

[The following article also appears in the Summer 1997 issue of the *Journal of College and University Law*, V24, No. 1]

Applying the Power of Association on Campus: A Model Code of Academic Integrity

by Gary Pavela¹

Institutions of higher education are paying renewed attention to the importance of academic integrity, and the value of traditional honor codes.² Reasons for this development include an apparent increase in academic dishonesty by undergraduate students; the withdrawal of some faculty members from the full scope of responsibilities traditionally associated with teaching and mentoring students; the need for a shared set of values to revitalize a sense of community on campus; and the expansion of student autonomy as the exercise of disciplinary authority *in loco parentis* wanes. The *Model Code* that follows is designed to assist college administrators and lawyers in developing academic integrity policies that can accommodate these trends, and the new collegiate environment coming with them.

Academic dishonesty is pervasive, and becoming worse

The most extensive recent research on college student and faculty attitudes toward

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Portions of this article draw upon the author's previous writing related to student development and academic integrity, including the 1996 National Association of Student Personnel Administrators (NASPA) White Paper: "The Power of Association: Defining our Relationship with Students in the 21st Century;" the Monograph *Academic Integrity and Student Development* (College Administration Publications, 1988); the NASPA monograph *Issues and Perspectives on Academic Integrity* (1994); and related articles in *Synthesis: Law and Policy in Higher Education* and *Synfax Weekly Report*.

² See Pavela and McCabe, "The Surprising Return of Honor Codes," *Planning for Higher Education* (Volume 21, Summer 1993). Schools adopting some kind of honor code in recent years include the University of Maryland at College Park, Georgia Tech, and George Washington University. The clearest evidence of heightened national interest in issues related to academic integrity was the creation of the National Center for Academic Integrity in 1992. The Center is consortium of over 200 colleges and universities that collaborate on academic integrity policies and procedures. Further information is available at <http://www.nwu.edu/vacc/cai/>.

academic dishonesty has been done by Professor Donald L. McCabe at the Graduate School of Management at Rutgers University.⁴ In a 1995 survey of over 4,000 students (with a 36% response rate) at 31 selective schools around the country, McCabe found that academic dishonesty is pervasive. For example, 42% of students at schools with honor codes (code schools) and 58% of students at schools without honor codes (non-code schools) admitted "cheating on written work" (defined as plagiarism; falsifying a bibliography; turning in work done by somebody else; or intentionally failing to footnote or cite sources). The numbers in 1990 were 32% at code schools and 56% at non-code schools.⁵

If current trends at American secondary schools are any indication, academic dishonesty at colleges is likely to become even worse in the years ahead. In 1996, the annual survey of high achieving high school students conducted by *Who's Who Among American High School Students* found remarkably high rates of cheating. Nearly 90 percent of the students said cheating was "common at their school;" 76 percent said they had "cheated on tests"; 58 percent said "it would be easy to obtain test questions or answers."⁶ Similar conclusions were reached in a 1995 *Reader's Digest* "Special Report" with the descriptive title: *Cheating in Our Schools: A National Scandal*.⁷

Faculty members are reluctant to enforce ethical standards

In a spring 1993 interview in *Synthesis: Law and Policy in Higher Education*⁸ Professor McCabe reported that a faculty survey he completed in 1991-1992 (involving 802 faculty members at 16 colleges and universities) revealed that 60% of the faculty at non-code schools and 47% of the faculty at schools with honor codes "said they would go to little or very little effort to document an incident" of academic dishonesty.

Many factors account for faculty reluctance to pursue academic dishonesty cases--including an emphasis on research and publication rather than teaching; fear of

⁴ See D. L. McCabe and L. K. Trevino, *Academic dishonesty: Honor codes and other contextual influences*, *Journal of Higher Education*, 64 (5) (1993), 522 and D. L. McCabe *Academic Integrity: What the Latest Research Shows*, *Synthesis: Law and Policy in Higher Education*, Spring, 1993, 340.

⁵ D.L. McCabe, *New Research on academic integrity*, *Synfax Weekly Report*, Week of May 20, 1996, 485.

⁶ *Sparing the rod does a lot more than spoil the child, study says*, *Washington Times*, January 18, 1996 at A8.

⁷ D.R. Levine, *Cheating in Our Schools: A National Scandal*, *Reader's Digest* October, 1995, 65.

⁸ *Synthesis interview*, *Synthesis: Law and Policy in Higher Education*, Spring, 1993, 343.

confrontation and litigation; and the bad experiences some faculty members have had with burdensome hearing procedures.⁹ Another possibility may be uncertainty among faculty members about whether traditional values and virtues should be affirmed in the classroom at all. This was an issue raised several years ago by Clark University philosophy professor Christina Hoff Sommers:¹⁰

Some time ago I published an article called "Ethics without Virtue," in which I criticized the way ethics is being taught in American colleges. I pointed out that there is an overemphasis on social policy questions, with little or no attention being paid to private morality . . .

A colleague of mine did not like what I said. She told me that in her classroom she would continue to focus on issues of social injustice . . . She made it clear that I was wasting time and even doing harm by promoting bourgeois virtues instead of awakening the social conscience of my students.

At the end of the semester, she came to my office carrying a stack of exams and looking very upset.

"What's wrong?" I asked.

"They cheated on their social justice take-home finals. They plagiarized!" More than half the students in her ethics class had copied long passages from the secondary literature. "What are you going to do?" I asked her. She gave me a self-mocking smile and said, "I'd like to borrow a copy of that article you wrote on ethics without virtue."

