

October 23, 1978

Dear Professor,

As was reported in the PLEADER, the SBA has appointed a committee to consider possible amendments to the Honor Code.

The PLEADER article was a reasonably accurate account and a copy of it is attached. The occasion for the appointment is an incident that occurred last Summer, in which a student acquired a list of names and exam numbers and thus discovered confidentially issued grades. There was an intuitive reaction at the time that what had happened ought to be an Honor Code violation, but the Executive Committee was unable to find a specific transgression. Other steps were taken, including a letter of apology from the student who had uncovered the numbers to the students concerned. This semester, another student proposed an Honor Code amendment to the SBA Board of Governors and the present committee was formed.

We have agreed to send this letter to every member of the faculty to ask for suggestions, criticism, and advice. We want to take care to review the Honor Code and underlying considerations as well as the immediate incident itself. We do not want to propose a stimulus-response sort of solution, which may prove to be a bad remedy. We expect that members of the faculty have had drafting experience, and more broadly we look to the faculty's experience in the law for help in analyzing a quasi-legal problem. We decided to distribute a letter to every professor rather than guess who had the time and interest to respond. If we only went to the faculty members we knew, the ones we passed over might be the ones we most needed to hear from.

Although the PLEADER article says we have several proposals, we actually have two, both attached. They are similar. Following each is a note from the author and a note summarizing our comments.

We would very much like to have your comments on the issues raised by the Summer incident and in these proposals, on the Honor Code, on the language of the proposals, and on anything else you may think is pertinent. It would help us most, of course, to have this in writing, which can be put in the SBA mailbox in the General Office.

We don't expect another incident like this to occur soon, but if the Honor Code requires amendment that should be timely. Accepting any amendment will call for balloting and should allow a little time for voters to think. We would like to wrap this up this semester, which means that we will have to bring a proposal to the Board of Governors in a couple of weeks.

Sincerely,

Steve Liccione
Judy Ludwig
John Hoover
Chester Smith
John Hertz

Proposal 1.

It is a violation of the Honor Code for any person to divulge the grade of any student in any course to any other person except (1) with the permission of the student whose grade is to be divulged, or (2) where this disclosure is privileged.

Author's Comment. Three distinct policies are fostered by the maintenance of confidentiality. First, it serves to protect the integrity of professors' grading, eliminating, to the degree possible, favoritism or bias in the distribution of grades. Second, it protects the academic environment of the institution from the competitiveness which is likely to be fostered by student-to-student comparison. Third, students have a privacy interest in confidentiality. Grades should not be divulged except where there is a legitimate interest in such disclosure sufficient to outweigh this privacy interest and, where applicable, the other abovementioned interests as well.

Committee Comment. This proposal as it is worded is broader than the scope of the Honor Code, which applies only to students. If it is intended to be binding on faculty and administrative personnel it will have to be inserted in the body of school policy. There is the question whether this is a necessary action. The proposal refers to the act of divulging. Possibly the action of discovery should also be considered. The specific mention of grades may be too narrow, especially as the incident occasioning the proposal did not reveal grades directly, possibly on other grounds. The term "privileged" should probably be replaced by a more explicit term or phrase.

Proposal 2.

Amendment to Honor Code, Article I, Section 2.

"A violation occurs when any student shall intentionally..."

(9) discover for himself or herself, or reveal to others, confidentially imparted information pertaining to official activities of the Law School, including, but not limited to, admissions, examination materials and grades, finance, placement, and student elections, except as authorized by the Law School.

(10) attempt.... ((was no. 9))

Author's Comment. This draft was written in response to Proposal No. 1. I think the issue here is broader than grades and exam numbers. Protection of confidentiality is crucial in any profession, and it belongs in the Honor Code. It is almost degrading to the Law School to focus so closely on competitive issues. Competition is incidental to learning the law. Also, the real problem last Summer was in confidentiality, not grades.

Committee Comment. Recognizing that this proposal was not as carefully drafted as Proposal No. 1, there are problems with the language. The term "official activities of the Law School," while fairly clear intuitively, may not be explicit enough. The use of "authorized" over "privileged" may be an improvement, but probably is still not clear enough. There was discussion over whether the Honor Code as it stands is, or should be, limited to acts which relate to student competition or advantage. This proposal does not include a provision by which persons concerned may waive privacy by giving permission for others to discover or divulge information normally confidential.

