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A Case Study of the Operations of the  
Office of Judicial Affairs at Stanford  
University – How 3 Students Were  
Deprived of Rights Afforded Them  
Under the Stanford Judicial Charter

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## I

### INTRODUCTION

This report is a case study and report of an actual case prosecuted against three Stanford students by the Stanford University Office of Judicial Affairs under Stanford's Honor Code. The case began with a June 2011 final exam in a Human Biology class. It concluded with an acquittal of all three students at a hearing on November 29, 2011.

In a conversation in October of 2011, the director of the Office of Judicial Affairs, Morris Graves, estimated that the University had handled 200 cases under the Honor Code in the 2010-2011 school year, with what appeared to be an exceedingly high conviction rate of in excess of 95%. This case may demonstrate why.

This study examines how the three students were charged, processed by the Office of Judicial Affairs, and almost convicted notwithstanding a lack of any credible evidence against them, and overwhelming evidence in their favor. This report will document pervasive misconduct and wrongdoing that appears systemic to the Office of Judicial Affairs in the handling of these cases. In this case, this misconduct was reflected in: the decision to charge this case, its continued prosecution, pretrial rulings, evidentiary hearing, intimidation by both the Class Coordinator and the Office of Judicial Affairs, illegal destruction of most of the file, and a refusal to cooperate with the authors of this report.

## II

### THE AUTHORS

The authors of this report are the three students charged with cheating under the Stanford Honor Code ("Honor Code") in a Human Biology class in June 2011. The three students were sitting in the same row, with a seat between each of them. For purposes of this report, the students will be identified as L, C, and R. Viewing the students from behind, L would be the student on the left, C would be the center student, and R would be the student on his right.

The other three authors are alumni who served as the students' legal representatives as allowed by the Honor Code. John Martin ('80), a supervising administrative law judge in Los Angeles, represented Student L. Bob Otilie, an attorney in San Diego specializing in education and administrative cases, represented Student C. Graham Gilmer, a private consultant to the federal government, represented Student R. All six authors have been active volunteers for Stanford University for many years.

### **III**

#### **RESPONSIBLE STANFORD OFFICIALS**

The responsibility for handling these cases was assigned to the Office of Judicial Affairs, under the leadership of Morris Graves (“Graves”). Graves was to be the neutral administrator of the case. The University’s Judicial Officer was Rick Yuen. He was also to be neutral, simply collecting all the evidence and submitting it to the panel. Cammy Huang-Devoss was the Course Coordinator for the class. Tanya Widmer was the Class Coordinator. Laura Schoenthaler is the attorney in the University Counsel’s office who has claimed to “represent” Graves and Yuen subsequent to the hearing.

Panel members have not been named in this report. This is designed to avoid any embarrassment to them, given that the named officials bear ultimate responsibility for the training of panel members and advising them during the hearing. The authors will privately advise the appropriate parties of those panel members the authors do not believe have the demeanor to hear cases. Some did not. None appeared to have been properly trained.

### **IV**

#### **ISSUES RAISED BY THE HANDLING OF THIS CASE**

This report raises issues with respect to conduct which includes, but is not limited to, the following:

1. Charges brought against students who were not accused of cheating by a fellow student;
2. Continuation of the case even when the student, who claimed to have witnessed one student cheating, requested to remain anonymous and did not want to pursue the charge;
3. The charging of one student for which there was no evidence or even a suggestion of cheating;
4. Actions that raised the question of advocacy by the Judicial Affairs Judicial Officer in favor of conviction;
5. Refusal to redact clearly and acknowledged irrelevant and prejudicial information from the Course Coordinator’s report provided to the hearing panel;
6. Telling the students they were not allowed to put on witnesses at the hearing;
7. Telling the students they were not allowed to cross-examine at the hearing;

8. Precluding effective direct and cross-examination questions at the hearing;
9. Intimidation of witnesses;
10. Violation of student privacy;
11. Inadequate training of the panel;
12. Shredding the case file in violation of University procedures;
13. Failure to bring charges against the Course Coordinator for intimidation of witnesses and violation of student privacy; and
14. Refusal to cooperate with the students subsequent to the hearing.

## V

### **EFFORTS TO AGREE TO THE RECORD**

Every effort has been made to be as accurate as possible in presenting an accurate record of what happened before, during, and after the hearing. Four of the authors attended the hearing and all are in agreement with respect to the occurrences at the hearing itself.

The authors made repeated efforts to obtain from the University officials an agreed set of facts for use in this case study. The goal was to avoid arguments over what happened so that responsible members of the University community could begin immediately to address the problems identified in this study.

Toward that end, all six authors asked to meet with Morris Graves and Rick Yuen in February to reach agreement on the facts. Graves and Yuen ultimately refused to meet. Next, the four authors who attended the hearing developed an agreed upon statement of what happened [*see*, Exhibit 29 – “99 Agreed Facts”] and provided this to Graves and Yuen for corrections, modifications, or additions. Graves and Yuen ignored the request, and instead referred the meeting request and proposed list of agreed upon facts to Lauren Schoenthaler in the University Counsel’s office. She never responded to either the request to meet or to make corrections to the list of 99 Agreed Facts, despite express assurances almost three months ago she would respond to *every* letter and request.

Numerous requests were also made to Graves and Yuen, and then their attorney, Schoenthaler, for various “rules” cited by Graves throughout the case, as well as Judicial Affairs statistics. These requests began in December and went through February. As of late May, these were also ignored.

Last, some of the issues addressed in the 99 Agreed Facts required input from Graves and Yuen, as only they would be aware of certain facts. These requests were ignored as well.

The purpose in proposing a meeting with Graves and Yuen was both to reach agreement on facts and to attempt to develop a consensus on how to improve the work of Judicial Affairs.

The inclusion of this history is not intended to reflect poorly on anyone. It is offered instead to demonstrate the extensive efforts that were made to avoid errors in recounting facts and describing procedures, and to develop a collaborative process to improve Stanford's justice system for students accused of violating the University's Honor Code. These efforts began in November and ended in April. Graves and Yuen, through their counsel, knew the authors wanted to submit this to the University by May 1, 2012. We have proceeded only because by May 21, 2012 we have not received any cooperation since November 30, 2011.

