectively, in accordance with current practice. Advisors would be limited to those from the trained support officer pool, except that an investigated student would be permitted to select an alternative student advisor, provided that such alternative advisor agrees to (1) participate in training by the Committee, and (2) abide by all of the rules and procedures of the Committee.
- The concept of “confrontation” would be eliminated. The first encounter with an investigated student would be replaced by a regular (and neutral-sounding) “interview.” (See also the discussion of this point at Proposal #5, above.)
- The order of interviews would be altered so that the investigated student is interviewed immediately after the initiator is interviewed. This reordering would facilitate fact-gathering and de-emphasize the need to “confront” the student before his or her story has been heard. (See also the discussion of this point at Proposal #5, above.)

- Accused students and initiators would be invited to attend the pre-Hearing conference, with their respective Advisors (but, as with the Investigative Panel hearing, absent compelling reasons for rescheduling, the conference would proceed without efforts to accommodate their respective schedules). Attendance by the accused student at the pre-Hearing conference emphasizes the enhanced role of the accused student in the preparation of his or her own defense.
- Investigators would jointly prepare a standardized, written form (for purposes of convenience only, referred to herein as the "Case Report") summarizing the evidence in the case and the list of witnesses and other evidence, if any, to be introduced at the Hearing. The Case Report would be provided to the accused student (after having been reviewed by the relevant Vice-Chairs and the Community Representatives), through his or her Advisor, for purposes of preparing for the pre-Hearing conference and the Hearing.
- Particularly in light of the proposed reform of evidentiary rules, discussed at Proposal #12, below, the pre-Hearing conference would be simplified and shortened and the contentious "motions" practice currently engaged in would be virtually eliminated.
- In order to emphasize the importance of the truth-finding function, the jury panel would arrive early to meet informally with the Hearing Chair, become oriented to Hearing procedures, and review copies of the Case Report.
- The Community Representatives would generally introduce the case at the Hearing and remain available for the purposes above-described.
- The jury panel would have the primary responsibility for questioning witnesses. Questions could be augmented by the Community Representatives, if evidence that either of them believes is critically relevant has not otherwise come out. It should be emphasized, however, that the Community Representatives would have no axe to grind and no preference as to the outcome of the Hearing.
- Ideally, accused students would tell their stories, in their own words, and, if appropriate, question witnesses themselves. The Commission recognizes, however, that this might be extremely difficult for some students and, in such cases, Advisors would have the discretion to assist such students in preparing for and conducting the Hearing. Such assistance would be limited and relatively passive, however. For example, an Advisor might prompt such a student to recall relevant events and to consider whether such events might be worth relating (or questioning witnesses about) at the Hearing. In extreme cases, an Advisor might question witnesses from a list of questions prepared by the accused student. In no case, however, would the Advisor be permitted to deliver or read

an accused student's closing statement, which would be delivered or read by the student personally.

- No closing statement would be delivered by or on behalf of the initiator or the community. This would eliminate legalistic grandstanding and emphasize the administrative, truth-seeking nature of the Hearing.

PROPOSAL #7

Eliminate the option to elect a jury panel consisting entirely of randomly-selected students, and alter the composition of mixed panels and the number of votes to convict.

DISCUSSION

The Honor Committee Constitution, in Article V, provides that “[e]very student accused of an honor violation shall have the right...[t]o appeal the accusation to an impartial panel, that panel to consist, at his election, of either elected school officers only or both elected school officers and student jurors, or student jurors only who are not elected school officers.”

The Commission proposes the elimination of an accused student's option to elect a panel comprised entirely of “student jurors only who are not elected school officers.” If the Honor Committee Constitution is revised accordingly, accused students would be permitted to elect either a panel consisting entirely of Honor Committee members, or a panel consisting of both Honor Committee members and randomly-selected student jurors (a “mixed panel”).

The Commission further proposes a revision of the rules relating to the size and composition of mixed panels. Currently, the Honor Committee Constitution provides, in Article V, that mixed panels shall consist of “at least two panel members from the school of the accused, at least eight and not more than twelve panel members, and three elected officers on a panel of less than eleven members, three or four elected officers on an eleven-member panel, and four elected officers on a twelve-member panel.” The Commission proposes to simplify these rules so that every mixed panel would consist of exactly nine jurors, five of whom would be students randomly-selected, and four of whom would be Honor Committee members. We further propose a requirement that at least one of the randomly-selected students be chosen from the school of the accused student, as well as a practice of selecting two additional student jurors, to serve as alternates.

Finally, the Commission proposes a change in the number of votes required to convict an accused student of an honor offense. Currently, the Honor Committee By-laws provide, in

Article IV, that act and intent are decided by a four-fifths vote. The Commission proposes that a vote of six jurors (two-thirds of the panel) be sufficient to convict a student of an honor offense.

The issue of jury composition has been debated for years. The arguments for and against panels comprised entirely of randomly-selected students, on the one hand, and panels consisting entirely of Honor Committee members, on the other, are well known within the Committee and, to a significant degree, within the larger community. With its Proposal to eliminate panels comprised entirely of randomly-selected students, the Commission endorses the mixed panel.

