

Families for Honor, LLC

Recommendations for Honor Reform with Protection of Students' Constitutional Rights

Introduction

The University of Virginia is internationally recognized for their signature honor principles. As a prestigious bastion of higher learning, it is incumbent upon all within its Community of Trust to faithfully uphold these foundational values, as well as the reputation for excellence that draws an elite body of students to its threshold each year.

Families for Honor, LLC has taken significant time to review and comment on known honor cases within its membership, and shared experiences within the UVA Honor System as community stakeholders. Each member has been touched directly by the current practices of UVA Honor. This document affords a rare opportunity to openly examine the issues presented, to improve the system for the greater good, and to evaluate areas needing redress since no evaluative academic study has been previously publicly published due to issues of confidentiality.

We are forwarding this document, *Recommendations for UVA Honor Reform with Protection of Students' Constitutional Rights* incorporated herein, for review and comment. We seek Honor reform that provides a more progressive view and balance between the Honor Code and all equally important educational values to remedy the inequities observed.

Discussion

There are five (5) areas of the Honor System process which are identified as problem areas and are reviewed herein:

- (A) Fourteenth Amendment Infractions
- (B) Insufficient Honor Training in Key Strategic Areas
- (C) Due Process Trial Procedural Protection Deficiencies
- (D) Honor Appeal Review Due Process Defects
- (E) The Ethics of Student Plagiarism

Each category of the Honor System process that is problematic diminishes the fairness and efficacy of the current due process system that is now in place. The standard of honor practice within the University community should bear up well under public scrutiny. Our objective is to see that the fundamental fairness and constitutional rights of all concerned are preserved.

Any UVA Honor hearing involving disciplinary action should meet the minimum due process standards established by their own Honor Constitution, the landmark *Dixon v. Alabama State Board of Education* case of 1961, and *Henson v. Honor Committee of UVA*, 719 F.2d 69 (4th Cir. 1983). However, the issues raised here go beyond the equality issues of the *Dixon* case. Similar to *Goss v. Lopez*, 419 US 565 (1975), these issues include, but are not limited to, loss of property interest in educational benefit (and equity), and the loss of liberty in reputation, good name and honor. Also, considered here are the significantly abridged due process rights related to the 14th Amendment of the Constitution including, but not limited to (1) the right to confront and cross-examine witnesses supporting the charge, and (2) to call his/her own witnesses to verify his/her version of the incident. While at least one of these particular due process rights are binding in the 4th Circuit Court as established by *Henson* (character witnesses), both of these safeguards are included in Article V.1 of UVA's Honor Constitution and are cited as rights of the accused student. However, these rights as well as others, were not permitted to be exercised in the cases of student expulsion studied in this *Recommendations for UVA Honor Reform with Protection of Students' Constitutional Rights* document. The *Henson* case brought two issues under scrutiny to establish due process in this area. These were formerly enforced in the UVA Honor System, but are now absent. They are no longer safeguarding the student's property and liberties, and include: (1) the right to have character witnesses to testify for him/her; and (2) the right to an independent examination by a separate appellate committee outside of the Honor Committee such as Student Council in any appeal under consideration. No public transparency or public accountability to take action on these issues has been previously provided or required. However, the need remains to be addressed, as UVA is a tax supported state university and its public constituency is requesting it.

SECTION A

Fourteenth Amendment Infractions

I. Loss of Property and Liberty, 14th Amendment, Multiple Sanctions

“No state shall enforce any law which shall deprive any person of life, liberty or property, without due process of law.” (14th Amendment, Section 1).

Problem: Students facing single sanction expulsion from a public university, such as UVA, have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment. The convicted student’s life, reputation, educational benefits and financial property interests are not being protected or preserved and are subject to egregious loss under the current Honor System. The student’s penalty or loss is not commensurate with or weighted against the behavior that is being disciplined. (Sections C and D elaborate on the due process issues).

Example 1 Problematic citations on an assigned paper during a UVA sponsored Semester at Sea (SAS) program were deemed to merit imperiled personal safety of convicted non-UVA students. Their very lives were potentially endangered by a dismissal at the proposed port of enforced debarkation. After investing \$15,000 per student, academic credit was forfeited.

Problem: **The Honor Committee does not view Single Sanction as a penalty, but as a decision that excludes a convicted student from being part of the UVA Community of Trust. However, the consequence of its implementation is a multiple sanction penal system for all accused students who can suffer emotional, social, academic, and financial adverse impacts. This is true whether the student is convicted of any Honor offense or not.**

Example 2 Honor investigations and trials did not meet the minimum requirements for due process according to the Dixon standard and resulted in an untenable loss of financial property and return on investment in a convicted student’s education. It is an infraction of 14th Amendment to be deprived of property without a legally sufficient due process Honor System. Here financial property loss is defined as severe tuition loss, up to 2 to 4 semesters of academic course credit loss, repeating coursework that does not convey to other universities, admission blocks to other universities and years of income earning potential loss. Other non-financial impacts include loss of liberty to good name, reputation, social stigma, emotional duress; loss of academic, employment and networking opportunities; loss of UVA diploma, course grade devaluation whether convicted or not, and lifetime academic and career barriers or disqualifiers.

Problem: **The unanticipated financial burden incurred by students and their families following a single sanction disciplinary dismissal is egregious. This financial burden may be exponentially compounded by the financial duress that many families are currently experiencing due to the economically depressed national environment.**

Example 4 In addition to attorney fees, the immediate monetary loss following a dismissal is currently approximated to be as high as \$100,000 due to the significant number of lost semesters in transferring to a different university. The convicted student will lose all the current coursework completed during the semester of the trial, estimated at \$10,000, even though there is no question of impropriety associated with any of these courses. This may be in addition to the course credit in question and low cum average from the prior semester from which the honor charge may have originated. A later graduation date and ‘gap time’ in between semesters impacts when a student can begin to earn a wage to pay back college tuition loans, and would add an additional \$60,000-100,000 in lost income earning potential for that time delay.