It appears intellectually fashionable in some academic circles to discredit virtues like honesty, perhaps because the very concept of truth has been called into question.¹¹ If

⁹ The *Model Code of Academic Integrity* proposed in this article is designed to give faculty members significant authority to resolve most forms of academic dishonesty, especially first offenses. Hopefully, a grant of such authority will induce faculty members to report more cases. It is the author's impression that the relatively small number of academic dishonesty cases reported at many colleges and universities--usually around thirty or less a year even at large institutions--reflect only a tiny fraction of the amount of academic dishonesty occurring.

¹⁰ C.H. Sommers, *Teaching the virtues*, The Public Interest, Spring 1993, 3-4.

¹¹ Gertrude Himmelfarb, writing in the Spring, 1997 issue of *The American Scholar* (*Revolution in the Library*, at 202) sought to define what she believes to be the dominant academic ethic, at least outside the sciences:

The mainstream of postmodernism is the . . . skepticism,

so, a campus code of academic integrity will need more than streamlined procedures to induce greater enforcement. Significant authority will also have to be given to students, comparable to what can be found in traditional honor codes. Those students may be less cynical than some of their teachers, and will have a natural desire both to protect the due process rights of their peers, and to guard the academic reputation of the institution that will be awarding them a degree.

A revitalized sense of community is sought--and being born

Contemporary American society is filled with calls for civic renewal and a greater sense of community obligation.¹² On many college campuses, however, "diversity" and "tolerance" are the only explicitly affirmed values and virtues. One senses a hunger for something more, particularly when the questions arise: "diversity for what purpose? Tolerance to what end?"

John Gardner, in a 1996 monograph titled *Building Community*,¹³ wrote that:

[T]o speak of community implies *some* degree of wholeness. What we seek--at every level--is pluralism that achieves some kind of coherence, wholeness incorporating diversity. I do not think it is venturing beyond the truth to say that wholeness incorporating diversity is the transcendent goal of our time, the task for our generation.

and subjectivism that rejects . . . the very idea of truth. For the postmodernist, there is no truth, no knowledge, no objectivity, no reason . . . There is no correspondence between language and reality; indeed there is no "essential" reality . . . What appears to be true is nothing more than what the power structure, the "hegemonic" authority in society, deems to be true.

To those of you who have been happily spared this latest intellectual fashion, it may seem bizarre and improbable. I can only assure that you it is all too prevalent in all fields of the humanities.

See also G. Pavela *Deconstructing Academic Freedom*, 22 *Journal of College and University Law* 359 (Fall 1995).

¹² The call for community in educational settings is best associated with the work of Ernest Boyer. See *The "Basic School" and the American College*, Synfax Weekly Report, week of October 2, 1995, 402

¹³ Independent Sector, 1996, at 15.

There was a time when defining "wholeness" was possible on most college campuses. It encompassed a range of beliefs framed in official charters, sometimes reduced to a few key paragraphs signed by students and faculty members in matriculation ceremonies. At least at the secondary school level, increasing numbers of parents expect educators to affirm comparable core values, usually associated with self-restraint and honesty.¹⁴ A 1994 survey of over 1,100 Americans (550 of them parents of school children) done by the research group Public Agenda¹⁵ found that:

- [] Ninety-seven percent of both white and African-American parents say schools should teach "honesty and the importance of telling the truth."
- [] Ninety-four percent of the white parents and ninety-eight of the African-American parents believe schools should teach kids "to solve problems without violence."
- [] Ninety-eight percent of white parents and ninety-six percent of African-American parents think students should be taught "respect for others regardless of their racial or ethnic background."
- [] Ninety-one percent of the white parents and ninety-two percent of the African-American parents believe student academic achievement will improve if schools emphasize "such work habits as being on time, dependable, and disciplined."

Character education programs evolving in elementary and secondary schools need support and reinforcement on campus. The direction more colleges and universities will take was summarized nearly a decade ago by Dartmouth President James O. Freedman, who predicated that, by the next century, "[m]oral development will once again become an explicit part of liberal education."¹⁶

Promoting student moral development requires affirming shared values. More colleges are starting to focus on one value that goes to the heart of the academic

¹⁴ For example, a 1997 Baltimore Sun article reported on a "surge" of enrollment in private schools in suburban Maryland. The reason why many Maryland parents are turning away from public education, according to the Sun, is a belief among "experts, parents, and administrators," that "the public schools no longer teach some key intangibles--integrity, honesty, discipline, respect" *Private School Surge in Howard*, March 17, 1997, at. 1.

¹⁵ *First Things First: What Americans Expect from the Public Schools* (Public Agenda, New York: 1994).

¹⁶ J. O. Freedman, *Five Areas of Concern*, The Washington Post Education Review, August 6, 1989, at 18.

enterprise: a commitment to honesty in the pursuit of truth. Ironically, it has been recent debates about postmodernist perspectives--and a defense of postmodernist thought by one of its leading exponents--that has accelerated this trend.