The arguments commonly made in support of all-Committee panels also tend to support a system in which mixed panels (versus random student panels) predominate. The most commonly cited arguments in favor of all-Committee panels have included, among others, increased consistency among verdicts, increased efficiency in scheduling and coordination, and the avoidance of jury nullification, which the Commission believes is invited in a system that pairs student juries with a single sanction.

Just as arguments in favor of all-Committee panels tend also to support the existence of Committee members on mixed panels, traditional arguments in favor of random-student juries tend also to support the existence of randomly-selected students on mixed panels. The most commonly-cited arguments in favor of randomly-selected juries have included, among others, an increased perception of student "ownership" of the Honor System, an increased sense among accused students that they are being judged by their peers, and increased educational opportunities for students selected to serve on panels.

In its deliberations, the Commission strongly agreed with the traditional rationales favoring Committee panels, and its decision to propose the elimination of panels consisting entirely of randomly-selected students reflects the concerns underlying these rationales. In its decision to propose the retention of mixed panels, however, the Commission also acknowledges the benefits of including randomly-selected jurors on honor panels.

The Commission also discussed, at length, the respective numerical representation of Committee members versus randomly-selected students on mixed panels. The decision to propose a mix of four Committee members and five randomly-selected students reflects the Commission's desire to ensure adequate Committee representation while preserving randomly-selected student jurors as a majority of the mixed panel.

Finally, the Commission also debated, at length, whether the existing four-fifths majority should be retained in order to convict, or whether some other super-majority should be sufficient to convict a student of an honor offense. The decision to propose the lesser requirement of two-thirds reflects the Commission's desire to foster consistency among verdicts and to avoid potential jury nullification by eliminating the possibility that a small minority of jurors will

undermine the System in particular cases. At the same time, by proposing that six jurors be required to vote to convict, the Commission would both require a substantial super-majority to convict and ensure that neither Committee members, voting as a group, nor randomly-selected students, voting as a group, would be in a position to control the outcome of a Hearing.

PROPOSAL #8

Change the manner in which determinations of seriousness are made.

DISCUSSION

The Honor Committee By-laws, in Article IV, Section H. 9 (c), provide that the Hearing panel must determine whether "...the act was serious." In Article VI. F., an act is defined as "serious" if "...open tolerance thereof would be inconsistent with the community of trust."

The Commission proposes changing the manner in which the seriousness determination is made. The Proposal has two essential elements, which are described separately, below.

1. CHEATING SHOULD BE DEEMED *PER SE* SERIOUS.

First, the Commission proposes that cheating be deemed *per se* serious. In other words, there would be no determination whether any particular act of cheating is in fact serious; all acts of cheating would automatically meet the seriousness standard and result in a conviction if the other elements of the offense (*i.e.*, act and intent) are established. In adopting this Proposal, the Commission felt strongly that, in an Honor System which is fundamentally concerned with ensuring a level academic playing field in an atmosphere of academic trust, cheating should not be tolerated in any form. In singling out the offense of cheating, the Commission reasoned that, while the impact of lying or stealing is borne mainly by its immediate victim(s), cheating arguably affects the entire community, including students, faculty, administrators, and the Board of Visitors—all of whom share an investment in preserving the integrity of the academic enterprise.

2. THE INVESTIGATIVE PANEL SHOULD MAKE THE FINAL DECISION ON SERIOUSNESS AS TO LYING AND STEALING.

Second, the Commission proposes to remove the determination of seriousness (which would continue to be a factor in lying and stealing cases only) from the scope of jury deliberations. Under the Commission's Proposal, the Investigative Panel would consider the issue of seriousness, as it currently does and, if the case moves forward to a Hearing, a conviction would

result if act and intent are established to the satisfaction of the jury panel. Note that in Article IV, Section C. 3 of the Honor Committee By-laws, the Investigative Panel is directed to accuse the student

“if it seems ‘more likely than not’ that: a. the investigated student committed the act, b. the student committed the act with dishonest intent, and c. the act was serious.”

The Commission’s Proposal would involve substituting a two-step process in which the Investigative Panel would first determine whether its standard (“more likely than not”) has been met with respect to the elements of act and intent (a and b, above), and then consider, in cases where the standard has been met, whether or not, assuming that the elements of act and intent are proven at the Hearing, the alleged offense is serious.

The rationales underlying the Commission’s Proposal to shift the burden of determining seriousness entirely to the Investigative Panel are several. Chief among them is the Commission’s concern that leaving seriousness to be determined by the Hearing panel opens the door to inconsistent results and, in some cases, the potential for jury nullification. The proposed reform would focus the jury directly and exclusively on the question whether the elements of act and intent have been proven beyond a reasonable doubt, a straightforward and purely factual inquiry best suited for the jury to decide. The Commission felt that the more “law-oriented” question whether a particular act of lying or stealing is “serious” enough to warrant expulsion is better left to Honor Committee members who comprise Investigative Panels and review cases on a continuing basis. In addition, the Commission felt that, as the sole arbiter of seriousness, the Investigative Panel would be inclined to focus on the issue more closely than it currently does, thereby relieving some subset of investigated students of the ordeal of a Hearing for a charge which ultimately fails for lack of seriousness. Finally, requiring an early Investigative Panel determination of seriousness could potentially avoid the anguish, time and expense of prosecuting and defending cases for all involved.