Example 5 The multiple sanctions levied in all these cases studied were disproportionate to the behavior in question, and would not be enforced in like manner at any other tax supported state university. The risk of not completing a degree is high for a convicted student due to severe loss of liberty, educational benefit and financial property that cannot be recovered, protected or preserved. College loans are no longer readily available to the student and/or their families for the additional years of tuition funds that are required to complete a degree requirement at another university.

Problem: **Even when an appeal is granted within the two (2) year period leading to exoneration, there is an arbitrary deprivation of financial property for the value of an entire semester. This results because the University does not maintain forfeited grades for the semester of dismissal. Specifically, there is no process in place to restore loss of property (for lost tuition or lost academic credits) and lost liberty (loss of GPA, good name, reputation and class standing) for this type of exonerated student. This procedural defect may also hinder the granting of New Evidence Appeals.**

Example 6 The UVA Registrar's office did not retain final semester grades for a dismissed student for coursework completed before dismissal. Therefore, the convicted student's academic standing could not be restored over the two-year possible appeal period, should the conviction be overturned because there is no available redress procedure for grades. This non-compliance with Honor procedure is in violation with 14th Amendment provisions for preservation of property and liberty.

Problem: **Grade penalties are not automatically vacated for any devaluations in courses involved in Honor disputes upon exoneration. Therefore, the accused student can be harmed academically even if found innocent.**

Example 7 Even after being submitted in a timely matter, a grade appeal request was not acknowledged by the course professor for a class following an Honor trial exoneration the next semester. The grade appeal was based on a grade devaluation given following an unproven Honor accusation. This unfairly lowered the exonerated student's grade point average. The faculty took a 'hands-off' position in recognizing the exoneration with respect to this requested grade appeal, despite the fact that the initial charge was made by another student and the charges were later found to be erroneous.

Problem: **Equal access to obtaining legal advice should not be a barrier to any student attending a public university because the student is forced to hire an attorney they cannot afford to help defend themselves against an honor charge.**

Example 8 Even students who are accused, but later exonerated, may pay out between \$1,000-\$40,000 for attorney consultation fees--expenses neither budgeted for nor equally available to all university families. (\$40,000 was amount for legal expenses filed in Christopher Leggett's case, June 1994).

Possible Solution:

The academic and economic inequities resulting from a multiple sanction Honor System at a tax-supported state university exists nowhere else in the Commonwealth of Virginia, and is of great concern to FFH, LLC members. In order to remedy this constitutional loss of property, consideration should be given to only imposing a penalty against the single course involving the honor violation. In addition, the Expedited Appeal decision date should be the date when student grades are no longer granted rather than going back to the trial date. This would minimize the huge financial impact an adverse decision has on the family paying the expenses, especially in the currently adverse national economic environment. All credit should be counted for transfer if a student completes the semester while the appeal is being processed. Steps should be taken to reduce the impact of multiple sanctions so that property rights and financial interests of the accused students and their families are preserved as much as possible in this period of particular economic hardship.

Because trial dates may be arbitrarily determined, thus financially impacting every student differently, any tuition lost as a result of becoming a dismissed student should be considered for refund on a case-by-case basis. Credits should be counted for transfer if the student completes the semester while an Expedited Appeal is being processed.

The University Registrar should be required to maintain grade records for all dismissed students for the allowable two (2) year period from the date of the trial if they complete the semester. Further, an automatic notification process should be developed where any grade penalties are considered for removal after exoneration.

II. Lack of Guarantee of Adequate Notification – Honor Article V.1 and 6th Amendment

“The principal purpose of the notice information is to provide the accused with a description of the charges against him/her in sufficient detail to enable him/her to prepare his/her defense.”

Problem: An Investigation-Panel (I-Panel) generally convenes within one week of the completion of an investigation. However, in practice it may be only one to three days later. The student is not permitted to review the final charges or evidence in the I-Log with the Investigators nor is there time provided to do so.

Example 9 All supportive defense material and witness affidavits requested to be gathered and included in the I-Log in support of the accused had been deemed irrelevant by the I-Panel. This unfairly influenced the decision to go to trial. In multiple cases, the students’ liberty to good name, reputation and honor were unnecessarily put at risk when the investigators excluded virtually all supporting witness interviews and relevant defense material early in the Honor System process.

Problem: After a determination to go to trial there is insufficient time allotted, 10 days in this example, for an accused student to mount an adequate defense before going to trial. Reasonable Delay Requests are often denied without good cause. This violates a student’s Article V.1 Honor constitutional rights for “a reasonable time to prepare for a hearing before the Panel.”

Example 10 Student submitted a timely Motion to Delay request to reschedule the trial. This request was denied by the Pre-Trial Panel without providing a good cause argument. An appeal was also submitted citing lack of good cause to Deny Motion to Delay. As a result of these denials, the student was convicted in large part because she was not granted enough time to be able to: (1) determine Counsel representation, (2) develop a compelling trial strategy, (3) garner and prep witnesses, (4) acquire supporting documentation and research; all while continuing to attend classes, and complete current coursework and final examinations. The investigation was one-sided for months, focusing only on gathering necessary evidence to find guilt and not equally gathering, evaluating and weighting evidence to ensure impartiality. As a result, evidence gathered showed extreme prejudice.

Problem: Students get less than a 24 hour notice about what evidence can be included or excluded from the trial when they are attending the pre-trial conferences the day before the trial.

Example 11 The accused student was not extended the guarantee of adequate notice to meet the minimum due process requirements for student disciplinary hearings. New charges were added at the last minute and defense strategies were unraveled at the 11th hour because of undue restriction of eye witnesses’ testimonies.