In 1996, New York University physicist Alan Sokal reported that he had published a nonsensical article titled "Toward a Transformative Hermeneutics of Quantum Gravity" in a "leading North American journal of cultural studies" (*Social Text*, Spring/Summer, 1996). Sokal's objectives in writing his parody were to reveal widespread ignorance about science in the humanities, and to debunk the view that the laws of physics--or efforts to follow objective standards in any field--are "mere social conventions."¹⁷

Duke University Professor Stanley Fish challenged Sokal in a May 21, 1996 *New York Times* article¹⁸ What surprised many readers was Fish's *ethical* perspective: namely, that Sokal (who claimed he had only written a parody) had done something wrong by engaging in an act of fraud, harmful to the scientific enterprise. This kind of fraud, in Fish's view, would apparently be wrong in any culture, since every culture is built on some degree of social trust:

[I]t is Alan Sokal, not his targets, who threaten to undermine the intellectual standards he vows to protect. Remember, science is above all a communal effort. No scientist (and for that matter, no sociologist or literary critic) begins his task by inventing anew the facts he will assume . . . They are all given by the tradition of inquiry he has joined, and for the most part he must take them on faith . . . The large word for all this is "trust" . . .¹⁹

If Professor Fish's observation reflects the latest trend in postmodernist thought, postmodernism as we used to know it is dead. And with its demise will come renewed attention to the values that support academic communities (both secondary schools and colleges)--especially the value of academic integrity.

Growing student autonomy is reviving an old idea: honor codes

Although some commentators would have it otherwise²⁰ most courts continue to

¹⁷ A. Sokal, *A Physicist Experiments with Cultural Studies*, May/June 1996 *Lingua Franca*, 62-64.

¹⁸ *Professor Sokal's Bad Joke*, at A23.

¹⁹ *Ibid.*

²⁰ See R.D. Bickel and P. F. Lake, *Reconceptualizing the University's Duty to Provide a Safe Learning Environment*, 20 *Journal of College and University Law* 261 (1994). A response to the Bickel and Lake article (G. Shur, *A Response to Professors Bickel and Lake*) appears in the Winter 1996 issue of *Synthesis; Law and Policy in Higher Education*, at 543.

recognize that college campuses are rapidly evolving beyond the traditional role of protecting inexperienced youth from their own behavioral excesses.²¹ The classic judicial statement on this subject is *Bradshaw v. Rawlings*:²²

There was a time when college administrators and faculties assumed a role *in loco parentis* . . . A special relationship was created between college and student that imposed a duty on the college to exercise control over students' conduct . . . A dramatic reapportionment of responsibilities and social interests [has now taken] place . . . College administrators no longer control the broad arena of general morals . . . [T]oday students vigorously claim the right to define and regulate their own lives.

Now, nearly twenty years after *Bradshaw*, a new cohort of students appears to be even more assertive about the rights and responsibilities associated with adulthood, and the freedoms traditionally protected in American society. This is so, in part, because many colleges are rapidly becoming multi-generational learning centers, attracting and educating a broad range of students with new technology, including communications technology allowing instruction at a distance.²³

A good part of the campus climate of the future may be seen in an article by Jon

²¹ See *Booker v. Lehigh University* 800 F. Supp. 234 (E. D. Penn. 1992). The plaintiff sued Lehigh for injuries sustained in a fall after she became intoxicated at an on-campus fraternity party. The court observed that:

[t]o require Lehigh to supervise its thousands of students would render null and void the freedoms won by adult students and place Lehigh *in loco parentis*. The Social Policy [alcohol policy] was not an assumption of such a duty but rather a policy statement that supposedly responsible adult students should be aware of their own behavior. As noted above, Lehigh's position, and rightly so, was to assume that the adult students were responsible enough to make their own decisions. Lehigh, being detached from the events in question, is not responsible for the indiscretions and poor judgment of one of its underage adult students.

²² 612 F.2d 135, 139 (3d Cir. 1979).

²³ See, generally, G. Pavela *The Power of Association: Defining Our Relationship with Students in the 21st Century*, NASPA White Paper, 1995. Educating students online, of course, does not mean dispensing with standards and rules pertaining to academic integrity, including traditional honor codes. See *U-Va. Honor Code To Reach Off Campus* Washington Post, April 17, 1997. at V01.

Katz in the April 1997 issue of *Wired* magazine²⁴ Katz describes the evolution of a generation--liberal on certain cultural issues like gay rights, but distrustful of government, and committed to personal and economic freedom. The Internet, for this cohort, isn't just a form of communication: it's a symbol of liberty and autonomy.

The word that comes to mind in reading Katz's analysis is *individualism*. Individualism, of course, is the heart of American exceptionalism, but it takes new and renewed form among the vast majority of technologically attuned young people--including those who come from economically disadvantaged backgrounds.²⁵ Those values are described by Katz as "libertarian, materialistic, tolerant, rational, technologically adept, [and] disconnected from conventional political organizations . . ."²⁶

A single-minded reliance on punishment and censorship "from the top down" won't work in dealing with most Americans--especially young people, and those attending colleges and universities now, or in the future. Candor, suasion, and the influence of peers might, especially if colleges define their relationship with students as an *association*, grounded in shared rights and responsibilities. That's why it's a new day for honor codes on college campuses, or at least for "modified" honor codes that give students a significant voice in defining and enforcing academic integrity policies.²⁷

²⁴ *Birth of a Digital Nation*, at 49.

²⁵ See *Teenagers and Technology* Newsweek, April 28, 1997, at 86. A Newsweek poll found that "89% of teens use computers at least several times a week. Teens from lower-income homes use computers as often as kids from wealthier families, but get their access at school more than at home."