PROPOSAL #9

Eliminate the Sixth Amendment (Confrontation Clause) analogue from the Honor Committee Constitution.

DISCUSSION

The Honor Committee Constitution, in Article V, provides that “[e]very student accused of an honor violation shall have the right...[t]o confront and cross-examine witnesses against him.” This language tracks similar language in the Sixth Amendment to the U.S. Constitution.

The Commission proposes the elimination from the Honor Committee Constitution of the language concerning the right "to confront and cross-examine" witnesses. In making this Proposal, the Commission does not intend to diminish the importance of obtaining live testimony in honor Hearings; in-person testimony is always desirable. The existing language, however, arguably suggests that there is little room for alternatives when a witness simply is (or claims to be) unavailable to attend the Hearing, the end result of which has been, in some cases, tremendous logistical and other administrative difficulty in scheduling and conducting honor proceedings.

The Commission also feels that the existing language, in its absolutism, may have the unintended effect of inviting an argument by the loser in an honor Hearing that the admission of uncross-examined testimony, by itself, rendered the Hearing unfair, even though, in an administrative proceeding, Due Process does not require that an accused student be afforded an opportunity to confront and cross-examine witnesses against him or her.

In essence, the Commission feels that the language in question may be confusing. In fact, it has long been the practice of the Honor Committee to admit testimony, by speaker-phone and sometimes other means, in certain circumstances where witnesses have proved unavailable to appear in person to testify. Although the Commission believes that this practice satisfies the requirements of applicable law, we propose to clarify and elaborate on the policies of the Honor Committee in connection with acceptable forms of testimony at honor Hearings.

While eliminating the language suggesting an absolute right to confront and cross-examine, as currently provided in the Honor Committee Constitution, the Commission would propose that the subject of witness confrontation be addressed in the Policy and Procedures Manual described in detail at Proposal #11, below. The revised approach would be to express a strong preference for live testimony in all cases, but to suggest certain alternatives that might be acceptable under particular circumstances. Specifically, a witness unavailable to appear at trial might testify by speaker-phone, by audio- or videotape, or might sign an affidavit to be admitted at the Hearing (after the accused student and the initiator have had an opportunity to interview the witness in question). The guidelines also might suggest a sliding scale approach to deciding whether and when alternatives to in-person testimony might be acceptable, in which the importance of an opportunity for cross-examination increases with the importance of the evidence in question. So, for example, the guidelines might indicate that certain uncontradicted evidence, evidence of marginal relevance, or somewhat cumulative evidence might be admitted in the form of investigative-log notes, while certain other crucially relevant evidence would be admissible only where an opportunity for cross-examination has been provided (e.g., through live testimony, speaker-phone testimony, tape, or affidavit following a joint interview, as described above). (The related subject of hearsay is also addressed in the proposed revised evidentiary standards discussed at Proposal #12, below.)

In summary, the Commission intends, by its Proposal to eliminate the Confrontation Clause analogue from the Honor Committee Constitution, to give the Honor Committee some needed flexibility and discretion in situations where witnesses are (or claim to be) unavailable for the Hearing, and to insulate the Honor Committee from potential claims of unfairness, where such claims have no legitimate basis in the Due Process Clause or other applicable law.

PROPOSAL #10

Eliminate the Fifth Amendment analogue from the Honor Committee Constitution.

DISCUSSION

The Honor Committee Constitution, in Article V, provides that “[e]very student accused of an honor violation shall have the right...[t]o refuse to testify against himself...” This language echoes similar language in the Fifth Amendment to the U.S. Constitution.

The Commission proposes the elimination from the Honor Committee Constitution of the right of an accused student “to refuse to testify against himself.”

The rationale underlying the Commission’s Proposal is two-fold. First, the Honor Committee, with or without the existing provision in its Constitution, lacks the means to compel an accused student to testify in his or her own defense. Therefore, the provision is to some extent meaningless and tends to undercut the spirit of honesty and forthrightness that underpins the Honor System. A right to stand silent and put the community to its proof is important to a citizen faced with the coercive machinery of the state in a criminal prosecution. In our view, however, such a right is antithetical to the very concept of an honor system in an academic community, which places the ultimate premium on the pursuit of truth and should oblige all to assist in that pursuit. The Commission notes that it was the refusal of those who shot Professor John Davis to come forward and admit their guilt that led to the formation of the Honor System in 1842.

Second, given its close parallel to the language of the Fifth Amendment to the U.S. Constitution, the existing language could give rise to an argument that, as in a federal criminal trial, the jury at an honor Hearing is not permitted to draw a negative inference from an accused student’s decision not to testify. Because honor Hearings are administrative proceedings and not criminal trials, however, there is no legal requirement that students refusing to testify must be afforded such protection, and the Commission believes that it is appropriate—and in keeping with the philosophical underpinnings of the Honor System—to allow jurors to draw negative (or any other reasonable) inferences from such silence.

Although generally in favor of eliminating the Honor Committee’s Fifth Amendment analogue, the Commission notes that in cases where the accused student is the subject of a pending or

threatened criminal investigation, he or she may have actual Fifth Amendment interests at stake in connection with any criminal proceedings which may flow from the actions giving rise to the alleged honor offense. The Commission notes that there may be a variety of ways in which to deal with such cases, one of which may be to delay the Honor proceedings until any criminal investigation or prosecution has run its course. The Commission proposes that this and other possible responses in cases involving a threat of criminal prosecution be addressed in the Practice and Procedures Manual discussed in detail at Proposal #11, below.