Possible Solution

Consideration should be given to the Advisor’s role to promote parent notification about the pending Honor investigation, trial or appeal in order to obtain adequate emotional and legal support. Many students may be too fearful to even tell parents about it to their own detriment, especially since the parents’ assets will be severely impacted if the decision is adverse. Counseling resources, and support group information should be provided in hard copy to accused student. The investigated student should get to review the completed I-Log and all charges made against him/her prior to being accused. This review should ensure adequate substantive defense material was not excluded and witnesses requested for affidavit were completed. Investigators should actively pursue investigating both sides equally. Pre-Trial Conferences should be scheduled at least one week in advance of the trial to give the accused student time to gather additional discovery materials and have sufficient time to prepare their affirmative defenses. Further, we strongly believe that a minimum of 30 days is needed for a student to juggle requisite class workload and still address trial preparation with their newly selected Defense Counsel who is also juggling their academic work during this time. The “right to a speedy trial” should not be required (within a brief 10-14 days following the I-Panel decision to proceed to trial) at the expense of a fair trial since this could lead to a wrongful dismissal and/or not give the accused student enough time to mount an adequate defense. The “speed” should take place at the front end--during the investigation period, with greater time available to the accused immediately prior to the trial. In the alternative, instead of the ‘adjudicative’ model now used, a mediative style of conflict resolution could be introduced that typically brings immediate discourse and resolution to the problem. This would allow for academic remediation rather than always instigating punitive sanctions.

SECTION B

Insufficient Honor training in key strategic areas

I. Honor Committee members, Honor Trial members

Problem: Defense Counsel may be an inexperienced member of the Honor Council that is assigned to the accused student resulting in deficient representation for a fair trial. He/she may also have limited examination tactics as well as not knowing how to protect a student during the trial from unfair procedures and prejudicial testimony. The Defense Counsel is assigned to an accused student so late in the Honor process that they cannot positively influence having the evidence gathered equitably in order to protect an innocent student from unnecessarily proceeding to trial.

Example 12 Unknown to the student, he/she was assigned an inexperienced Defense Counsel with limited trial experience. Because of this inexperience, the Defense side lacked support from even one witness, had no evidentiary material, and proceeded without any well-considered trial strategy. This resulted in one-sided trial testimony against the accused student, and very poorly articulated Defense, ending in permanent expulsion. A capable Defense Counsel would have changed the outcome of the trial, but an Appeal on this basis was denied.

Problem Investigative Counsel is supposed to be ‘impartial’ as to the evidence presented at the I-Panel. However, both Prosecuting Counsel and Investigating Counsel are making critical decisions about key defense material despite substantive defense witnesses being excluded from the trial and the I-Panel, respectively. The accused student has to rely on Defense Counsel alone to stick up for his/her rights.

Example 13 The principle defense witness was severely restricted in what testimony would be permitted in Pre-Trial Panel decisions. Virtually all other major witnesses in support of the accused were also stricken by the Counsel for the Community. They stated that because they were friends of the accused, their testimony would be biased in favor of the accused and therefore irrelevant. This was despite the accused student’s contention that their testimony was critical to her defense. Prosecuting Counsel used an unsubstantiated prejudicial claim to sway the jury toward conviction.

Problem: The accused students’ Advisors are not trained to deal with the overwhelming amount of information about the system, the student’s rights, the decisions needing to be made and the emotional burden placed on the student that must be communicated in a few short meetings. The Advisor is the single point of contact for the investigated student for months before any Defense Counsel is appointed, if they become an accused student. The student typically meets with the Advisor only a few times before making critical decisions. There often isn’t time for the students to fully understand their rights having never gone through a trial and the Honor process before.

Example 14 The Advisor was often unable to provide information that the accused student needed in order to prepare for trial. This included problems with timeliness in providing I-Log copies, and not locating missing support documentation for the student resulting in serious implications for the Defense.

Problem Advisors provided false reassurance to accused students by repeatedly advising them “not to worry, just tell the truth (inferring the case would be dismissed once the truth was heard).”

Example 15 The Advisor’s advice was a disservice to the students who relied upon it to their own detriment thinking that this was all that was required in order to be exonerated. Dismissal liability was incurred by the accused students for not being fully apprised of the substantive requirements for preparing a sufficient defense.

Problem: The I-Log investigators do not ensure that evidence collection for both sides is equally weighted. Our study shows that this is usually to the detriment of the accused student. It is not uncommon for not even one of their requested witnesses to be interviewed before the I-Panel convenes.

Example 16 Because I-Panel Investigators had not performed due diligence in evidence collection in a number of cases in this study, key strategic data supporting the innocence of the investigated students was lacking in each of the I-logs. This set up a failure in fundamental fairness by presenting a preponderance of evidence biased against the investigated students to only support the necessary assumptions they were looking for in order to prove guilt.

Possible Solution:

We urge an immediate procedural change whereby Defense and Community Counsel are brought in at the beginning of the investigative phase to ensure more thorough discovery and impartiality in gathering evidence for the I-log. Consider using 3rd year law students during I-Panels to fairly and impartially weigh and adjudicate evidence in order to safeguard innocent students from further erroneous prosecution. This would insure that a student's Article V.1 Honor constitutional rights have then been preserved.

II. All Honor Positions

Problem: **There is a perception that some members of the Honor Committee and Honor pool are more concerned with their prestige, their room on the Lawn, their victory in court, and other emoluments than the fairness of the Honor process.**

Example 17 The Honor Committee's tone in public sessions of Honor meetings had a degree of hubris that had no place in this Single Sanction Community. Response to community concerns that were voiced in multiple open Honor meetings in the fall went unanswered and undebated. Justifications and rationalizations for why everything should stay the same were provided instead.

Problem Courtroom tactics demonstrated that Counsel for Community had desire to win at all costs, even if it did not serve justice for the accused.

Example 18 Tactics such as Trial Chair intimidating Counsel for Accused with invalid reprimand of "badgering witnesses," developing new charges during the trial, deliberately using redacted evidence, and other methods of undue influence were used to sway the jury decision outcome. The "win" came across as more important than objectively getting the truth out.

Possible Solution:

A Committee should be formed to develop new training courses for all members of the Honor Committee and Honor pool positions by initiating a mandatory classroom course for any Honor positions sought. Course completion should be a pre-requisite for running and/or being elected or selected for any honor position. Various levels of certification could be awarded for completion of each course. These could include beginner, intermediate and advanced levels of accomplishment determined by the number of hours of experience completed in that position. The names of students that obtain completion should be posted on the Honor web site. This will bring more transparency to the Honor and accused student trial process. The result would insure that more experienced Honor Committee members such as Fourth Years and Law School students were assigned to key roles and positions in a trial. We understand that Law School students used to play a major role in the trial process lending a mature and balanced approach to the process. Sadly, that is no longer the case. The level of Law School involvement is significantly reduced from prior years.