²⁶ Katz, *supra*, at 52.

²⁷ The honor code concept does not have to be limited to promoting academic integrity. Marjorie Hodges, Policy Advisor for the Office of Information Technologies at Cornell University, and a leading authority on law and technology issues in higher education, made the following observation in an interview in the Spring 1996 issue of *Synthesis: Law and Policy in Higher Education* (at 554).

Synthesis: Are there ways we can give students a larger voice in defining the "institutional culture" regarding computer use? If we give student leaders a greater role in educating their peers, and policy enforcement, do you think we would regret the results?

Hodges: [An] honor code is the perfect model to apply to computer abuse policies. [It relies] on an understanding and acceptance of basic behavioral expectations. In fact, existing honor codes should

MODEL CODE OF ACADEMIC INTEGRITY

PREFACE

1. This model code is designed to incorporate many features of a traditional honor code into an administrative structure that also provides for prompt informal resolution of academic dishonesty allegations by faculty members.

Promoting and protecting academic integrity is the responsibility of every member of the campus community. Although there are many ways of sharing that responsibility, the approach set forth in this *Code* is to give considerable discretion to faculty members in reporting and processing allegations of academic dishonesty. In turn, the exercise of faculty discretion is structured and complimented by a Student Honor Council. Such balancing and sharing of authority is premised upon an assumption that control of academic dishonesty will not be accomplished by the threat of punishment alone. Ultimately, the most effective deterrent will be a commitment to academic integrity within the student peer group. Only by giving students genuine responsibility in a collaborative effort with faculty and staff members can such a commitment be fostered and maintained.

DEFINITIONS

2. Academic dishonesty is a serious offense at the University because it undermines the bonds of trust and honesty between members of the community and defrauds those who may eventually depend upon our knowledge and integrity. Such dishonesty consists of:

CHEATING

already encompass
computer use issues. Moreover, the computer culture
already embraces its own form of an honor code, and
experienced users not only have an understanding of
"netiquette," but attempt to enforce those expectations on-
line.

I also don't think we would regret giving students a larger role in
defining the "institutional culture" regarding computer use.
Students can play a very active role in educating the campus on
these issues both by adapting existing programs to include an
electronic communications component and through the creation of
new programs.

Intentionally²⁸ using or attempting to use unauthorized materials, information, or study aids in any academic exercise.²⁹

FABRICATION

Intentional and unauthorized falsification or invention of any information or citation in an academic exercise.³⁰

FACILITATING ACADEMIC DISHONESTY

Intentionally or knowingly helping or attempting to help another to violate any provision of this Code.³¹

²⁸ Labeling a student as being “dishonest” constitutes a form of moral condemnation which can be a legitimate sanction in itself. Such moral condemnation, however, is not normally imposed for a simple act of negligence (e.g., a typographical error resulting in a miscited source). See *Wait v. University of Vermont*, unreported U.S. Civil Action 82-247 (D. Vt., 1982) p. 7: “it is the accepted rule of law . . . that, before the imposition of civil or criminal liability for acts of deception or fraud, it must be shown that the actor either intended that his actions deceive, or acted with knowledge and reckless disregard of the possibility that his actions might deceive. This comports with the ordinary meaning of the words deceive, cheat, or defraud...”

The issue of “intent” is a question of fact. A student who cites long passages from a book without acknowledgement cannot expect to convince the decisionmaker that the omission was merely “negligent.” Also, requiring a showing of intent is not to be confused with excusing students who claim they were unaware of the rules. Such ignorance is not a valid defense. Not knowing what one has done (e.g., inadvertently omitting a footnote) is to be distinguished from knowingly doing something while ignorant of a rule.

²⁹ The term Academic exercise includes all forms of work submitted for credit or honors at the University, as well as materials submitted to other institutions or organizations for evaluation or publication.

³⁰ For example, a writer should not reproduce a quotation found in a book review and indicate that quotation was obtained from the book itself. Likewise, it would be improper to analyze one sample in a laboratory experiment and covertly “invent” data based on that single experiment for three more required analyses.

³¹ For example, one who provided term papers or examinations to other students while knowing or having reason to know that such materials would be used in violation of this Code would be responsible for “facilitating academic dishonesty.”

PLAGIARISM

Intentionally or knowingly representing the words or ideas of another as one's own in any academic exercise.

HONOR STATEMENT

3. Letters informing both graduate and undergraduate students of their acceptance at the University, as well as appointment letters for members of the faculty, shall contain a short statement concerning the role of the Student Honor Council, as well as the obligation of all members of the campus community to promote the highest standards of academic integrity.³²

THE STUDENT HONOR COUNCIL

4. There shall be a Student Honor Council. The Honor Council is composed of 20³³ students³⁴ in good standing, normally appointed in the Spring for the following academic year, who may each be reappointed for additional one year terms.
 5. The members of the Honor Council are appointed by a committee consisting of the Vice President for Academic Affairs, the Vice President for Student Affairs, the Chair of the Graduate Student Association, the President of the Student Government Association.³⁵
 - 6.. All council members are subject to training and conduct requirements specified by
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³² It would be best if the letter were signed or co-signed by the chair of the Student Honor Council, thereby affirming the significant role given to students in promoting and protecting academic integrity.

³³ A substantial number of students should be selected, since many functions will be assigned to the Honor Council, including educational programming.