PROPOSAL #11

Relocate rules of practice and procedure from the Honor Committee By-laws to a separate "Practice and Procedures Manual"; where appropriate, replace rigid rules with flexible guidelines.

DISCUSSION

The Honor Committee By-laws, which have fluctuated in length and complexity over the years, currently occupy approximately 20 pages of text, more than half of which is dedicated to fairly detailed provisions governing the various phases of honor proceedings (initiation, investigation, Investigative Panel hearing, pre-Hearing matters (including the pre-Hearing conference), Hearing, and post-Hearing matters (including appeals and grievances)).

The Commission proposes that the Honor Committee By-laws be edited to eliminate all matters relating to practice and procedures (*i.e.*, the bulk of Article IV of the By-laws, entitled "Procedures: How the System Works"). The remaining By-laws would generally address only such organizational matters as relate to Honor Committee constituents, elections, removals, meetings, voting, and so forth. Currently, these matters are set forth in Articles I, II and VII of the By-laws.

The bulk of Article IV (and perhaps Article III, regarding Conscientious Retraction, Article V, regarding Confidentiality, and Article VI, regarding Definitions) would be streamlined and relocated to a "Practice and Procedures Manual," which would set forth guidelines for the conduct of investigations, pre-Hearing conferences, Hearings, appeals and grievances. This document would be designed for use by the Honor Committee and its support officers, and would include a broad, preliminary disclaimer to the effect that its provisions are not intended to be relied upon as establishing legal rights by students involved in Honor proceedings. Investigated and accused students would learn about Honor Committee procedures through existing (or newly-created) forms and summaries, as well as through discussion with their respective advisors.

The primary rationale for this proposed division of rules between the By-laws, on the one hand, and a Practice and Procedures Manual, on the other, is simply a reduction in Honor Committee risk and resulting liability for failure precisely to follow its own (often fairly elaborate) procedures. As the literature and case law in the field of academic disciplinary systems amply demonstrates, the Honor Committee's Constitution and By-laws afford far greater procedural protections to students than are required by the jurisprudence of Constitutional Due Process. (Procedures required by Due Process would continue to be addressed by the Honor Committee Constitution.) Because the By-laws arguably form part of the contract between each student and the University, however, a failure by the Honor Committee to adhere to the letter of its own By-laws could give rise to claims by students that the Committee (and, indirectly, the University) has breached its contract with them, even where the failure in question involves procedural protections far in excess of what is legally required in honor cases. Simply put, the most important implication of this seemingly simple relocation of rules would be to shorten and streamline a portion of the "contract" (i.e., the Honor Committee Constitution and By-laws, collectively) that arguably exists between each University student and the Honor Committee.

A second benefit of this Proposal is that it would lend itself to a more flexible approach to certain aspects of honor proceedings. As the Model Code of Academic Integrity implicitly notes in its discussion of trial procedure, the facts and circumstances of honor cases will vary, and a certain amount of discretion in the conduct of cases may be desirable:

The sequence of an Honor Review is necessarily controlled by the nature of the incident to be investigated and the character of the information to be examined. It thus lies within the judgment of the Presiding Officer to fashion the most reasonable approach. The following steps, however, have been found to be efficient and are generally recommended..." [discussion omitted]³

The current By-laws, while not the most lengthy and complex version in their history, nevertheless contain a number of rigid rules which could be more flexibly expressed. If practice and procedure guidelines are set forth separately from the core, contractual provisions of the Honor Committee Constitution and By-laws, a certain amount of flexibility and discretion could be reserved without the risk of misleading students who may eventually find themselves caught up in the System.

The Commission notes that, in recent years, at least, the Committee's By-laws have been amended so frequently as to create questions and, in some cases, confusion, about the actual provisions in effect at a given time. In addition, based on comments by Committee members on the Commission, it appears that there is a perception by some in the community that the

³ Pavela, Gary. "Applying the Power of Association on Campus: A Model Code of Academic Integrity." *Journal of College and University Law*. Summer 1997

Committee occupies itself almost exclusively with honor legislation—in the form of By-law amendments.

The adoption (if it occurs) of the Practice and Procedures Manual described herein presents the Committee with an opportunity to adopt a new approach to amendments as well. Although the substance of amendments, as well as matters of form and voting requirements, would remain in the discretion of the Committee, the Commission suggests an annual amendment cycle. Committee members would keep notes throughout their terms of problems they believe should be addressed by amendment. Toward the end of their terms, the outgoing Committee members' collective thoughts would be forwarded to the Committee's Legal Advisor who, over the course of the summer, would assist in preparing appropriate draft amendment language. One of the first tasks of the subsequent Committee would be to take up the proposed amendments which, if enacted, would apply throughout the academic year. At year-end, the cycle would begin again.

By regularizing the amendment process, at least as to the Practice and Procedures Manual, the Commission believes that the Committee would avoid the current confusion about By-Law iterations and would combat the community's current perception that, although the primary focus of the Honor Committee should be adjudication, it is instead preoccupied with legislation.