Accused students should be assigned Counsel representation immediately upon learning that they have become an investigated student so that the Advisor no longer has this sole responsibility. The role of the Advisor should be to make the investigated student aware of all support resources and potential training material available to them within and outside of the UVA community. Also, the Advisor would provide emotional support and take on more clerical duties to expedite the trial preparatory meetings, and possible transfer processes to a new university.

III. Jurors

Problem: **Juror questionnaire filter questions do not include case specific questions, definition explanations, are too vague and deliberation instructions are not always clear.**

Example 19 Explanations of the three criteria for conviction were too vague on the juror questionnaire to provide any clear definition. No hypothetical examples were given to provide a 'yardstick'.

Problem: **The Trial Chair is present when the jury is deliberating to answer questions. Jury instruction by Trial Chair before final decision on student’s guilt or innocence may introduce outcome bias in the way instructions are provided as to judging intent and triviality.**

Example 20 Honor Committee contact with jury was not minimized. Therefore, the probability of ex-parte communications or undue influence may have occurred and biased the jury in decisions made against the accused student. An example of undue influence is was tone of voice in which instructions were given to the jury. Another example was saying things that were confidential or were supposed to have been stricken, but were overheard by the jurors.

Possible Solution:

Instructions given to the jury by the Vice Chair of Trials should be changed to instructions that are web based and are a pre-requisite for completion prior to attending jury duty. Give specific examples of each violation being voted on and require pre-requisite jury training to minimize Committee contact with jurors. Questions from the jury regarding definitions, process, and procedures that still remain unclear can be answered by a non-Committee representative, such as an undergraduate intern or equivalent in order to remove any undue potential bias to the jury by Vice Chair for Trials. Jury instruction should stress that “the benefit of the doubt should always go to the (accused) student” since this is a model of recognizing the student as part of The Community of Trust. “Beyond a reasonable doubt” is a much more difficult instruction to interpret and determine boundaries for.

IV. All students and faculty

Problem: **New students to UVA are given a crash course in the Honor System during Orientation their first year. There is no follow-up discussion or mandatory seminar given to each student to update and re-educate them about Honor rules and regulations or changes throughout their academic career.**

Problem: **New faculty often do not know the Honor rules for their specific school and then do not adequately convey them to their students through content in the course syllabus, emails or written direction on tests.**

Example 21 A course syllabus explanation of the Honor Code only stipulated that “students are not to lie, cheat or steal” when in fact there was an uncommunicated, and far more detailed expectation of fulfilling the Honor Policy in that discipline. Honor requirements for the course were fluid and changed over the course of the semester, and were supposed to be discovered by the students in three separate documents.

Possible Solution:

Honor orientations should be expanded for all incoming students, transfer students, TA’s and new faculty. At a minimum, a hard copy of every course syllabus should clearly outline a detailed interpretation of the UVA Honor Code as it applies to that course, give more specific and demonstrative examples for the most common Honor violations and provide a full review of all Honor rules and how they apply to the specific school that is being attended. This orientation should be made available in person and on-line for future reference or questions. This course should be a non-credit requirement and mandatory. A test and sign-off on the policies of each school that is attended or taught at should be taken annually to update certification. The rules must not change during the semester. Faculty should be required to complete an on-line course on Honor policy in their respective schools since policies within the University are not uniformly applied. This is a potentially a topic to be submitted to Faculty Senate that would address deadline policies relating to Honor Offenses that should be clearly articulated and provided in writing in each College or School within the university at the beginning of the semester.

SECTION C

Due Process Trial Procedural Protections Deficiencies

I. Perceived as “guilty before being proven innocent.”

Problem: A student may perceive that they are being treated as ‘guilty before being proven innocent’ because of the way the I-Log is compiled and reviewed. Conduct by Investigators requires the utmost impartiality during interviews and collection of evidentiary material. Unfortunately, this requisite objectivity has not been observed.

Problem: The current Honor mentality seems to promote an attitude of hubris among some Honor members. There appears to be an indifference to the full ramifications of the decisions they are making, apparently sometimes in jest, that alter the course of student’s lives. A cavalier attitude in the midst of serious proceedings does a huge disservice to the accused, with their whole future jeopardized in a seemingly flippant way.

Example 22 Several different accused students waiting to be interviewed have overheard Honor Committee investigators openly deriding, and making belittling statements about other accused students from cases being discussed prior to theirs. Confidentiality between cases is apparently commonly breached when care has not been exercised in determining who is within hearing distance of the supposedly ‘confidential’ discussions between Committee members. The lack of respect exhibited toward accused students by Honor Committee members undermined those accused student’s security and faith in receiving a fair trial. Unbelievably, those fears were born out when cases went to trial.

Possible Solution:

Changes to the Honor Constitution and By-laws should be made to ensure that a student is perceived as ‘innocent until being proven guilty’ by putting in safeguards so that they will receive a fair and unbiased investigation and trial. These changes would insure the procedural protections and rights for accused students that are necessary for fair due process during UVA Honor investigations, trials and appeals. Any procedural defect or deficiency presented in Honor documents, that can be easily identified, should be promptly remedied. If an Honor Committee member is caught repeatedly breaking confidentiality rules, it should be grounds for their dismissal from the Honor pool, as well as for Honor charges against them. The involvement of Defense Counsel occurs too late after the accusation is reported to fully protect the interests and rights of the accused student, and also delays their ability to begin developing supportive Defense strategies. Assigning Defense Counsel before the I-Panel decision is rendered would better protect the rights of accused students. These recommendations are taken from real cases and represent serious problems that have been encountered by dismissed students and urgently need to be recognized and corrected by the UVA Community of Trust.

II. Redaction of all positive defenses and removal of most witnesses deemed as ‘irrelevant’.

Problem: The accused student’s right to have relevant evidence and substantive witnesses admissible in order to have a fair trial has on too many occasions not been allowed or wrongly restricted by the Vice Chair of Investigations and the Prosecuting Counsel. In the 1980’s procedural rules created by then Senior Trial Counsel Roger Goldman, now a prominent lawyer in Washington D.C. and Law School Coordinator and former Honor Committee Chair Kent Sullivan, now an appellate judge in Texas, were put in place to make the system more fair and transparent. There is a signal of departure from these safeguards and benefits for the accused student.