³⁴ Graduate and professional students should be included, if the *Code* applies to the institution's graduate programs and professional schools. Applying the *Code* to graduate and professional schools is desirable, since the *Code* sets a consistent, high standard, can be promoted as a campus-wide tradition, and because the collaboration of graduate, professional, and undergraduate students helps foster a sense of campus community.

³⁵ The screening committee shall actively recruit a broad range of students in order to create an Honor Council that reflects the diversity of the campus.

the Vice President for Student Affairs.³⁶

7. The Student Honor Council has the following responsibilities and authority:
 - (a) To develop bylaws subject to approval by the University for legal sufficiency and consistency with the requirements of this *Code*.
 - (b) To advise and consult with faculty members and administrative officers on matters pertaining to academic integrity.
 - (c) To create and conduct educational programming designed to promote academic integrity.
 - (d) To designate from its members students to serve on Honor Boards, as specified in Part 19 of this *Code*.
 - (e) To consider petitions for removal of the grade of "XF" from University records, in accordance with Part 12 of this *Code*.
 - (f) To assist in the design and teaching of the non-credit seminar on academic integrity and moral development, as specified in Part 12(b) of this *Code*.
 - (g) To issue an annual report to the Campus Senate on academic integrity standards, policies, and procedures, including recommendations for appropriate changes.
8. The campus administration shall provide an appropriate facility, reserved for the primary use of the Honor Council, and suitable for the conduct of hearings. Clerical and secretarial assistance will also be provided.
9. A full or part-time Honor Council administrator should be appointed by the Vice-President for Student Affairs, in consultation with the Honor Council. The administrator will report to the Vice-President for Student Affairs, and will be responsible for the efficient administration of the academic integrity system, as specified by this *Code*.³⁷

³⁶ Significant authority is given to the Vice President for Student Affairs, since the courts have consistently treated academic dishonesty as a disciplinary rather than an academic offense. See G. Pavela *Disciplinary and academic decisions pertaining to students* Journal of College and University Law, at ?

³⁷ It is important for a staff member to be responsible for day-to-day management of the academic integrity system , since a student group cannot be expected to be consistently attentive to the many administrative tasks associated with it.

THE GRADE OF "XF"

10. The grade of "XF" is the standard penalty for academic dishonesty at the University.³⁸ If imposed in accordance with procedures specified in this *Code*, it shall be recorded on the student's transcript with the notation "failure due to academic dishonesty." The grade of "XF" shall be treated in the same way as an "F" for the purposes of grade point average, course repeatability, and determination of academic standing.
11. No student with an "XF" notation on his or her transcript shall be permitted to represent the University in any extracurricular activity, or run for or hold office in any student organization that is allowed to use University facilities, or receives University funds.³⁹
12. A student may file a written petition to the Student Honor Council to have the grade of "XF" removed and permanently replaced with the grade of "F". The decision to remove the grade of "XF" and replace it with a permanent grade of "F" shall rest in the discretion of a majority of a quorum of the Council (or as otherwise provided by Council bylaws), provided that:
 - (a) at the time the petition is received, at least twelve months shall have elapsed

³⁸ The XF grade penalty has proven to be a valuable innovation at the University of Maryland-College Park, and elsewhere. It represents a compromise between sanctions seen as too lenient (e.g. a reduced grade, which is little or no deterrent to a student already doing poorly in a course) or too harsh (e.g. automatic suspension or expulsion, often regarded by members of hearing panels as being unjust, causing them to distort the fact finding process to find students "not responsible" in "minor" cases). Latitude is given, however, to impose varied sanctions. Generally, acts involving advance planning, falsification of papers, extensive collaboration with others, or some actual or potential harm to other students will merit suspension or expulsion, even for a first offense. An attempt to commit an act of academic dishonesty should be punished to the same extent as a completed violation.

³⁹ The prohibition against representation associated with the XF grade penalty can be especially burdensome to athletes. This is not an unreasonable result, given the privileges athletes are often accorded, and the responsibilities they have as role models. Given the potential consequences, however, it is recommended that orientation programs for athletes pay special attention to University academic integrity policies.

since the grade of "XF" was imposed; and,

- (b) at the time the petition is received, the student shall have successfully completed a non-credit seminar on academic integrity,⁴⁰ as administered by the Vice-President for Student Affairs; or, for the person no longer enrolled at the University, an equivalent educational activity, as determined by the Vice-President for Student Affairs; and,
 - (c) the Honor Council Administrator certifies that no reports have been received indicating that the student has been found responsible for any other act of academic dishonesty or similar disciplinary offense at the University, or another institution.
13. Prior to deciding a petition, the Honor Council will review the record of the case and consult with the Honor Council administrator. Generally, the grade of "XF" ought not to be removed if awarded for an act of academic dishonesty requiring significant premeditation. The decision of the Honor Council shall not be subject to subsequent Honor Council review for four years, unless the Honor Council specifies an earlier date on which the petition may be reconsidered. Honor Council determinations pertaining to the removal of the "XF" grade penalty may be appealed to the Vice President for Student Affairs. If the Vice President removes the grade of "XF" from the student's transcript, the Vice President shall provide written reasons to the Honor Council.