PROPOSAL #12

Replace current evidentiary rules with broad, flexible guidelines emphasizing a strong presumption that all relevant evidence should be admitted at honor Hearings.

DISCUSSION

The Honor Committee By-laws, in Article IV, Section G.4, provide that the pre-Hearing conference is the forum for determining the nature and scope of evidence to be admitted at the Hearing. In general, the By-laws provide that relevant evidence should be admitted, although Section G.4 requires the exclusion of certain evidence relating to polygraph testing, the accused student's character, psychological or psychiatric matters, as well as evidence which is "unnecessarily cumulative," and evidence the "probative value [of which] is far outweighed by its potentially prejudicial effect on the panel." Except with respect to hearsay evidence, the By-laws afford the Committee little discretion in the application of its evidentiary rules, nor do the By-laws provide any guidance to the Committee in the proper application of its evidentiary standards.

The Commission proposes replacing the current By-law provisions with broad, flexible evidentiary guidelines to be contained in the Practice and Procedures Manual discussed at Proposal #11, above. A rough draft of such proposed guidelines is attached to this Report as

Appendix A. Before discussing the Commission's motives in proposing these important reforms, however, a few preliminary matters should be noted.

First, it is the Commission's intention that the proposed evidentiary guidelines, in their final form, would be expanded to include a thorough discussion of their respective underlying rationales, and would be illustrated, where appropriate, with clear examples of their application. The addition of a clear narrative explanation and practical examples of application would be particularly important with respect to Paragraphs 3, 4(a) and 4(c) of the proposed guidelines, which may be more abstract than some of the other paragraphs.

Second, it is the Commission's intention to propose guidelines which are flexible enough to recognize and account for the very disparate contexts in which evidentiary issues may arise. Of course, the very idea of "guidelines," as opposed to "rules," suggests flexibility and discretion, as would their placement in the Practice and Procedures Manual.

Finally, the Commission stressed the importance of enhanced training for Honor Committee members focusing specifically on the meaning and intended application of the proposed evidentiary guidelines, if adopted. Intensive training in this area makes particular sense in light of the very subjective and contextual nature of evidentiary decision making.

Although couched as a single Proposal, the proposed evidentiary reform has three basic dimensions. Each of these dimensions is described separately, below.

(a) The proposed guidelines stress a strong presumption that all relevant evidence should be made available to the Hearing panel. The rationales for the adoption of such a broad presumption of admissibility closely track the concerns which have guided this entire Report.

First, the emphasis on a broad presumption to admit evidence should significantly simplify the pre-Hearing conference, which is currently dominated by motions, objections, deliberations and rulings relating to admissibility and "scope" of evidence. The proposed presumption would allow the pre-Hearing conference to bypass much of the debate and decision making which currently occupies its agenda. The conference would be less formal and more likely to conclude in a single session. Simplification has been a major theme of this Report, and the reformation of the Honor Committee's evidentiary rules may represent the single most effective way to simplify the honor process.

Second, the elimination of significant and protracted wrangling over evidentiary issues should amplify the shift toward a less adversarial, less legalistic Honor System. The Commission's desire to move the Honor System toward an administrative (versus legalistic and adversarial) model has been another important theme of this Report. Together with the Commission's other Proposals (and particularly Proposal #6), above, the reduction in legal maneuvering and conflict

over the application of evidentiary rules should help to emphasize the shift toward an administrative, truth-seeking model for the Honor System.

In addition, the proposed presumption in favor of admitting relevant evidence supports the Commission's intention, described in more detail in Proposal #6, above, to encourage accused students to take the lead role in the presentation of their cases and to tell their stories, fully and without legal posturing or interruption, in an effort, above all else, to arrive at the truth. Moreover, this Proposal would go a long way toward shifting to the fact-finder—in this case, the jury panel—the primary role of evaluating the available evidence and implicitly trusts the jury to distinguish between evidence that is meaningful and probative, in the context of the Hearing, and that which is not. (Although the benefits of this Proposal are not dependent upon the adoption of Proposal #7 (relating to jury composition), a shift to mixed panels would have the added advantage of ensuring that juries would include at least some individuals (i.e., Committee members) with training and experience in evidentiary matters.)

Finally, a broader and more flexible initial presumption of evidentiary admissibility should mean the elimination of some subset of potential errors by the Honor Committee in the application of its own rules of evidence. As discussed elsewhere in this Report, the Committee is arguably bound by its own rules even where, as here, they exceed the requirements of Constitutional Due Process. By starting with a strong initial presumption that, with a small number of specific exceptions, all relevant evidence is admissible, the Committee should reduce its risk of error (a worthwhile goal in its own right, and one which should also reduce its legal exposure over time).

(b) The new guidelines would eliminate the exclusion of evidence the “probative value [of which] is far outweighed by its potentially prejudicial effect on the panel.” The proposed guidelines would retain most of the specific and discrete exceptions now contained in the Honor Committee By-laws (e.g., exclusions for evidence relating to polygraph testing, the accused student's character, psychological or psychiatric matters, as well as evidence which is “unnecessarily cumulative”). They would, however, eliminate the foregoing abstract exclusion for evidence which is, in the judgment of the Committee, more prejudicial than probative. In recent history, this difficult language has been the basis for most of the Committee's decisions to exclude evidence from honor proceedings. As such, its elimination is crucial to the presumption of inclusion described in (a), above.