Consequently, any errors are unintentional and efforts (discussed herein) were made to avoid them. Any perception this study was intended to be adversarial is belied by the multiple requests to collaborate with the responsible parties at Stanford. Solely because of their refusal to be involved, this study is presented to others first.

## VI

### BACKGROUND

#### A. The Rules

The following authorities and procedures govern the handling of academic integrity cases:

- Exhibit 30     Stanford University Honor Code
- Exhibit 31     Interpretations of the Honor Code
- Exhibit 32     Stanford University Student Judicial Charter
- Exhibit 33     Bylaws to Stanford Judicial Charter
- Exhibit 34     Definition of reasonable doubt – disseminated by the University
- Exhibit 35     Chart of Judicial Affairs timeline and Description of Flow Chart
- Exhibit 36     Judicial Affairs-promulgated procedures re: hearings in contested cases

Throughout the process, Graves frequently cited rules and procedures that have never been found anywhere in the voluminous materials disseminated by Judicial Affairs. Those have been requested from both Graves and the University's Counsel's office. None of those previously

unidentified “rules” or “procedures” have ever been documented to exist. They will be referred to here as “Graves’ rules.”

## **B. The Facts**

### **1. The Accusation**

The original allegation was reported to Morris Graves by Cammy Huang-Devoss [Exhibit 37]. Ms. Huang-Devoss was Course Coordinator for the Human Bio 4A class. Up until the hearing itself, Ms. Huang-Devoss never claimed *she* witnessed anything.

The only witnesses, to the students’ knowledge, were the never-identified student (Student X) and the Course Administrator, Tanya Widmer. The student, under the Judicial Charter, should never have been referenced in any materials since she chose to remain anonymous. That left a single witness, Tanya Widmer, the Class Coordinator.

In the initial report forwarded to Judicial Affairs, Huang-Devoss reported Widmer had said she (Widmer) was approached by a student claiming she had observed Student C *cheating off of Student L*. This student, who was never identified, did not say she saw any cheating by Student R or by Student L. [Huang-Devoss’ original report is Exhibit 37.] Widmer claims she entered the exam room only after receiving this report from Student X.

Widmer told Huang-Devoss that at 11:24 a.m., six minutes before the end of the test, and after being approached by the never-identified Student X, Widmer went to the back of the classroom to observe. Widmer claims she observed Student C twice move his scantron from the desk in front of him to the empty desktop to his left. She perceived this as an effort to show Student L his test, although she testified at the hearing she could not see the scantron or the student’s hands when this was occurring, given her position approximately 30 to 45 feet away.

However, much different from the anonymous student’s version of events, Widmer claims Student C had eye communication with Student L and that Student L looked at Student C’s scantron, then the two nodded before Student C returned to his own desk. She said this process was repeated one more time (twice in two minutes), and then she went in to pull Student C out of the classroom.

### **2. Student C’s Version of What Occurred**

Student C, from the beginning, told anyone who would listen he was simply filling in his scantron at the end of the test. He had marked all of the answers to 42 multiple choice questions in his test booklet at the beginning of the test, hours earlier. He had then answered the second set of exam questions, which called for short answers in the test booklet. When Widmer observed him, he was just transferring his multiple choice responses to the scantron. He was trying to take them out of his test booklet, which he had placed on the very small desktop in front of him, and since no one was sitting to his left, he was turning to his left and using that empty desktop to fill

in three or four scantron answers at a time. He would then turn back to his own desk to get the next three or four questions. He took the scantron back with him to his own desk on each occasion so it would not be left unattended where it could be observed by other students.

Widmer reported she observed Student C for two minutes. She stated she saw him place his scantron on the empty desktop of the chair to his left twice. Student C admits this, as he was using that desktop to fill in his scantron.

Student C was asked to leave the room four minutes before the end of the exam and to take his belongings. Student L and Student R were never asked to leave the room. Widmer has never disputed that Student C had not completed filling in his scantron when he was removed from the room. It was unrebutted that Student C had filled in only 19 answers out of 41 questions. He had 22 answers to go after he left the room, but had plenty of time to complete those in those four minutes as he had already circled those answers in his test booklet hours earlier.

Student L and Student R were not asked to leave the room, nor were they stopped when they left the room. They were not accused of cheating by anybody at the test site. Significantly, no student ever observed, or accused them, of cheating.

Student C made multiple requests to Huang-Devoss to compare his scantron with his neighbors'. As discussed below, a comparison would have exonerated him. Huang-Devoss refused.

### **3. Fifteen Witnesses With a Close-up View Disputed the Lone Witness Who Thought She Saw Cheating**

In contrast to what was the *only* witness offered to support the cheating claims (Widmer), 15 witnesses (the 3 charged students and 12 other independent witnesses) provided declarations, all under oath, that no Honor Code violation occurred. [The 12 independent witness declarations were submitted as Exhibits 1-12.] The location of each of the witnesses can be found by looking at the seating chart [Exhibit 13]. Also, after the declaration of each witness, a photograph has been supplied showing their view of the three students during the test.

One of the declarations was submitted from Erica Do, who sat in the row behind the gap between Student C and Student L. These were the students Widmer claims she saw cheating. Do's declaration is Exhibit 9. Her view in that gap between Student C and Student L is reflected in the photograph right after her declaration. The student to Do's right was Cameron Foreman. His declaration is Exhibit 10. Her view, right off the shoulders of Student R and Student C, is reflected in the photograph right after her declaration. These two students were right on top of the accused cheaters and could see them, their booklets, their scantrons, their hands, and their faces. They saw nothing.

### **4. There Was No Credible Evidence to Support Prosecution**

As he left the exam site, Student C immediately contacted an attorney, who became his

representative in this matter. He knew the alum ('77) from Stanford volunteer work. Student C denied cheating on the exam. He was simply using the desktop to his left. All Widmer observed was two movements from his own desk to the left. She never observed him move to his right, something she later acknowledged at the hearing.

A review of Student C's test booklet [Exhibit 26] against his scantron [Exhibit 25] shows that the answers on Student C's scantron were identical to those he had circled hours earlier in his test booklet. There is no evidence to support the claim by the anonymous student that Student C was cheating off of anybody.