PROCEDURES: INFORMAL RESOLUTION⁴¹

⁴⁰ The academic integrity seminar has proven to be one of the most successful features of the University of Maryland *Code of Academic Integrity*. Taught by staff members or graduate assistants, the seminar uses provocative short readings to engage students in ethical dialogue. Some of the topics and issues raised in the seminar can be seen at a University of Maryland Student Honor Council World Wide Web site: www.inform.umd.edu/Henry

⁴¹ The process for informal resolution suggested here is based on the author's "disciplinary conference" procedure, discussed in *Limiting "The Pursuit of Perfect Justice" on Campus: A Proposed Code of Student Conduct*, 6 *Journal of College and University Law* 137, 156 (n.29) (1979-1980). The concept of informal "disciplinary conferences" is drawn from the United States Supreme Court decision in *Goss v. Lopez*, 419 U. S. 565, 581-584 (1975). In *Goss*, the Supreme Court held that a public school student subject to a short suspension (10 days or less) is entitled to "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story" to a school disciplinarian. Even "truncated trial type proceedings" are not required, unless the student is accused of an offense that may result in a "[l]onger suspension . . . or expulsion . . ."

14. A faculty member⁴¹ who suspects that a student may have committed an act of academic dishonesty shall:
- (a) so inform the student and the Honor Council administrator in writing on the standard form established for that purpose,⁴² and
 - (b) if authorized by the Honor Council administrator,⁴³ determine whether an act of academic dishonesty occurred. Such a final determination may be made only after the student has been given an opportunity for a personal meeting with the faculty member to discuss the allegation, and to present relevant evidence. Findings by faculty members made in accordance with these

Likewise, in the specific context of student discipline in the college setting, the First Circuit held in *Gorman v. University of Rhode Island*, 837 F. 2d 7, 15 (1st Cir. 1988) that "[i]n fostering and insuring the requirements of due process . . . the courts have not and should not require that a fair hearing is one that necessarily must follow the traditional common law adversary method." Nor is it necessarily a due process violation to combine the prosecutorial and judicial functions in an investigatory proceeding. The court in *Gorman* cited Justice Blackmun's observation in *Richardson v. Perales* 402 U.S. 889 (1971) that "the advocate-judge-multiple hat suggestion . . . assumes too much and would bring down too many procedures designed, and working well . . ." Finally, for a thoughtful commentary on how informal procedures can work to the benefit of students (by fostering dialogue and empathy) see D. L. Kirp *Proceduralism and Bureaucracy: Due Process in the School Setting*, 28 *Stanford Law Review* 841 (1976).

⁴¹ Reports from third parties concerning alleged acts of academic dishonesty should be referred to the faculty member of the course in question. However, if the faculty member is unable or unwilling to participate in resolving the case, the Honor Council administrator retains discretion to seek the assistance of the Campus Advocate, and refer the matter to an Honor Review Board.

⁴² The form should contain a specific statement of facts to support the charge. Furthermore, the form should outline the policies and procedures in this *Code* and provide a list of student rights. Students should also be urged to meet with the Honor Council administrator within five business days.

⁴³ All records in academic dishonesty cases should be maintained in the office of the Honor Council Administrator. This practice will allow the administrator to detect patterns in academic integrity cases, including possible repeat offenses. The administrator would not normally authorize informal resolution in a case involving a student found responsible for a previous act of academic dishonesty.

procedures are not subject to appeal.⁴⁴

15. Prior to authorizing a faculty member to determine whether an act of academic dishonesty occurred, the Honor Council administrator shall agree to meet with the accused student, upon the student's timely written request,⁴⁵ in order to review pertinent procedures. In any event, the Honor Council administrator will retain discretionary authority to modify or clarify the charges, and to refer a case for an Honor Board Review, in lieu of informal resolution.⁴⁶ A referral for Board Review in lieu of informal resolution must be made upon the faculty member's request; or in any case in which a student is subject to suspension or expulsion.⁴⁷
16. Proceedings in a case resolved by a faculty member are informal and nonadversarial. The faculty member will provide the accused student with written notice of a scheduled meeting at least three days in advance. The purpose of the meeting will be to review and discuss the charges before a final decision is reached. Documentary evidence and written statements could be relied upon by the faculty member, as long as the student is allowed to respond to them at the meeting. Students may also be allowed to bring relevant witnesses, or be accompanied by parents or other advisors, in the discretion of the faculty member. Neither the faculty member nor the student will be represented by legal counsel.
17. A faculty member who is authorized to hear the case in accordance with Part 14(b) of this *Code*, and who determines that a student is responsible for an act of academic dishonesty, shall promptly inform the Honor Council administrator. The faculty member shall not impose any penalty, but may include a statement of aggravating and/or mitigating factors to be considered when a penalty is

⁴⁴ The "findings" in question pertain to whether academic dishonesty occurred. Faculty members may *recommend* penalties, but do not impose them. The Honor Council administrator retains inherent authority to reject both the findings and a recommended penalty, and to refer a case for an Honor Committee Review, if the administrator determines that a faculty member attempted to resolve a case without following the procedures specified in this section.

⁴⁵ The student should be given five business days from the time of notification by the faculty member to schedule an appointment with the Honor Council Administrator.

⁴⁶ Referrals for Committee review will normally be made in complex cases (i.e., those deemed more suitable for an investigatory hearing, especially where questioning of witnesses may be necessary) or in cases where the accused student has a previous record of academic dishonesty.

⁴⁷ Typically, such cases involve considerable advance planning, group coordination, or other serious acts or fraud or deception.

determined by the Honor Council.