The judgment whether particular evidence is more prejudicial than probative requires the application of an especially difficult standard, even for experienced jurists. Any effort to quantify and compare these two abstract characteristics must be subjective in the extreme. Indeed, comments from Honor Committee members on the Commission indicate that Committee members have often expressed confusion and unease in trying to apply the prejudicial vs. probative standard and even, in some cases, in understanding the meaning of “prejudicial” in this context. The difficult task of measuring such elusive qualities has resulted in protracted

deliberations at the pre-Hearing stage and, in an effort to avoid errors and uneven rulings, over-zealous exclusion of evidence which may be only slightly “prejudicial.”

The elimination of this language would amplify the benefits of the broad presumption of inclusion, described in (a), above. Specifically, the pre-Hearing conference would be simplified and stream-lined, with the number and complexity of evidentiary contests significantly reduced; the most explosive subject of the pre-Hearing conference would be defused, resulting in a further tilt toward a less legalistic, adversarial-type of proceeding; the accused student would be in a better position to focus on relating his or her story, rather than on which legal arguments to make or avoid in order to manage the evidence; and the risk of uneven or incorrect application of the rules would be minimized.

(c) The proposed guidelines would be relocated to the Practice and Procedures Manual described elsewhere in this Report. Evidentiary guidelines are paradigm examples of the kind of “practices and procedures” that this Commission has proposed relocating to a manual or handbook separate from the Honor Committee Constitution and By-laws. In fact, the vision of the evidentiary guidelines presented here, with their expanded narrative discussions of rationale and examples of their application in particular circumstances, would fit poorly in the By-laws, as they currently exist. As for the benefits of relocating matters of practice and procedures into a separate handbook, generally, see the discussion of Proposal #11, above.

PROPOSAL #13

Designate a University Representative to be available to provide advice and consultation in connection with appeals and/or grievances reviewing honor convictions.

DISCUSSION

In recent years, it has been the practice of the Honor Committee Chair (or Vice-Chair for Trials) to contact the University’s Office of the General Counsel, or, more recently, the Committee’s Legal Advisor, for advice when difficult issues have been raised by appeals or grievances relating to honor convictions. This contact has not so far been codified as a part of the Committee’s official practice.

The Commission proposes a codification and elaboration of the current practice of consulting with the Office of General Counsel on appeals and grievances. Under the Commission’s Proposal, one or more representatives of the University administration (a “University Representative”) would be designated, from time to time, by the President of the University, in collaboration with the Honor Committee Chair. University Representatives would be culled from the Office of the General Counsel, the general University administration, the faculty, or all three.

Under the Commission's Proposal, a University Representative would be available for consultation with, and, at the request of the Honor Committee, to attend meetings of, the Committee in connection with honor appeals and grievances. The role of a University Representative would be to provide advice on issues raised in the post-conviction setting by students seeking review of their convictions. University Representatives would not be entitled to vote on appeal or grievance decisions by the Honor Committee. The decision whether to seek the advice of a University Representative would be within the discretion of the Honor Committee Chair. (The Commission recommends the adoption of a guiding policy, however, that such advice should be considered in all cases raising complex questions, issues of first impression, or other difficult issues on appeal or in the context of a post-appeal grievance.)

The rationale for proposing an official statement of the current informal consultation practice is two-fold. First, the Commission, after discussion with the General Counsel, expressed a desire to emphasize the importance of involving a University administrator familiar with the Honor System in cases, particularly difficult cases, which are the subject of serious appeals or grievance issues. It is at this stage, following a conviction but before other remedies have been exhausted, that the Honor Committee has what may be its last chance to take a hard look at, and correct, any significant errors in the underlying Hearing. By emphasizing the importance of this post-Hearing phase, and by providing a formal basis for consultation with a University Representative, the Commission aims to preserve and highlight the current informal practice and to ensure that the practice continues from one Committee to the next.

The second rationale relates to the perceptions of the larger community. As the Introduction to this Report makes clear, the Commission believes that the Honor Committee suffers from a perception among students, parents, faculty, administrators and the Board of Visitors, that the Honor System is at risk, both from successful external attack and from erosion of support and participation within the University community itself. The Honor Committee's current practice of consulting with the Office of the General Counsel on appeal and grievance issues is something which, in the Commission's opinion, should have the effect of increasing the confidence of the community in the Honor System generally, and particularly its confidence in the fairness of honor Hearings and their outcomes. (Indeed, adding a layer of advice and review should have the effect of reducing the actual risk of successful attack from at least one external source—litigation.)

Because the current consultation practice is informal, however, it is generally invisible to the larger community. By formalizing the practice through the appointment of University Representatives, the Honor Committee should benefit by increased community awareness and confidence that all appeals and grievances seeking review of honor convictions will have the benefit of advice, when appropriate, from an objective, experienced University administrator.