A review of Exhibits 27 and 28 (a comparison of the similar wrong answers by the three students) will show that Student C and Student R had four similar wrong answers *after* Student C left the room. They had three similar wrong answers on the first half of the test *before* Student C left the room. Thus, their scantrons were more dissimilar when Student C was in the room.

A review of the scantrons of Student C and Student L reflects that the two of them had three similar wrong answers when Student C was still in the room. They had three similar wrong answers after he left the room.

The case against Student C never had legs.

This comparison, other than the testimony of 12 independent witnesses, was the most important evidence in the case. Similar wrong answers, as everyone in the field will tell you, are the key to cheating cases. Here, the similar wrong answers evidence strongly suggested cheating was not occurring. Huang-Devoss should have compared the scantrons as requested by Student C and his representative on the day of the exam. That would have ended this case.

All of the witnesses supported the students. The seating chart [Exhibit 13] reflects *every single student* in the row of the accused cheaters, along with *every single student* in the row behind the accused cheaters. The photographs are most telling. Look at the photographs behind each of those individuals' declarations [last pages of Exhibits 1-12] which were given under oath. These witnesses were literally sitting right on top of these three students and observed nothing suspicious, let alone what would have been a multi-movement cheating system as perceived by Widmer.

Huang-Devoss grudgingly admitted at the hearing that the department could have recreated the test seating chart and thus identified witnesses. She never did. Neither did Rick Yuen, tasked by Stanford with developing just such evidence. And Graves, the supposed neutral Judicial Affairs director, told the students they were not allowed to contact witnesses, a directive they wisely ignored.

Student X never expressed a willingness to pursue the charges. And remember, it was her claim that Student C had been cheating off of Student L. There has never been any evidence in this case to suggest that was even remotely possible or occurred. At the time of the hearing, Widmer remained the *only* witness, and she acknowledged she only saw Student C turn to his left twice, taking his scantron to the seat next to him, but then returning the scantron to his own

desktop where he went back to his test booklet on his own desktop. She never saw him go to his right. No documentary or written evidence corroborated Widmer’s testimony.

Exhibits 14 and 15 are photographs taken from the back and front of the classroom in question. Exhibit 16 reflects a recreation of three students taking the exam in the seats used by Students C, L and R, as they would have been observed from the front of the classroom. Exhibit 17 is a photograph showing the location of the three students and also their popup desks. Exhibits 18, 19, and 20 reflect the view Tanya Widmer would have had from behind and to the side of the students. Prior to the hearing she had not described whether she was on the left or the right, so pictures were taken from both sides. Exhibits 21 through 24 are additional views of the students from the various witness perspectives.

### C. The Result

Stanford utilizes the “beyond a reasonable doubt” burden of proof. It is the hardest burden to meet of any standard used in any administrative or judicial process in the United States. At Stanford, by the University’s own definition, it requires a determination that there be no other plausible explanation except guilt.

Honor Code panels are comprised of six panelists, four students, and two University employees. The panel chair must be a student. Five or six of the panelists are required to convict. Notwithstanding the lack of any evidence to support conviction, the overwhelming evidence that cheating did not occur, an incredibly difficult burden of proof, and a requirement of at least 5 of 6 panelists to convict, the three students *were almost convicted*. All three students were acquitted, but on the following votes:

<u>Student</u>	<u>For Conviction</u>	<u>Against Conviction</u>
Student L	4	2
Student C	4	2
Student R	3	3

How, on these facts and with such a high burden, could three innocent students almost be convicted? The answer is that at every turn the Stanford University officials entrusted with protecting the rights of the students failed to do so. In doing so, they failed not just the students, but also Stanford University.

The misconduct discussed below permeated the process from start to finish. Violations of the students’ rights under the Honor Code and Judicial Charter were committed by the Course Coordinator, Judicial Advisor, Judicial Investigator, and the panel itself. The handling of these cases suggest all cases handled by Graves and Yuen should be reopened to determine the extent others’ rights have been violated and to identify wrongful convictions.

## VII

### PRE-HEARING AND HEARING VIOLATIONS OF STUDENT RIGHTS BY OFFICE OF JUDICIAL AFFAIRS

Both Morris Graves and Rick Yuen were generally easy to deal with, at least up until the time to make pre-hearing rulings in the last two weeks of November. While Yuen did not want to deal with the students' representatives, he and Graves were both civil and available to the students. Both exhibited empathy to their situation. Other than the charging decision by Yuen and the initial contact from Judicial Affairs (both of which are discussed below), the majority of problems discussed herein were close in proximity to the hearing, including pre-hearing rulings and post-hearing conduct, and at the hearing itself.

#### A. Pre-hearing Violations

##### 1. **The Students Were Told From the Beginning Not to Talk to Witnesses**

###### What Occurred

Section II of the Judicial Charter, entitled "Fundamental Rights" (A)(15), provides that every student accused of misconduct has the right "to call witnesses on their behalf..." Yet, from the very beginning, Graves or his office made repeated efforts to preclude this.

After Huang-Devoss forwarded her complaint about Student C to the Office of Judicial Affairs, Student C received his first email from Student Affairs. This came from Tijan White in the Office of Judicial Affairs; it is lodged as Exhibit 38. Students L and R received identical emails.

In the email, White told Student C (in this form email apparently sent to every single student charged with cheating at Stanford – 200 cases in 2010/2011) that they were not allowed to talk to witnesses. When he received the email, Student C was in the process of contacting every witness he could find. He was attempting to network out, starting with the students closest to him and then asking them to find the students who were sitting further away. This ultimately was a major, if not deciding, factor in his acquittal.

Student C froze at the receipt of the email, and called his alumni representative to make certain he would not get in trouble, as he perceived he would, if he continued to contact witnesses. He was told to ignore the email, as the Office of Judicial Affairs had no right to tell the student he could not contact witnesses. It is an absolute right guaranteed by the Judicial Charter of the University.

Had Student C listened to the Office of Judicial Affairs, he would not have had the testimony of the other 14 witnesses who corroborated his testimony. He probably would have

lost his case and carried this wrongful conviction with him through life. No one at the University should ever tell a student they cannot contact or speak to witnesses. The University should *encourage* witness contacts and should prepare and then share a seating chart and contact information with every accused student.