Example 23 An Honor Committee representative, who was also the Reporter, issued a ‘gag’ order to course faculty forbidding the disclosure of any information about the student’s own case to the accused student, or the student’s Defense Counsel after the Honor Report was submitted. The accused student was never afforded an opportunity to discuss why he/she had been accused since faculty declined to reply to his/her inquiries before being dismissed from the University. The evidence withheld from the accused and their Counsel in this manner was still admitted to trial though the Defense Counsel was not privy to it.

Example 24 Accused students have routinely and unfairly had their primary witnesses’ participation and most significant supportive evidence stricken from use during Pre-trial for no clear reason by Pre-trial Panel. The Pre-trial Panel has also imposed severe limitations in what witnesses were permitted to say. All of these unexplained restrictions have had lasting deleterious consequences to the accused.

Possible Solution:

Prohibiting witnesses considered by the accused to be essential for their defense should not be permitted. Faculty should not be instructed by Honor to refuse to communicate with their students under investigation, as it is not consistent with the principles of Jefferson’s Lessons of the Lawn ensuring close student-faculty communication for quick resolution of any dispute. In choosing an adversarial judicial model of conflict resolution for Honor trial hearings, this ideal has not been preserved. A more modern meditative style of conflict resolution is highly recommended to streamline the process and robustly uphold the core foundation of Honor tradition at UVA. Re-adopt the old rules of evidence that would safeguard and uphold the procedural protections for an accused student and promote the student faculty interchange that Jefferson intended.

III. Definition of ‘intent’ excludes honest mistakes and definition of “triviality” is too vague and inconsistent.

Problem: Higher educational values of improving communication between faculty and students, or learning from actions made in ignorance, should rate higher than imposing a dubious “should have known” sanction that has vague and amorphous applications.

Example 25 Too many accused students have been convicted without clear evidence of any wrongful, premeditated intent to cheat or plagiarize. Jury (due to instruction by Trial Chair) often resorts to ubiquitous quicksand of what student “should have known,” and not their actual intentions--to render a guilty verdict based on intent. Virtually no allowance is given for honest, non-deliberate oversight/mistake, inadequate communication from faculty, misunderstanding of faculty instructions by student or inadvertent or grammatical plagiarism, etc., before trial decision is made based on unlimitable “should have known”.

Problem: Triviality definition is too vague and many times is a pivotal factor in a conviction vote. The triviality clause does not provide a value added remedy to the student’s innocence since it has no definitive criteria and is not assigned on a case-by-case basis.

Example 26 Why would forgetting to cite a repeated reference in a paper when already cited, inadvertently citing a wrong source, and having a differing opinion between student and professor on what constitutes “Common Knowledge” not be considered trivial, since it is likely an oversight, not an intentional attempt to plagiarize from that author?

Possible Solution:

We believe this should be the University’s emphasis: “The benefit of the doubt should always go to the (accused) student” when judging intent. The Honor Code’s primary purpose is to require a demonstration of pre-meditated, deliberate intent to do wrong, or to cover up a wrong knowingly committed. The “should have known” yardstick

should be severely limited in its use as proof of intent, as there is no boundary to this concept. It cannot measure an actual deliberate intention on the part of an accused student. Reported accusations based on hearsay and speculation alone should result in a case being automatically dismissed unless tangible evidence is in hand following an investigation. Faculty discretion in not forwarding a suspected violation should allow for the recognition of a student's clear act of unintentional omission.

IV. Trial Request Notification - Computation of Time

Problem: **Students often do not receive the notice of accusation in a timely manner. They have only 10 days from the notice date to respond.**

Example 27 Student did not check email and the certified letter went to the wrong address in the mailroom.

Possible Solution:

Enter a by-law change that permits the ten (10) days required to respond to the Trial Notification to be counted from the date of confirmation of the accused student's receipt of the Notice, not from the 10 days of the Honor Committee sending it to the accused student. If a student fails to respond with 10 days, a second notice is to be sent. If still no response within 10 days after that, the student is considered to LAG (Leave Admitting Guilt), but may have that LAG automatically lifted if a student shows that the notice was never received.

V. Improper or Inappropriate Conduct of Trial Jurors and Community Counsel

Problem: **Jurors during trial are unprofessional or show improper conduct.**

Example 28 Accused students during trials have witnessed jurors conducting themselves improperly, exemplifying lack of responsibility in their designated official capacity. Behavior such as falling asleep and reading a book is a dereliction of duty, shows a lack of respect for the accused student and jeopardizes a fair outcome of the trial. If this type of behavior were demonstrated in an executive business meeting, it wouldn't be tolerated.

Example 29 A juror was overheard in an angry phone conversation during trial recess complaining about the length of the trial and missed social engagement. During later resumption of trial, began making hostile interrogations of witnesses in apparent reflection of frustration over having to serve on jury when desirous of attending planned social event. That juror became an obvious, forceful negative influence on the jury impacting decision-making throughout the final stages of trial.

Problem: **Counsel for Community demonstration of improper/unethical conduct.**

Example 30 Counsel for Community deliberately built their case upon evidence agreed in Pre-trial to strike from the record. University attorney consulted by Trial Chair during one hour trial recess about this wrongful Community action did not provide advice consistent with civil law in such matters. Request to have declaration of a mistrial by Accused was not responded to by her Counsel, in large part because there is NO provision for declaring a mistrial within current Honor Code.

Possible Solution:

Trial Chair must insist upon proper jury conduct throughout trial proceedings, and impress upon jurors the import of decisions they will be making. Jurors should be informed about full impact of adverse decision upon accused. In case of egregious violation of student rights during trial due to prejudicial event, declare mistrial so that fairness is upheld. By-laws need to address when to declare a mistrial in Honor Code policy, and Honor training should address this. Educate student and counsel about the Standard Panel process and enforcement if they feel that there has been misconduct or unethical behavior at the trial.