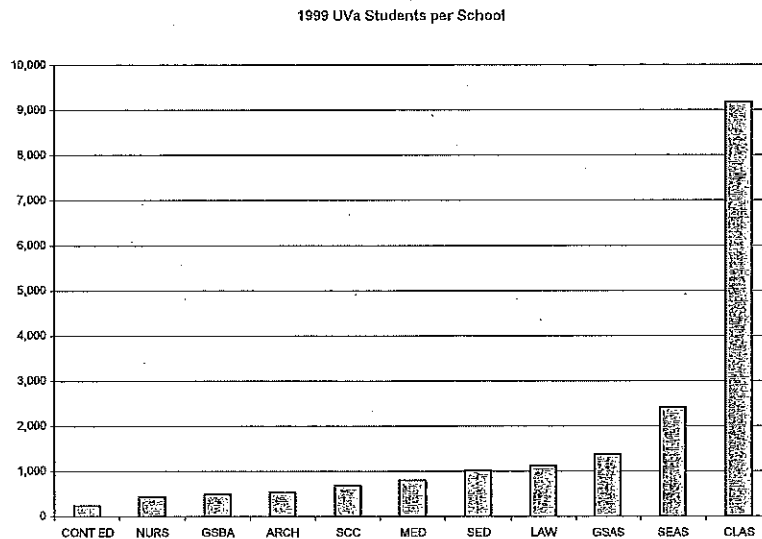
PROPOSAL #14

Consider increasing the size of the Honor Committee.

DISCUSSION

The Commission recommends that the Honor Committee consider expanding its size, although it leaves the specifics of such a change up to the Honor Committee itself. In making this decision, the following considerations are worth taking into account:

- **Representation.** 1999 enrollment numbers by school are depicted below.



This breaks down to the following number of students per Honor Committee representative:

	Total Students	Reps	Reps/School
CONT ED	240	2	120
NURS	443	2	222
GSBA	492	2	246
ARCH	536	2	268
SCC	691	2	346
MED	810	2	405
SED	1,025	2	513
LAW	1,127	2	564
GSAS	1,379	2	690
SEAS	2,420	2	1,210
CLAS	9,183	3	3,061
Total	18,346	23	

* An additional 4,850 students exist off grounds on a credit enrollment basis

Source: Student Information System

- **Manageability.** There is a careful balance in Committee size between productive and unwieldy.
- **Education.** Many College representatives in the past have been disappointed with their inability to reach their constituents. Honor breakfasts or surveys, which are common to the Commerce and Engineering schools respectively, are nearly impossible to do in a meaningful way in the College, if taken as a whole. Perhaps better coordination with the Vice Chair for Education would improve this situation.
- **Case Responsibilities.** If implemented, the Commission's recommendation to eliminate random student juries will cause mixed panels to be more commonly utilized. Assuming an average of one trial each weekend, four additional Committee members will be called upon to serve each week. This is approximately 1/2 more than are currently utilized, assuming two I-panels (6) and one trial per week (2). It is also crucial to avoid recycling Committee members on panels for an individual case. Under the new recommended System, a student who went through the appeal phase and had a new trial would use sixteen Committee members (assuming no Committee observers at trial), not to mention Executive Committee members who may already be disqualified from serving due to their intimate knowledge of the case.
- **Balance.** Many people are concerned that a Committee weighted heavily toward one particular group would be unfair to others. College representatives for example, could easily occupy all seats on the Executive Committee if they were represented proportionately on the

Committee. Graduate students as well could feel detached or slighted by the System should undergraduates dominate the Committee and serve heavily on their panels.

- **Commitment.** Honor Committee members should be held to the highest standard of participation in terms of service on any hearing panel, given some amount of flexibility to the time limitations of students in particular programs at the University.

COMMUNITY AND PUBLIC RELATIONS

As noted intermittently throughout this report, the Honor System, the Honor Committee and the University as a whole have changed greatly over the years. Perceptions of the Honor System have also changed, and the Commission spent a considerable amount of time discussing these perceptions both inside and outside the University community.

These discussions led the Commission to surmise that, though most students and community members agree the ideal of honor is one worth striving for, the Honor System does not effectively promote this ideal. The increasingly legislative and process-oriented functions of the Honor Committee have led many to divorce the System from honor with a small "h."

Adding to this perception is the fact that the Honor Committee and the Honor System often only receive publicity about negative aspects of the process. Few news outlets mention the benefits students receive from living under the Honor System. Students may even take these benefits for granted as most have not attended other institutions and cannot compare their experiences with those of students at non-Honor System institutions. In addition, the Committee spends so much of its time processing cases and educating about that process, that there is little time remaining for meaningful discussion about the benefits of living under an Honor System and how these benefits will continue to pay dividends long after graduation day.

To make these benefits salient to University students, and to counteract an undercurrent of feeling that the Honor System has become antiquated, even counterproductive to professional success after graduation, the Commission recommended early in its deliberations that the Committee partner with the Alumni Association to produce an ad campaign highlighting influential alumni. The Committee accepted this recommendation and the partnership began in earnest during the fall semester. These ads, appearing once a week in the *Cavalier Daily*, feature "real world" applications of an education obtained in an environment committed to personal and academic integrity. Posters have been produced from the ads for distribution around Grounds.

The Commission recognizes however, that positive publicity alone cannot educate the student body about the importance of honor and the unique contribution of the Honor System to their moral and ethical development. For this reason, the Commission fully supports the recommendation set forth in Proposal #2 above, and urges the Committee and the Administration to consider ways in which honor can be reestablished as a central focus of University life.