#### Questions Raised By This Issue:

1. If students have a fundamental right to put on witnesses, how can the Office of Judicial Affairs tell them they cannot contact witnesses?
  2. Who trained the Office of Judicial Affairs such that employees think they should tell every single student charged with cheating at Stanford not to contact witnesses?
  3. How many students had cases handled by the Judicial Affairs office under Morris Graves, who received that same form email at the beginning of their case telling them they could not contact witnesses?
  4. How many cases have been tainted because of the erroneous advice?
  5. Since this has come to light, has Stanford University reopened every case handled by Graves to see if the office has precluded other charged students from their right to have witnesses?
  6. If the means exist, why should the University not in all classroom cheating cases prepare and share, with contact information, a seating chart of everyone who sat in close proximity to the accused student?
2. **The Charge Against Student C Proceeded Even Though the Original Reporting Student Chose to Remain Anonymous and No Other Evidence Supported the Charge**

#### What Occurred

Students at Stanford are assured that University employees will not proctor their exams. The Stanford Honor Code provides in subsection B:

“The faculty on its part manifests its confidence in the honor of its students by refraining from proctoring examinations...”

In this case, Huang-Devoss claims (although there has never been any proof of it) that a student approached Widmer saying Student C was cheating by looking at answers from Student L. That student, referred to here as Student X, has never been identified. No documentation was ever produced to verify a written or verbal complaint by the student.

The Judicial Charter refers to the individual observing cheating as “the Reporting Party.” Judicial Charter Section II(B)(6) provides the following right to the Reporting Party:

“6. To withdraw the concern at any time and, *if so*, to be assured of confidentiality and anonymity.”

Despite repeated requests, none of the students were ever provided the identity of Student X. He or she, if they even existed, was allowed to report that they believed Student C to be cheating off of Student L, but then remained anonymous.

The Judicial Charter, Section II(B)(6) allows the Reporting Party to remain anonymous, *but only if they “withdraw the concern.”* Here, the concern (cheating by Student C) proceeded notwithstanding that Student X asked for, and was granted, anonymity. There is no provision for anonymity if the concern is not withdrawn.

At the hearing Graves advised the panel, and the three accused students, that Widmer and Huang-Devoss had been designated as “Complaining Parties.”

The Judicial Charter never uses the term “Complaining Party.” The Judicial Charter reflects only a “Reporting Party.” This contemplates someone who has something to “report.” The term “Complaining Party” may be a Graves’ Rule.

Student C was charged and had to defend an Honor Code violation reported by Student X, but Student X was allowed to remain anonymous. The Judicial Charter, in Section II(A) Rights of the Responding Party, subsection 10, provides the accused party (referred to as the “Responding Student”) as having the following right:

“To be informed, in writing, of...the names of the Reporting Parties and the names of potential witnesses against them.”

Judicial Charter Section II(A)(6) also provides the responding student is:

“To be given access to all evidence in the case, both incriminating and exculpatory.”

Student C was never told the name of the “Reporting Party” in his case, as required by Section II(A)(10). He understood that because Student X wanted anonymity, his or her concern had been “withdrawn” as required by Judicial Charter II(B)(6).

There are no provisions in the Student Judicial Charter to transfer or assign the status of “Reporting Party” to a proctoring faculty member if they are proctoring because of a report from a student. Further, since the Reporting Party, Student X in this case, is a critical witness who would impeach the testimony of Widmer (remember, Student X said that Student C was cheating off of the student to his left; Widmer claimed her observation was the other students were cheating off of Student C), Student C was deprived of his right to have access to all witnesses in the case, a violation of Judicial Charter II(A)(6) and (10).

By concealing the identity of Student X, all three students were deprived access to an exculpatory witness. At the hearing, Huang-Devoss stated Student X watched Student C cheating off his neighbor or neighbors. Student X claimed to have seen no cheating by Students L or R, even though she was watching. Yet, her identity was also concealed from Students L and R, who therefore could not call her as a witness.

If it is the University's position that the Judicial Charter allows a classroom exam case to proceed without a "Reporting" *student*, and if Student X was not the reporting student, then there was no basis to withhold the identity of Student X. Student X gets anonymity only if their concern has been withdrawn. Their concern was not withdrawn as the case, initiated solely by Student X, proceeded against Student C (and all the students), without any of the students having the opportunity to identify and examine Student X for purposes of impeaching Widmer, or showing L and R were not cheating.

If classroom exam-based cases (as opposed to plagiarism cases, for example) can proceed without a student "Reporting Party," every student witness would simply share their concern with a faculty member, Course Coordinator or TA, choose anonymity, and thereby circumvent the Honor Code. Every Honor Code violation could conceivably proceed by proctoring claimed to be prompted by an alleged student concern. Students could use the system maliciously, as may have occurred here, avoiding responsibility when putting fellow students through unmeritorious cases. A principal witness in the case, as here, could be concealed from the accused student.

Alternatively, because no mechanism exists to verify that Student X even existed, Widmer may have simply initiated the process herself by violating the Honor Code and proctoring the exam, accusing Student C and then falsely claiming that a Student X existed. Given the issues of credibility relating to Huang-Devoss, discussed below, this is a very real concern by all three students at this late date.

#### Questions Raised By This Issue:

1. If a student is the Reporting Party in a classroom exam-based case, and the University employee observes only in response to a report from the student, can the case proceed if the Reporting Party wishes to remain anonymous?
2. What does Judicial Charter Section II(B)(6) mean when it provides that Reporting Parties may have anonymity and confidentiality, but only if they *withdraw the concern*?
3. If the Reporting Party (student) withdraws the concern in a classroom exam-based case, can it proceed?
4. From a policy standpoint, should cases that are classroom exam-based proceed if there is no student involved in the complaint?
5. If students can make an anonymous charge, and yet have their case go forward, what are the checks and balances to prevent false/malicious claims?