18. An Honor Council committee, appointed in accordance with Honor Council bylaws, will determine the penalty to be imposed if a student is found responsible for academic dishonesty after informal resolution by a faculty member.⁴⁸ The case file shall be available to the committee, including any relevant statements submitted by the faculty member, and the student. Both the faculty member and the student should be notified of the date, time, and location of the committee meeting, by personal delivery, certified mail, or by encrypted electronic mail (with receipt confirmed), at least three business days in advance, and shall be given an opportunity to appear and to make a short statement concerning the appropriate penalty to be imposed.

PROCEDURES: RESOLUTION BY AN HONOR REVIEW⁴⁹

19. Cases not resolved in accordance with Part 14 of this Code will be referred for an Honor Review. An Honor Review is conducted by an Honor Board. The Board is convened by the Student Honor Council. It will normally consist of six persons, five of whom will be voting members. Determinations of the Honor Board will be by a majority vote (three votes or more). Honor Boards are selected as follows:
 - (a) three students selected by the Student Honor Council from among its members. In the event the student accused of academic dishonesty is a graduate student, then at least one of the student members shall be a graduate student.
 - (b) Two faculty members selected in accordance with procedures established by the Vice President for Academic Affairs. In the event the student accused of academic dishonesty is a graduate student, then at least one of the persons selected shall be a regular member of the Graduate Faculty.
 - (c) The Honor Board shall have one non-voting member, who shall serve as the Presiding Officer.⁵⁰ The Presiding Officer will be selected by the Vice

⁴⁸ The Honor Council is given the responsibility to determine penalties in order to demonstrate the importance of peer influence in promoting academic integrity. Discussion and dialogue with accused students about the purpose of University academic integrity policies are expected.

⁴⁹ The author is indebted to Terry Roach, General Counsel at the University of Maryland-College Park, for substantial portions of the wording in this section.

⁵⁰ The role of presiding officer is critical. It should be filled by a person specifically trained to conduct contested hearings. Possible options include a retired judge familiar with administrative proceedings.

President for Student Affairs.

20. If the Vice President for Student Affairs determines that the Student Honor Council or a Honor Board cannot be convened within a reasonable period of time after an accusation is made, the Vice President or a designee will convene an ad hoc Honor Board by selecting and appointing two students and one faculty/staff member. Whenever possible, student members of ad hoc honor boards shall be members of the Student Honor Council. A non-voting presiding officer will also be appointed by the Vice President for Student Affairs.
21. The Campus Advocate⁵¹ or a designee shall serve as the Complainant at an Honor Review. The principal responsibilities of the Complainant are to present the evidence and analysis upon which the charge is based.
22. The purpose of an Honor Review is to explore and investigate the incident giving rise to the appearance of academic dishonesty, and to reach an informed conclusion as to whether or not academic dishonesty occurred. In keeping with the ultimate premise and justification of academic life, the duty of all persons at an Honor Review is to assist in a thorough and honest exposition of all related facts.

The basic tenets of scholarship--full and willing disclosure, accuracy of statement, and intellectual integrity in hypothesis, in argument and in conclusion--must always take precedence over the temptation to gain a particular resolution of the case. An Honor Review is not in the character of a criminal or civil legal proceeding. It is not modeled on these adversarial systems; nor does it serve the same social functions. It is not a court or tribunal. Rather, it is an academic process unique to the community of scholars that comprise a university.

23. The role of the Presiding Officer is to exercise impartial control over the Honor Review in order to achieve an equitable, orderly, timely and efficient process. The Presiding Officer is authorized to make all decisions and rulings necessary and proper to achieve that end, including such decisions and rulings as pertain to scheduling and to the admissibility of evidence. If in the judgment of the Presiding Officer there is reasonable cause to question the impartiality of a board member, the Presiding Officer will so inform the Honor Council, which will reconstitute the board.
24. The Presiding Officer or designee will select the date, time and place for the Honor Review, and notify the Complainant, the referring faculty member, and the student

⁵¹ More cases will be reported by faculty members if they are not required to present allegations before hearing panels. This "presenting" role could be assumed by a trained student, graduate assistant, or professional staff member, designated as the Campus Advocate. The Campus Advocate could also assist the referring faculty member by helping to investigate the case before a hearing.

(Respondent) by personal delivery, certified mail, or by encrypted electronic mail (with receipt confirmed), a minimum of ten (10) days prior to the review.

25. 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:
- (a) The Complainant or the referring faculty member, and then the Respondent's advocate or the Respondent, will briefly summarize the matter before the Honor Board, including any relevant information or arguments.
 - (b) The Complainant will present witnesses having knowledge of the incident, and offer documents or other materials bearing on the case. The Presiding Officer will normally allow the witnesses to make narrative statements, to be followed by questions by Honor Review Board members. The respondent or the respondent's advocate may then ask relevant questions, as needed.⁵²
 - (c) The Respondent will present witnesses having knowledge of the incident, and offer documents or other materials bearing on the case. The witnesses will normally be allowed to make narrative statements, to be followed by questions by Honor Review Board members. The Complainant and the referring faculty member may then ask relevant questions, as needed.
 - (d) Members of the Honor Review Board may request additional material or the appearance of other persons, as needed.
 - (e) The Complainant or the referring faculty member, and then the Respondent's advocate or the Respondent, may make brief closing statements.
 - (f) The Honor Board will meet privately to discuss the case, and reach a finding by a majority vote.
 - (g) The Honor Board will not conclude that a student has attempted or engaged in an act of academic dishonesty unless, after considering all the information before it, a majority of members believe that such a conclusion is supported by clear and convincing evidence.⁵³ If this is not the case, the Honor Board

⁵² This sequence of questioning stresses the investigatory role of the Honor Review Board. The Board is conducting an inquiry, not a trial. Most questions should be asked by Board members, not the parties, or their advocates.