The PLEADER

Northwestern University School of Law Vol. III, No. 8

SBA/Honor Committee

This past summer a second year student, while xeroxing material in the Registrar's Office, came across, and xeroxed, a copy of the master list of student names and exam numbers for the current second year class. With the aid of the master list, the student maintained a list of the students in the class who were "in the running" for Law Review. Students were added or subtracted from this list as various professors posted their grades. An honor complaint was filed against this student but the Executive Committee failed to find "probable cause" for adjudicating the issue before the Honor Committee. Although the Executive Committee had a visceral feeling that this student's conduct violated an esoteric sense of honor, the Committee felt this student's actions were not proscribed by the present Honor Code. In order to prevent similar action from going unsanctioned in the future, the SBA appointed a committee to bring such actions within the reach of the Honor Code. A proposed amendment is now posted on the SBA's bulletin board. The Committee, composed of Judy Ludwig, John Hoover, Steve Liccione, Chester Smith and John Hertz, is submitting a number of proposals to the faculty in an effort to solicit their comments. Student input regarding this topic is greatly needed as it is student conduct which shall be regulated. The student body is requested to make their suggestion to members of the committee, professors or in writing to the SBA suggestion box.

OPPOSITION TO PROPOSED AMENDMENT

You are strongly urged to vote against the proposed amendment to the Honor Code which will prohibit a student accused of an Honor Code violation from having an attorney represent him/her at the trial before the Judicial Council.

The situation of the defendant:

A trial of an Honor Code violation is not an informal matter. Seven Articles comprising some 35 sections of the Honor Code govern the procedure of the trial and related hearings. An accused faces an S.B.A. Prosecutor, one or more special prosecutors, and a 9-member Judicial Council in a formal setting that includes a court reporter.

The consequences of a finding of guilty are very grave. Possible penalties include expulsion, suspension, and notation on the student's transcript. Even if no penalty is imposed, the disgrace of the conviction will haunt the individual for life, making it difficult or impossible to practice law, and engage in certain other occupations as well.

The student accused of an Honor Code violation, facing a formidable body of fellow students and the possibility of severe sanctions, should be able to feel secure that he/she has entrusted his/her cause to one who is willing and able to advise and represent him/her. The case may well arise where a non-student, a member of the bar, is the best person to serve this function. Before you vote, consider the following possibilities:

A student has no friends in the law school willing to undertake the task of defending him/her;

A case is politically so highly-charged that no fellow student is willing to risk representing the accused;

A defendant is a first-year student, none of whose acquaintances feel capable of conducting a full-blown trial;

A defendant wishes to keep the matter private from his/her friends;

In all such cases, the defendant will be compelled to defend himself/herself at trial alone.

Equal basis and enhancement of truth-seeking:

The drafters' goal of keeping the defense and prosecution on an equal basis is a worthy one. But the proposed amendment will prove counterproductive to this goal, leaving the defendant with too little protection. A cool-headed, experienced, and non-law-school advocate is necessary to make timely motions, to ensure that the rules of evidence are adhered to, to prevent unfair surprise, and to preserve all procedural fairness to the defendant as mandated by the Honor Code.

The goal of enhancement of truth-seeking will not be blocked by the presence of an attorney. When the stakes are so high, it is wisest to get at the truth slowly and methodically, with watch-dogs on both sides.

Student control and administration of the Honor Code:

The Honor Code provides that students will have almost all the control over the Code and its administration.

A charge may be made only by a student, former student, member of the faculty, or employee of the university. Art III §2.

Only students (the Executive Committee of the S.B.A.) can find probable cause and direct the Prosecutor to proceed to trial. Art II §7.

The Prosecutor is a student, and is appointed by a student. S.B.A. By-laws, Art XIV §1.

The Honor Code is interpreted by students (the Judicial Council) who have the authority to promulgate regulations and issue rulings to that end. Art VI §1.

Only students can amend the Honor Code. Art VII §1.

Only students (the Judicial Council) can find the defendant guilty or not guilty. Art IV §5.

Only students (the Judicial Council) can determine the penalty to be imposed. Art V §1.

None of this will change - there will be no loss of student control - if defendants are permitted representation by an attorney.

"Negligible need":

The defendant's need for outside counsel is anything but negligible - it may never be greater. As the Code stands, a student can be represented by an attorney - and this has happened. Amending the Code will destroy that possibility in the future.

If you vote for this amendment you will significantly diminish your rights.

Theodore Grippo '80
Charles Hertel '80
Peter Wasserman '80
Michael Manfredi '80