6. Does the University have a procedure/mechanism for dealing with false claims?
7. What mechanisms do accused students have against students bringing false claims, particularly when or if the case proceeds while the Reporting Student is granted anonymity?
8. If the answer to the preceding is “none,” what procedures can be enacted to ensure that University employees (professors, teaching assistants, Course Coordinators, etc.) will not fabricate a claim of a Reporting Party to cover their proctoring of the exam?
9. Where an initially reporting student (the alleged Student X in this case) is a witness to actions involving students charged with cheating by University employees, how is the right of the Responding Party to have access to all witnesses protected if the Reporting Party (who withdraws their report) can remain anonymous and yet the case proceeds? Doesn’t this deprive the Responding Party of a key, if not *the* key, witness?
10. From a policy standpoint, should a Responding Student be precluded from access to the single witness who impeaches the only witness against him, simply because that student was the one who initiated the complaint and then requested anonymity?
11. In society, people do not get anonymity when witnessing and then reporting a crime. Why do we allow it? What is the justification if it deprives the accused of a (or the) key exculpatory witness and if it encourages (as may have occurred here) malicious allegations?
12. The Reporting Party’s concern was not withdrawn in this case. Should the three students now be told the name of the Reporting Party?
13. If cases should not proceed when the Reporting Party requests anonymity, are there other cases that proceeded improperly? Should those cases resulting in convictions be reopened and the charges dismissed?

### **3. Student L and Student R Were Charged Without Any Reporting Party**

#### What Occurred

Student L and Student R were charged in this case, not by a student, not by Widmer, and not by Huang-Devoss. They were charged by Rick Yuen, the Judicial Officer. How did that occur?

Remember, the alleged Student X stated she had only seen Student C cheating off of

Student L.<sup>1</sup> No student claimed to have seen Students L or R cheating.

Widmer claims she observed what she believed to be cheating for approximately two minutes. Yet, after those observations (which would be the only evidence in the case), she took *only* Student C out of the room. She said nothing to Student L or Student R. She did not take them out of the room. She did not take their exams away from them. She did not stop them when they left.

Widmer reported the matter to Huang-Devoss. Huang-Devoss was not a percipient witness and knew no facts personally. She could not be a Reporting Party.

Huang-Devoss referred the matter to Judicial Affairs, based solely on Widmer's observation. Her referral for charges was for Student C only. She did not refer Student L or Student R [Exhibit 37]. Nevertheless, in her referral of Student C, she communicated she had reviewed "the midterms" of all three students and that there were "similarities" in the midterms. While Judicial Officer Rick Yuen would later refuse to redact that reference to the midterms from Huang-Devoss's report which was distributed to the panel, Huang-Devoss herself at the hearing acknowledged she (and unidentified others) had decided not to pursue anything related to the midterms.

Notwithstanding that there was no Reporting Party as to Student L or Student R, and notwithstanding that Huang-Devoss had not recommended charges against Student L or Student R, and notwithstanding that the midterms apparently provided no basis to charge the students with anything, Judicial Officer Rick Yuen charged Student L and Student R. As to Student L and Student R there never was a Reporting Party. At the hearing, the panel was told the "Complaining Party" as to Student L and Student R were Widmer and Huang-Devoss, but in fact, they were not. It was Yuen. And, as discussed above, no evidence supported a cheating claim against Students L or R.

#### Questions Raised By This Issue:

1. Can a Judicial Officer initiate a complaint of cheating under the Honor Code against two students if there are no Reporting Parties?
2. If no students or faculty accuse a student of cheating, how can the Stanford Judicial Officer do so, particularly when there is no other evidence?

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<sup>1</sup>At the hearing itself, Huang-Devoss, who intimidated a witness and attempted to violate another student's privacy, claimed (in violation of a pre-hearing ruling prohibiting discussion of the subject) Student X had observed Student C cheating off of Student L "continuously" during the exam. This information was news to the students, as Huang-Devoss had never mentioned this in her initial report, nor had she claimed that she had ever spoken to Student X. And, as Huang-Devoss herself had acknowledged in her initial report, Student C was the strongest student academically and the charges that were filed were premised upon Student C providing assistance to the other students, not the other way around as allegedly seen by the alleged Student X.

3. Were Students L and R wrongfully prosecuted in this case?
4. If the Judicial Officer himself is the reason a student is charged, are they not then conflicted from continuing on in the case as the neutral Judicial Officer?

#### **4. Charges Were Brought Against Student R Even Though No Evidence At All Existed Against Him**

##### What Occurred

The *only* evidence in this case submitted in support of a claim of cheating was the testimony of Widmer. Student X could not be a witness because he or she chose to remain anonymous. The panel should never have heard about Student X, although they improperly did from both Widmer and Huang-Devoss, with tacit approval of Graves and Yuen (discussed below) despite pre-hearing rulings.

A comparison of the scantrons of all three students showed that while the students had some similar wrong answers (what you look for as possible evidence of cheating), the students had *more* similar wrong answers after Student C was taken out of the room. Fifteen witnesses testified that none of the students cheated. This included every student in their row, every student in the row behind them and two students sitting to the front and right of Student R. [See the seating chart of witnesses, Exhibit 13, and declarations (and views) of the 12 independent witnesses, Exhibits 1-12.]

Widmer's testimony did not suggest Student R was in any way involved. In her initial statement (shared with Huang-Devoss and transmitted to the Judicial Affairs office, see Exhibit 37), Widmer said she had observed Student C move to his left and then back to his own desk. She never said he moved to his right. She acknowledged this at the hearing.

At the hearing, Widmer also conceded that while she claims Student C made eye contact with Student R, she never saw Student R do anything in response to the eye contact. Widmer testified she could not see the scantrons of any of the students. She admitted she never saw Student R write anything on a scantron when Student C was facing his own desk. She did not take Student R out of the room. She did not advise Student R that he had been accused of cheating or that she had observed cheating.

Student R had recorded all of his answers to the multiple choice questions in his test booklet before he went on to the short answers. In the last minutes of the exam, he went back by transferring the previously-circled answers from his test booklet to his scantron. A review of Student R's test booklet and scantron at the hearing demonstrated he had no erasures in his test booklet. Every single answer on his scantron matched the answers he had circled in his test booklet almost two hours earlier. While he had some similar wrong answers with Student C, he had *more* similar wrong answers in the second half of the test after Student C departed.

There was no evidence against Student R. None. Neither was there a Reporting Party, as noted above.