SECTION D

Honor Appeal Review Due Process Defects

I. Appeal Review Board procedures, conflict of interest and lack of due process

Problem: The Executive Honor Committee has interaction with the Appeal Review Committee, but the convicted student is not afforded an opportunity to speak with them during the appeal process in order to potentially clarify newly provided documentation.

Problem: The appeal process is closed, so that the convicted student is not informed about why the appeal was denied.

Example 31 A student was notified by email letter that the Appeal was not granted. No explanation was given regarding rationale for decision, and it felt like there was a rush to finish before summer break, despite high stakes for accused student who believed himself innocent, and worthy of reconsideration.

Problem: If it is determined that a substantial question is raised, the appeal is reviewed by an Investigator and/or university attorney who reports back to the Appeal Review Committee. This testimony and any deliberations are never seen or heard by the student.

Problem: Students are misled to believe that they will be heard and understood in the appeal process. They do not know how to be heard on issues of unfairness.

Example 32 When pressed for answers to questions raised in the Appeal, the response received is “You should have articulated these points during your trial.” Or, “If we were to grant this appeal it would set a precedent.” Or “The outcome would not have been any different.”

Example 33 The reality is that the accused student faced their trial still in shock over having been unexpectedly charged with an Honor offense. Thus, the accused experiencing adverse impact on ability to sleep, and unable to clearly process the flood of evidentiary information necessary in the short window of time before the trial, in addition to having no prior legal or court experience arrives at the trial inadequately prepared. Many new arguments or substantiating pieces of evidence may be recalled or located that were not accessible during the trial and would then form the basis for an appeal based on a now more robust complement of evidence.

Example 34 For a number of students giving no prior alert to parents that they were facing an Honor investigation and trial, parental involvement with the Appeal was the first assistance from a mature adult that the student received in rebutting their accusation. The parents’ subsequent examination of evidence and strategically differing analysis and emphasis in re-presentation of that material would have changed the outcome of the trial, so a subsequent Appeal should be given very strong consideration by the Appeal Panel.

Problem: **Fact: Extraordinarily few appeals have been granted in the last ten years. There is no requirement for these statistics to be accurate or have actual accountability. There is no roadmap on how to compose a successful Appeal or rationale accepted for same. This implicates that the appeal process is overly complicated. The Appeal Review Committee rarely admits mistakes made by Honor Committee members. There appears to be a built-in cultural bias within the Honor Committee to maintain original trial decisions and to rarely consider reversal, even when strong procedural due process or Good Cause objections have been honestly raised, or when trial evidence was collected and presented in a blatantly prejudicial manner.**

Example 35 Student was denied virtually all appeals, despite strong supportive good cause and/or new evidence submitted. This denial was based on the favored Honor mantra that “it would not have changed the outcome of the trial.” This was patently unfair to the student who had already felt victimized by a hasty rush to trial and obviation of their witnesses.

Example 36 A strongly substantiated Appeal was not given a completely objective reconsideration from fresh eyes-from evaluators who were completely unfamiliar with the case. This denied a potentially wrongfully dismissed student a full, fair evaluation based on ALL the evidence available to be submitted. This appeal right is supposed to be enforceable as a result of Henson v. Honor Committee of UVA, 719 F.2d 69 (4th Cir. 1983).

Problem: **Selection of Appeal Board may include Honor Committee members who were involved, even if peripherally, during Trial phase, so they cannot approach case completely free of bias. There is a built-in bias of support for friends who may have been Counsel for Community against student when issuing ruling on appeal.**

Example 37 Incoming Chair of Appeal Panel had been involved in student's entire 12 Hour trial. While officially only there for training and to observe, pending Appeal Chair was observed with cell phone activity throughout the trial, and appeared to be organizing incoming witnesses for Counsel for Community against accused student. Also seen entering jury deliberation room, so presumably overheard jury discussion. Later in new Honor role, returned the Appeal Decision Letter to dismissed student as "denied." Dismissed student was confident that decision was tainted because the case was well-known to Appeal Chair before Appeal was received, prejudicing the outcome of the Appeal unfairly due to trial participation induced bias.

Problem: **During the two-year window for appeals, the convicted student cannot benefit from any changes in the by-laws subsequent to the trial.**

Example 38 Semester at Sea students were convicted onboard ship, by jury comprised of faculty members in direct opposition to Honor regulations on main campus. A serious conflict of interest was demonstrated in that the Reporting faculty member and the person responsible for hearing the appeal, were faculty members in an academic department chaired by a member of the jury. The Reporting faculty member was the chairman of the academic center where both a juror and the person hearing the appeal were faculty members. Neither conflict was brought to the attention of the accused student. Shipboard investigated students were not assigned Honor Advisors for emotional and trial support. Students were given only given 24 hours to prepare an appeal without assistance. Honor by-laws were changed "mid-stream" after students already were onboard the ship without adequate notice of changes. Appeal opportunity beyond the ship was not permitted and they were thrown off the boat. Students were unable to benefit later on from changes to the by-laws and procedures brought about by this incident that would have allowed a trial by a jury of peers, and the same Appeal opportunities afforded the rest of the extended UVA Community.

Possible Solution

The Executive Committee and the Appeal Review Committee shall have separation of powers from each other in order to obtain a truly independent review of any submitted appeal. A new Community Appeals Review Board should be developed. The member composition should consist of 6 members: 2 members from the accused student's school, 2 from the 3rd year Law School and 2 adult members from the community or Alumni who are volunteers for the position on a rotating basis and who are trained in the Honor System and are approved by the Honor Executive Committee. Permit representation by the student during appeal deliberations. Initiate transparency through precedent based decision-making tools developed and based on hypothetical or simulated scenarios that are kept in a FAQ on-line database. Provide a volunteer mentor or coach to assist in more complex cases to facilitate a more meditative model of conflict resolution for all concerned. If a procedural due process flaw is recognized by the Honor Committee with an appeal that was denied but resulted in a subsequent by-law change within the 2-year appeal period, it should set a precedent to automatically redetermine any decision on the case it used as a basis for that by-law change. This by-law change would grant an automatic reversal or new trial under a 'good cause' argument even though the 30 days have past to submit a good cause appeal if it is still within the 2-year appeal period.