Beyond this philosophical discussion of honor and the Honor System, the Commission also discussed the very practical matter of publicizing this Report and educating students regarding possible changes resulting from it.

PROPOSAL #15

Educate and obtain feedback from the University community about this Report and the potential changes recommended herein.

DISCUSSION

The Commission recommends the following plan to educate and obtain feedback from students regarding this Report. Much of this plan has been discussed with the Committee and is already in the process of implementation.

The first phase of the plan will provide an important assessment tool to members of the Honor Committee. With the help of the Office of Institutional Assessment and Studies, the Honor Committee will conduct a web-based survey asking a range of questions about students' interaction with and opinions of the Honor System. Assessing students' participation in and image of the Honor System allows the Committee to identify key pieces of the System that students feel require change. Administration of this survey has begun and the Committee hopes to have results by the beginning of the spring semester.

To assess community reaction to this Report and to the changes suggested herein, the Committee plans to undertake several open forum discussions. These discussions will begin with a condensed presentation of the Commission's recommendations followed by an open discussion of student, faculty and administration concerns surrounding these suggestions. These discussions will include members of both the Honor Committee and this Commission and should help the Committee make educated decisions regarding the future of these recommendations in relation to the concerns of their constituents and the University community at large.

After obtaining feedback from the University community, the Commission recommends the Committee focus on outreach and education in regards to any recommendations the Committee decides to send on to a student referendum. Such efforts should provide both the information for students to cast educated votes and generate enthusiasm surrounding the referendum to achieve a high voter turnout. Most of these efforts will be concentrated in the month of February. Prior to that time, however, the Committee should strive to maintain a productive working relationship with Student Council to ensure their cooperation with a request for a referendum to be placed on the ballot they administer. The Committee should be observant of its own procedures in passing the referendum resolution two to six weeks before Student Council conducts University wide elections in March.

Opinion pieces will be written and submitted to all media outlets in the University and Charlottesville communities. The Committee, with the help of Honor Educators, will widely

distribute a pamphlet containing point-by-point comparison of the pros and cons of the proposed reforms. This pamphlet allows the Committee to double its on Grounds efforts and most importantly, to reach off Grounds students through a mid February mailing.

The Committee has also accepted a recommendation from the Commission to establish school-specific education programs. The rationale behind establishing such programs is the fact that efforts at education and outreach that may work in the College of Arts and Sciences may not be effective in the Law School and other graduate schools. Honor representatives will provide information regarding the best way to educate their particular school and will establish action plans based upon this information.

APPENDIX A**EVIDENTIARY STANDARDS FOR HONOR COMMITTEE PROCEEDINGS**

There is a strong presumption that all relevant evidence offered by either party should be made available to the panel. In making rulings on evidentiary questions, Hearing Chairs should bear in mind that the Hearing is a search for the truth and that the standard is whether the evidence offered would be helpful in determining the truth of the charge(s).

- (1) Relevant evidence is evidence having any tendency to make the student's guilt or innocence of the offense(s) charged more or less likely than it would be without the evidence. A piece of evidence that may not have great logical bearing on guilt or innocence by itself may be more powerful when viewed in light of other evidence. The Hearing Chair should be especially careful to permit an accused student to present any evidence that bears logically, even if remotely, on the question of guilt or innocence.
- (2) The questions whether the evidence is believable or the witness is biased are for the panel, not the Hearing Chair, to determine; therefore, the Hearing Chair should not exclude any evidence just because he or she deems it unworthy of belief.
- (3) The Hearing Chair retains the discretion to exclude evidence offered by either party that is merely cumulative or repetitious.
- (4) Certain categories of evidence are not admissible even if the evidence might be deemed relevant:
 - (a) Evidence that the accused student's act was a product of or related to a psychological disorder is not admissible.
 - (b) Evidence of the character of the accused student or any other person is not admissible. By "character" is meant general personality traits, such as honesty, carelessness, aggressiveness, etc.
 - (c) Evidence that the accused student committed some other wrongful or dishonest act outside the scope of the charge(s) is not admissible, unless it specifically tends to prove some fact relevant to the charge(s), such as motive, identity, intent, or lack of mistake.
 - (d) Evidence that the accused student either passed or failed a polygraph examination is not admissible.
 - (e) Evidence of the disposition of any other proceeding involving the accused student's conduct is not admissible. This does not mean that police officers or others involved in such separate proceedings cannot testify to their investigations or observations; nor does it mean that their identities as police officers, etc., should be concealed from the panel

- (5) Evidence is not rendered inadmissible because it would be considered hearsay in a court of law; however, Hearing Chairs should employ a preference for the live testimony of witnesses with first-hand knowledge, and evidence about disputed points should be presented, whenever possible, by one of the following methods, in descending order of preference: (a) live testimony; (b) testimony by live telephone conference call; (c) testimony presented by video- or audio-tape, provided that both parties have had an opportunity to participate in the questioning of the witness; or (d) testimony in written form, but only after both parties have had an opportunity to interview the witness and to include in the testimony those relevant items they desire to present to the panel. This does not mean that previously created documents are inadmissible.