As reflected in a document provided by the Office of Judicial Affairs [Exhibit 35, p. 5], the Judicial Officer, Rick Yuen here, is supposed to investigate the facts. He then has discretion to file charges or not file charges based on his investigation. Yuen charged Student R when *nothing*, including Widmer, implicated him.

Questions Raised By This Issue:

1. Why did Judicial Officer Rick Yuen charge Student R if there was absolutely no evidence (none!) against Student R, and no Reporting Party?
2. How could a panel of six Stanford students and professors come up with three votes to convict Student R on a “beyond a reasonable doubt” burden of proof, when there was no evidence at all?
3. Who is auditing or reviewing the decisions of Judicial Officer Rick Yuen to determine whether he is reasonably exercising his responsibilities to dispose of unverified charges?

**5. Judicial Officer Rick Yuen Charged Student C and Student L Even Though the Record Did Not Support the Charges**

What Evidence Did Yuen Have When He Charged?

All the evidence generated by the students was assembled and given to Yuen before he made the decision to charge. Given the overwhelming record, and Stanford’s assurances to students that unmeritorious cases will not be charged, it was assumed the case would not be pursued.

By the time he made his charging decision, Rick Yuen had the denials of all three students, and twelve additional declarations signed under oath by every single student sitting in the row of the three charged students and every single student in the row behind them, including the students sitting in the gaps between Student C and Student L and Student C and Student R.

Rick Yuen had the exam booklets and scantrons so he could make his own determination that these students had simply transferred their own previously-marked answers onto their scantrons. He knew, by the time he exercised his discretion, that Student C was simply moving to his left to use the adjacent empty desktop on which to write, given that his own desktop was only 8 inches by 10 inches. This was the plausible explanation for the two movements that Widmer observed to his left and then back to his own desk.

By the time Rick Yuen made the decision to charge Student C and Student L, he knew that collectively the students had more similar wrong answers *after* Student C had been taken out

of the room than before he was taken out of the room.

By the time he made the decision to charge, Judicial Officer Rick Yuen knew that Widmer could not see the scantrons from her location up to 45 feet away, could not see the students' hands or pencils, and that she had never bothered to do a comparison of similar wrong answers before and after Student C was taken out of the room, nor had she performed an examination of the test booklets and the scantrons. He also knew she had not spoken to witnesses.

Yuen, as Stanford's Judicial Officer, was aware of the burden of proof. The University provides its own definition of "beyond a reasonable doubt." It reads:

*"Reasonable doubt means no other logical explanation can be derived from the facts except that the defendant committed the crime, ..."* [Exhibit 34]

When Yuen charged these two students he had to know they could never lawfully be convicted. Yet he charged all three.

#### Questions Raised By This Issue:

1. Why were Student C and Student L charged in this case when there was no way, on this evidence, that any reasonable person could conclude beyond a reasonable doubt (using Stanford's own definition) that the students had cheated?
2. Given the definition of reasonable doubt utilized by the Office of Judicial Affairs, how could Judicial Officer Rick Yuen conclude, given the test booklets, the scantrons, and the 15 witnesses, set against the "testimony" of Widmer, that there "was no logical explanation other than" that Student C and Student L cheated?
3. Who is auditing or reviewing the decisions of Stanford's Judicial Officer Rick Yuen to determine whether he is reasonably exercising his responsibilities to dispose of unverified, unmeritorious, or unprovable charges?
4. The decision to charge or not to charge has a potentially life changing impact on the charged student's life. Has it been exercised responsibly at Stanford University?

#### **6. Did Judicial Officer Rick Yuen Become an Advocate for Conviction?**

##### What Occurred

Yuen received a substantial amount of material from the students. Student C prepared a basic set of exhibits, which included the exhibits reflected here as Exhibits 1 through 28. He described his movements, discussed the number of similar wrong answers after he was taken

from the room versus before he was taken from the room, and addressed all aspects of the case.

Yuen should have known the case would be impossible to prove beyond a reasonable doubt. As Stanford's Judicial Officer, he is supposed to be impartial. He is simply supposed to obtain all aggravating or mitigating facts, make a decision as to whether the case should be charged, and then present the facts evenly and fairly to the panel. He is not to be an advocate for either side.

This fact is emphasized by the materials promulgated by the Office of Judicial Affairs. Those materials encourage the students to speak freely and tell the Judicial Officer everything ("...it is in your best interest to talk frankly about the situation"). Students are led to believe that this will be to their benefit as the case may not be charged or, if charged, at least all the facts will get to the panel [Exhibit 35, p. 3].

Here, at least the public record reflects Judicial Officer Rick Yuen repeatedly made rulings and decisions that the students contend advanced the interests of the prosecution of the case by the "complainants" (whom he identified as Huang-Devoss and Widmer), and did *nothing* to advocate or advance the interests of the three students other than simply sharing their materials.

First, Yuen charted the students' answers to show the number of similar wrong answers [Exhibits 27 and 28]. However, although he was possessed of the information, he never identified that the students had more similar wrong answers *after* Student C left the room than before. He purposely chose not to personally share that critical aspect of the evidence with the panel, even after the students shared that with him.

Second, Yuen failed to compare each student's own handwritten answers in their test booklets (placed there hours before the alleged sharing of answers from Student C's scantron) with answers on the scantrons themselves. Had he done so, he would have seen their scantrons reflected their own work product. Alternatively, Yuen did observe this but intentionally chose not to share it.

Third, Yuen failed to create a seating chart and contact potential witnesses. The HumBio department advises they number tests for just this purpose. Had Yuen performed this simple task, he would have discovered the 12 witnesses, and probably more, who observed no cheating. He then could have shared those witnesses with the panel, in addition to sharing Widmer.

Fourth, without being asked by either side, Yuen took it upon himself, just 3 weeks before the hearing and 15 weeks after the exam, to approach and retain what he referred to as a statistical expert [Exhibit 39]. The Judicial Charter makes clear that the case is prosecuted and defended by the Reporting Party and the Responding Party. The Judicial Officer is simply to obtain all of the facts and share them. There is no provision in the Judicial Charter for the Judicial Officer to generate an expert's report, or any other *created* evidence, that could be used to convict or acquit the students.