⁵³ See Nicholas Trott Long, "The Standard of Proof in Student Disciplinary Cases," Summer 1985 *Journal of College and University Law* 71, 80-81:

will dismiss the charge of academic dishonesty in favor of the Respondent with a finding that an attempt or act of academic dishonesty "did not occur", or that it was "not proven", whichever more accurately describes the result of its investigation. The Respondent and the other parties would then be notified in writing of the decision to dismiss the charge.

- (h) If the Honor Board finds the Respondent has engaged in an act of academic dishonesty, both the Complainant, the referring faculty member, and the Respondent and the Respondent's advocate will be allowed to recommend an appropriate penalty.⁵⁴ Pertinent documents and other material may be offered. The Honor Board will then meet privately to make a sanction determination, which must be by a majority vote of its members.
 - (i) The Presiding Officer will provide the Complainant, the referring faculty member, and the Respondent with a written report of the Honor Board's determination.
26. The Presiding Officer will attempt to ensure the following rules and points of order are observed:
- (a) The student may be assisted by an advocate, who must be a registered, degree-seeking student at the University. Advocates are subject to civility standards and enforcement procedures established by the Vice President for Student Affairs.⁵⁵

[T]he preponderance standard on campus inaccurately treats the accused student and the institution as equals . . . [T]he "clear and convincing" standard weighs the balance in the student's favor while not placing an undue burden of proof on the institution. . . From a practical point of view, the "clear and convincing" standard provides a safe harbor from one of the last remaining campus due process storms. No court will require school discipline to rest on "proof beyond a reasonable doubt" but [a court] may well rule "by a preponderance" inadequate.

⁵⁴ The Presiding Officer--usually in the interests of time--may determine that penalty recommendations should be made in writing, rather than delivered orally.

⁵⁵ Basic standards for civility in advocacy might be established and enforced by the Vice-President, comparable to lawyer "civility codes" used in some federal circuits.

- (b) The student may also be accompanied by an advisor, who may be an attorney. If a student is to be advised by an attorney at the Honor Review, written notice to that effect must be provided to the Honor Council Administrator at least three business days before the review is held. Advisors may not address the review panel, and are authorized to be in the hearing room solely to advise their clients, provided they do so without interfering with or disrupting the Honor Review.

Even if accompanied by an advocate and/or an advisor, the student must take an active and constructive role in the Honor Review. In particular, the student must fully cooperate with the Honor Board and respond to its inquiries without undue intrusion by an advocate or advisor.

In consideration of the limited role of advocates and advisors, and of the compelling interest of the University to expeditiously resolve allegations of academic dishonesty, the work of an Honor Board will not, as a general practice, be delayed due to the unavailability of an advocate or an advisor.

- (c) Honor Reviews may be tape recorded or transcribed. If a recording or transcription is not made, the decision of the honor board must include a summary of the testimony.
- (d) Presence at an Honor Review lies within the judgment of the Presiding Officer. An Honor Review is a confidential investigation. It requires a deliberative and candid atmosphere, free from distraction. Accordingly, it is not open to the public or other "interested" persons. However, at the Respondent's request, the Presiding Officer will permit a student's parents or spouse to observe and may permit a limited number of additional observers. The Presiding Officer may cause to be removed from the Honor Review any person, including the Respondent or an advocate, who disrupts or impedes the investigation, or who fails to adhere to the rulings of the Presiding Officer. The Presiding Officer may direct that persons, other than the Respondent or the Complainant, who are to be called upon to provide information, be excluded from the Honor Review except for that purpose. The members of the Honor Board may conduct private deliberations at such times and places as they deem proper.
- (e) It is the responsibility of the person desiring the presence of a witness before an Honor Board to ensure that the witness appears. Because experience has demonstrated that the actual appearance of an individual is of greater value than a written statement, the latter is discouraged and should not be used unless the individual cannot reasonably be expected to appear. Any written statement must be dated, signed by the person making it, and witnessed by a University employee. The work of an Honor Board will not, as a general practice, be delayed due to the unavailability of a witness.

- (f) An Honor Review is not a trial. Formal rules of evidence commonly associated with a civil or criminal trial may be counterproductive in an academic investigatory proceeding, and shall not be applied. The Presiding Officer will accept for consideration all matters which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious, irrelevant, or personally abusive material should be excluded.

APPEALS

- 27. In cases where an Honor Board has determined the appropriate sanction to be an "XF" or less, both the finding of responsibility and the sanction will be final.
- 28. If an Honor Board determines to suspend or expel a student, the student may submit a written appeal to the Vice President for Student Affairs. The appeal must be received by the Vice President within 10 business days after the student has been notified of the Honor Review Board's sanction determination, sent by certified mail to the last address provided by the student to the institution. Deference shall be given by the Vice President to determinations made by the Honor Review Board. Deviations from prescribed procedures will not necessarily invalidate a decision or proceeding, unless significant prejudice to the respondent may result. Sanctions may not be reduced unless determined to be "grossly disproportionate" to the offense.