SECTION E

The Ethics of Student Plagiarism

Problem: The student is not given a clear definition of what constitutes plagiarism in today's technological educational environment. In society today, the Internet is a tool used by many to obtain information, whether it is Wikipedia for general information or other websites.

Example 39 Course expectations for how to do citations from web sources were not consistent.

Problem: Faculty does not clearly specify what is expected of the student in each class syllabus. One professor's definition of plagiarism may be completely different from another's.

Example 40 While some faculty enforce their strict technical definition of plagiarism and report students on Honor charges for any deviations, other professors feel it is their job to educate and help their students learn how to correct mistakes. This inconsistency is confusing to students.

Example 41 Between the different schools at the University there are inconsistencies in the rules.

Possible Solution:

If a student does not follow a professor's instructions and/or rules because they were unclear, or were never delineated in detail in the syllabus, it should be the responsibility of the professor to correct the student and not make it an Honor violation.

Problem: It shocks the conscience that the guilty get off with a conscientious retraction and are able to remain students, while innocent students that may have unknowingly committed inadvertent plagiarism are placed in jeopardy of dismissal. University dismissal is a drastic way to educate our finest students in order for them to learn from their grammatical errors or mistakes!

Example 42 A professor accused students in his class of cheating on an academic paper and incorrectly invited anyone who had cheated to claim conscientious retraction. Some of the students came forward and admitted cheating and did not get dismissed. The remaining students who did not cheat but only made 'honest mistakes' (i.e., inadvertent plagiarism) were dismissed and faced being judged by the Community of Trust to be less trustworthy than the cheaters.

Problem: In writing a supplement that defines plagiarism the Honor Committee inadvertently took information from sources without following the standard practice of citations. Instructions by the professor contradict the proper practice that is stated in Kate Turabian's book, *A Manual for Writers of Research Papers, Theses and Dissertations*. How can students find a standard if the Honor Committee members also do not know correct citation practices?

Example 43 See the Discussion section excerpted from Families For Honor, LLC (FFH, LLC) paper, "Comparative Analysis of the UVA Honor Committee Supplement." Also, see the FFH, LLC Comparative Analysis at the end of this section involving the Honor Committee's supplement that was recently voted on and passed by Honor members and changed several times after being posted on the Honor web site.

Problem: There is no clear definition of intent regarding plagiarism.

Problem: Students testify in honor trials that they have no intent to commit an honor offense but made a mistake. Mistakes are not honor offenses. Intent cannot be proven unless the evidence is concrete, not someone's opinion.

Example 44 Faculty member misused his position to prove intent without making any attempt to speak to the student about his questioned motives.

Possible Solution:

Address 'Inadvertent' or 'Grammatical' Plagiarism within the 'Intent' definition of the Honor Code.

If it is determined by the I-Panel or the jury that only inadvertent plagiarism has occurred, it should not be considered an Honor Offense. The varying degrees of intent and motivation need to be reflected in the definition of intent for plagiarism as well as other Honor Offenses. Read excerpts below of a paper provided on this subject involving the Ethics of Student Plagiarism entitled, "Plagiarism: A Misunderstood Concept" By Dr. Alan Briceland to understand about the misuse of the intent clause.

" The problem with plagiarism is that the word plagiarism is used to denote four different distinct intellectual concepts. This confusion leads to a great deal of fuzzy thinking and miscommunication. Thus, the word should not be used unless the speaker and the listeners are attuned to the same meaning. University communities depend on those responsible for honor systems to understand that this is a problem and to instruct others- most importantly to instruct and educate the faculty, who discover most instances of plagiarism- because many faculty are not attuned to the various distinct meaning contained in the word plagiarism.

*In a university setting the most basic distinction is between two applications of the word: "Inadvertent plagiarism," meaning the author is careless or is unaware of the conventions and skills that are required, and "Honor plagiarism" involving a deliberate attempt by a student to gain an unfair advantage over some portion of their peers. Honor systems as the word clearly denotes, exist to deal with, to punish, only dishonorable acts when students are unclear how closely one can paraphrase a paragraph or sentence they most often do not realize that they are unclear. They think that they know what is allowed but they don't. They do not ask for help because they do not know they need help. "*²

Comparative Analysis

Discussion

"Plagiarism occurs when written work in an academic or publishing setting is presented to members of an academic or reading community as portions of the document have been borrowed or taken, in whole or in part, from the work of one or more other persons or groups. Plagiarism is not limited to academic papers presented for a grade. It can occur in books, scholarly papers and materials intended to be read by a wider audience.

While a teacher or publisher may exempt a particular assignment from including citations, the requirements for a unique organizational structure, for quotation marks, and for proper paraphrasing remain standards for all academic work. In any public presentation where reader may be deceived as to who constructed the organization, who wrote the words, and who selected the examples, accepted writing practices requires that citations be used. Since citation are to serve the readers, no author or a published available work may exempt anyone for the obligation to properly cite work".³

² Dr. Alan Briceland, "Plagiarism: A Misunderstood Concept," November 8, 2009.

³ FFH, LLC, "Comparative Analysis of the UVA Honor Committee Supplement," November 30, 2009.

Comparison

We have used two (2) source documents listed below and shown eight (8) examples for you to compare against the Honor Supplement revised and posted March 2010.

1. Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 41, 77-79.
2. Indiana University Bloomington, School of Education copyrighted website <https://www.indiana.edu/~istd/example1paraphrasing.html>.

Example 1

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 41.

“Paraphrase when you can represent what a source says more clearly or pointedly than it does. Paraphrase doesn’t mean just changing a word or two. You must use *your own* words and *your own* phrasing to replace most of the words and phrasing of the passage (see 7.9.2).”

Honor Committee Supplement (as it appears in the online document)

...you can represent what a source says more clearly or pointedly in your own words. Paraphrasing does not mean merely changing a word or two or re-ordering the concepts in a passage; you must use your own words and your own phrasing to replace most of the words and phrasing of the source.

Example 2

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 77.