When Yuen communicated he was doing this [Exhibit 39], he did not identify the expert.

Student C, through his representative, quickly asked for the identity and qualifications) of the so-called expert as well as his or her credentials [Exhibit 40, p. 3]. Aware of a case at UCSD reversed for this exact conduct, they knew that his efforts (given he was concealing the expert's identity) were not in their interests. Yuen refused at all times to provide this information. It still has not been disclosed. In fact, Yuen advised Student C he would not even respond to C's representative. C had to renew the request himself.

Yuen later reported that the expert had provided calculations of the statistical chance of the students having this number of similar wrong answers [Exhibit 41]. The information provided by the expert appears to have been *exculpatory for the students*.

When the expert reported a number that appears to have been favorable to the students (which Yuen did share), Yuen chose not to utilize that information or share it with the panel. The students could not share it with the panel because they had never been provided the name or contact information of the expert, although they requested it. Consequently, they could not lay a foundation for the evidence, or call the witness to explain its import. Exhibit 35 (Verbal Flowchart of Process) 6(b) requires the Judicial Officer to present exculpatory evidence. It would appear he did not.

The Judicial Charter, Section II(A)(6), provides students shall be "given access to all evidence in the case, both incrimination and exculpatory." Either way, the students should have had access to this "expert."

Fifth and sixth, in this case Yuen made the decisions as to *what evidence* would go to the hearing panel. The evidence included the written statement from Huang-Devoss that was prepared on the day of the test and forwarded to the Office of Judicial Affairs. Huang-Devoss's statement [Exhibit 37] included the suggestion that she or someone had reviewed the students' midterms and this had suggested collaboration on those tests (although the students were never charged with cheating on the midterms at any time). Huang-Devoss' statement also included the reference to Student X.

On November 22, the students moved to exclude reference to the midterms [Exhibit 42, p. 1]. Yuen ignored the request and left it in. Student C was forced, again, to email Yuen advising him that Student C wanted the midterm reference redacted before the materials went to the panel. Huang-Devoss had to admit at the hearing that the midterms showed nothing, saying "we" decided not to use them. "We" appears to refer to her and Yuen. Whether it does or not, the reference should have been redacted. Yuen ignored both Student C and his representative. By November 29, neither Student C or his representative had received a response. By that time, the panel had received the materials which included reference to the midterms. Student C moved for a continuance and a new panel. Graves rejected the request. As confirmed in Exhibit 49, Graves later admitted in a conversation he was not even aware, when denying the request for continuance, that it was based on the unredacted midterm reference.

The hearing at times became surreal. Although the midterms were not an issue, Yuen refused to redact the reference to them. Graves pointed out to the panel that they were not an issue, but then immediately said, "Cammy, would you like to explain why you mentioned them?"

As in other instances, he wanted it discussed even as he acknowledged it should not be.

The students moved to exclude all references to Student X [see Exhibits 42, 43, 44, and 47]. While Yuen redacted the content of the statements purportedly made by Student X to Widmer, which were passed on from Widmer to Huang-Devoss and included in her report, Yuen refused, despite repeated requests to redact any reference to Student X. Over objection, the panel was allowed to see Huang-Devoss's report, which indicated that a Student X had seen cheating and reported it to Widmer, even though Student X had chosen to remain anonymous and the three students were therefore at no time able to cross-examine Student X. And, as noted below, Yuen and Graves let both Widmer and Huang-Devoss detail all of what they claim Student X told them, even though they both knew such testimony was impermissible.<sup>2</sup>

Panel members picked up on both the Student X and midterm references. This prejudiced the students.

Seventh, during the hearing itself, one or more of the panel members requested to see answers to questions given by all test takers on this exam. In a several minute discussion with the panel, Yuen made clear he would obtain that information during the hearing itself (by going elsewhere on campus to retrieve it), and was even willing to bring it to the panel members *in deliberations*, after the hearing had concluded.

While this discussion took place, the students were precluded from objecting to Yuen's proposal to obtain this previously undisclosed evidence and provide it in deliberations when it would not be subject to any examination. They could not object because they had previously been told by Graves that "[Stanford] doesn't allow objections" in judicial affairs hearings (discussed below).

Eighth, Yuen required the students to produce statements from their witnesses prior to the hearing. He did not enforce this requirement as to Widmer and Huang-Devoss.

Ninth, as noted above, Yuen refused to deal directly with the students' representatives. Also, as discussed above, when he was pressed on an evidentiary issue by the representative, he would attempt to exclude the representative by ignoring a written communication and instead inviting the student in *alone* to discuss the issue (e.g., Exhibit 45 re prehearing objections).

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<sup>2</sup>On this issue, Yuen sought to separate the students from their representatives. After C's representative raised the issue [Exhibit 44], and knowing all students were represented, Yuen wrote to the students [Exhibit 45] (not copying their representatives) and suggested *the student* come in to talk. This was Yuen's way of depriving the students of their representative. When they refused to meet without their representative, Yuen simply denied the redaction request [Exhibit 46], without sharing his decision with Student C's representative. Yuen clearly is hostile to the Charter's provision for representatives. When his effort to exclude Student C's representative was called to his attention [Exhibit 47], he ignored that, too.