“Because technology begets more technology, the importance of an invention’s diffusion potentially exceeds the importance of the original invention. Technology’s history exemplifies what is termed an autocatalytic process: that is, one that speeds up at a rate that increases with time, because the process catalyzes itself (Diamond 1998, 301).”

Honor Committee Supplement (as it appears on the online document)

Because technology begets more technology, the importance of an invention’s diffusion potentially exceeds the importance of the original invention. Technology’s history exemplifies what is termed an autocatalytic process: that is, one that speeds up at a rate that increases with time, because the process catalyzes itself (Jared Diamond 1998, 301).

Example 3

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 78.

“Two of his phrases, however, are so striking that they do require quotation marks: *technology begets more technology* and *autocatalytic process*.”

Honor Committee Supplement (as it appears in the online document)

At least two of the author's phrases, are so striking that any use of these phrases would definitely require quotation marks: "*technology begets more technology*" and "*autocatalytic process*."

Example 4

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 78.

"The power of technology goes beyond individual inventions because technology "begets more technology." It is, as Diamond puts it, an "autocatalytic process" (301)."

Honor Committee Supplement (as it appears in the online document)

The power of technology goes beyond individual inventions because technology "begets more technology." It is, as Diamond puts it, an "autocatalytic process" (301).

Example 5

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 78.

"Once you cite those words, you can use them again without quotation marks or citation:"

Honor Committee Supplement (as it appears in the online document)

Once the distinctive phrase has been cited, you may use them again without quotation marks or citation.

Example 6

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 78.

"You paraphrase appropriately when you represent an idea in your own words more clearly or pointedly than the source does. But readers will think that you crossed the line from fair paraphrase to plagiarism if they can match your words and phrasing with those of your source."

Honor Committee Supplement (as it appears in the online document)

You paraphrase appropriately when you represent an idea in your own words more clearly or pointedly than the source does. **Remember: Even an appropriate paraphrase requires citation to the original source.** But readers will think you crossed the line from fair **paraphrase to plagiarism**, even though you have cited the original source, if they can match your words or phrasing with those of your source.

Example 7

Indiana University Bloomington, School of Education copyrighted website:

<https://www.indiana.edu/~istd/example1paraphrasing.html> (Example 1)

<https://www.indiana.edu/~istd/example2paraphrasing.html> (Example 2)

(Examples 1 and 2 are shown on this web site).

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Examples 1 and 2 (from Honor web site supplement revised and posted in February, 2010)

Example 8

Turabian, Kate L., *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th ed. (Chicago and London: University of Chicago Press, 2007), 79.

“To avoid seeming to plagiarize by paraphrase, don’t read your source as you paraphrase it. Read the passage, look away, think about it for a moment, *then still looking away*, paraphrase it in your own words. Then check whether you can run your finger along your sentence and find the same ideas in the same order in your source.”

Honor Committee Supplement

“One suggestion for avoiding plagiarism in paraphrasing is to avoid reading your source as you paraphrase it. Read the passage, look away, think about it for a moment; then, still looking away, put it in your own words. Then check whether you can run your finger along your sentence and find the same ideas in the same order in your source.”

Conclusions

It is clear from the many examples provided in this document that Honor at the University of Virginia is in urgent need of remediation. FFH has offered a set of recommendations to initiate Honor Reform that prioritizes learning from mistakes rather than from extreme punishment and severe loss of equity, welfare, and liberty. A student's educational investment or their welfare and safety should not be put at any undue risk over a disciplinary action that is not commensurate with the behavior in question. These interests must be properly balanced and reasonably adjudicated through a process that is timely, has public accountability and transparency, and preserves fundamental fairness and the constitutional rights for all concerned. These proposed changes would address the injustices that have been observed and described that are prevalent within the UVA Honor System.

The “Lessons of the Lawn” would support a revitalized concept on how learning should take place in Mr. Jefferson's University. Would he have offered a second chance for ignorance? Would he have wanted the faculty to converse with and correct the student’s misunderstandings in mutual discourse? Or would he take pride in a “one strike and your out” policy? Somehow, looking at the many missteps he made in his own life, the answer would speak to more mercy than is currently available to students at the University. FFH would like to see implemented at a minimum a requirement for faculty members to talk with their students suspected of an honor infraction before an I-Panel decision is rendered. We also strongly urge that a new disciplinary option be adopted that allows for a “warning” to be issued, or for a student to be placed “on report” for a first time question of honor if there is no clear evidence that it was utterly intentional. This would allow for students who unintentionally omitted a reference, or acted with only good and reasonable motives to have simple academic penalty options rather than experiencing the current practice of expulsion based on “should have knows” that now promotes honorably intentioned students with clear consciences being dismissed from the University.

Without immediate attention to the critical issues described in this document, future students under investigation and facing judgment will continue to be subject to wrongful dismissal. For the University to remain silent and take no action would lead to further injustice toward their select and predominately stellar body of students. Constitutional protections afforded by the 14th Amendment need to be robustly executed and enforced. The ongoing deprivation of due process with respect to loss of property and welfare needs to be immediately addressed by the Board of Visitors and the Virginia State Assembly because the obligation of the University of Virginia to preserve students' liberty, property, and educational investment as well as their future is absolutely imperative.

“Laws and institutions must go hand in hand with the progress of the human mind. As it becomes more developed, more enlightened, as new discoveries are made, new truths disclosed and manners and opinions change with the change in circumstances, institutions must advance also and keep pace with the times.”

-- Thomas Jefferson

*Disclaimer: **Families For Honor**, LLC does not make any claim to comprehensive expertise in the areas addressed in this document to include academic or honor practices, plagiarism, or constitutional law. However, we do claim to have been deeply affected by these areas from personal experience, and it is upon that foundation that we respectfully submit this Manifesto. This document represents a tremendous commitment to communicating these concerns with a fervent hope for redress.*

The following sources were utilized and extracted on or around March 4, 2010 from the Internet to complete the comparative analysis: <https://www.indiana.edu/~istd/example1paraphrasing.html> , and the Honor supplement current on that date from <http://www.virginia.edu/honor> . This comparative analysis was undertaken for educational purposes only, to address the section on The Ethics of Student Plagiarism involving inadvertent or grammatical plagiarism.