### Questions Raised By This Issue:

1. Did Judicial Officer Yuen become an advocate for the position of complainants?
2. Why did Yuen, on his own, fail to share with the panel that the students had more similar wrong answers after Student C was removed from the room than when he was in the room?
3. Why did Yuen not point out to the panel members that a comparison of the students' scantrons to their premarked answers in their test booklets corroborated their statements they were not cheating?
4. Why did Yuen not prepare a seating chart and provide those witnesses' names and contact information to the accused and the panel?
5. Why did Yuen refuse to redact the reference to the midterms from Huang-Devoss's statement when nothing concerning the midterms was at issue in the hearing?
6. The midterm reference caught the attention of panel members. One panel member raised it with Huang-Devoss, who stated "We" looked at that and decided not to do anything with it. To whom was Huang-Devoss referring when she said "We"? Was she collaborating with the supposedly impartial Judicial Officer, Rick Yuen?
7. Why did Yuen leave the reference to Student X in the materials? Yuen claimed, when overruling the students' objections to that reference, that it was essential to let the panel know that this case had been initiated by a student, because "Our rules require" that a student initiate a complaint. However, by leaving this in the materials, it provided a corroborating witness to Widmer's testimony, but without the students having an opportunity to cross-examine Student X and demonstrate why she might have been lying (and such evidence existed as the students believe they know the identity of Student X, if there was a Student X). Multiple panel members, during the course of the hearing, raised the issue of Student X, with one professor even asking Student C, "Why would Student X lie?" The reference to Student X, without any right of cross-examination, buttressed Widmer's otherwise uncorroborated testimony.
8. Did Yuen leave in the irrelevant and prejudicial references to "Student X" and "midterms" to intentionally bolster the case that was otherwise unsupported?
9. Can a Judicial Officer, in this case Rick Yuen, do more than impartially accumulate and share the facts?
10. If the Judicial Officer retains an expert, does he or she have an obligation to provide the expert's information to both parties given that his retention of the expert – if that is allowed, and the students do not agree it is – must be impartial?

11. In this case, when an opinion was rendered that may have helped the students, why was that information not shared with the panel when the Judicial Officer has an obligation to share with everyone all incriminating or exculpatory evidence?
12. If the information was helpful to the students, why were they not given the name and contact information for the expert so they could call him or her as a witness?
13. How could the Judicial Officer be so untrained as to not immediately tell the panel they could not consider any evidence that had not been shared before the hearing (answers from all test takers)? Both sides have an obligation to share all evidence (including a statement from every proposed witness) long before the hearing. This evidence is shared with both sides and. When the panel asked for answers from the exams of other students that had not been shared before the hearing and as to which nobody had had an opportunity to prepare, why did Yuen not immediately cut off the discussion and advise the panel that could not be done?
14. Why were the students not allowed to object to the discussion of hearing extraneous evidence as it was occurring, instead of having to wait until the break to bring the issue to the attention of Graves, which is how it was finally stopped? After the break, Graves did stop the ongoing discussion of this issue, not by saying it was improper, but by suggesting to Yuen (in the presence of the panel) that before anything proceeded the students should be heard from (which put them in the position of looking like they were objecting to what would be incriminating evidence).
15. Why did Graves not know that new and unrelated evidence could not be introduced for the first time during the hearing, and that any evidence at the hearing would have to have been shared prior to the hearing?
16. Why did neither Graves nor Yuen appreciate that under no circumstances could they just go out and get other evidence and turn it over to the panel *during the deliberation*, when no one would have an opportunity to see the evidence or examine anyone on it?
17. If the Judicial Charter provides for representatives for students, why, when significant decisions had to be made, did Yuen shut out the representative?
18. The Judicial Charter provides for representatives. Yuen refuses to copy them on even significant evidentiary rulings. Is this the way to ensure the Charter requirement of representation is met by Stanford?

## **B. Hearing Violations**

### **1. Morris Graves Told the Students and Their Representatives That Witnesses Were Not Allowed at the Hearing and Did Everything He Could to Prevent Witnesses From Testifying**

#### What Occurred

A fundamental precept of Stanford's Judicial Charter, and any concept of due process, allows an individual charged with an offense to defend themselves by both presenting witnesses and cross-examining witnesses brought against them. This is the underpinning of the American judicial system, as well as Stanford's Judicial Charter.

The Judicial Charter, Section II, provides that students accused of misconduct have the following rights:

- (15) To call witnesses on their behalf at judicial panel hearings and to cross-examine witnesses against them. ...Evidence provided by a witness who is unwilling or unable to be cross-examined will be disregarded.

On the other hand, Morris Graves told Student C, Student C's representative, the other students, and the hearing panel that there was no right of the students to call witnesses.

In addition to the testimony of the three Responding Parties, the students had 12 other percipient witnesses. These are the 12 individuals who either sat in their row, the row behind them, or in the case of two students, the row in front and to the right of the three students. Judicial Bylaws [Exhibit 33, p. 4] require that before any witness may testify, a written statement of their intended testimony must be submitted to Judicial Affairs in advance of the hearing. Students have no choice. If they want to call a witness – a right guaranteed to them under the Judicial Charter, they have to first submit a statement.<sup>3</sup>

In this case, the three students, acting through Student C, submitted declarations under oath from all 12 of their percipient witnesses [see Exhibits 1-12]. Those were submitted in the summer of 2011, even before Judicial Officer Rick Yuen charged the case, with the goal that he would realize there was no way the difficult “beyond a reasonable doubt” burden could be met in this case, and not charge the cases.

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<sup>3</sup>As interpreted by Graves, this obligation to submit a statement in advance of the hearing was not applied to Widmer (who submitted no statement) or Huang-Devoss (whose original report contained no statement of personal knowledge, but who testified at the hearing as to what she suggested was personal knowledge). The issue was raised prior to the hearing with Yuen as it related to the absence of a Widmer statement [see Exhibit 42]. Yuen, as with many requests, ignored the issue.

When the case was thereafter charged and set for hearing, the students, acting through Student C, advised the Judicial Affairs office that the statements for their 12 witnesses had already been submitted and were reflected by those 12 declarations.

The day before the hearing, Morris Graves told Student C the three students would not be allowed to put on witnesses at the hearing. He told Student C that because they had submitted declarations, those would take the place of the live testimony of the students. Student C told Graves the students intended to put on multiple witnesses. Graves told Student C there was no right to put on witnesses and that it is a decision that must be made by the panel *as to whether or not witnesses can be called*. Graves made clear students had no automatic right to witnesses, and was clearly not supportive of the students bringing witnesses [see Exhibit 50, where C confirmed the exchange].

Student C's representative then contacted Graves to discuss this situation. Graves initially said he understood that the students had decided to submit the declarations "[in lieu of] witnesses." When reminded that the declarations were submitted both to head off charges in the first instance, and because they *were mandatory to presenting witnesses*, Graves then stated it was "his understanding" that there were going to be no witnesses and the declarations would take their place. He was clearly doing all he could to discourage the students from having witnesses.

Again, Graves was told the students intended to put on witnesses. At that point, Graves stated, "Under our rules," witnesses are "not automatically allowed." This statement was in gross conflict with Section II(A)(15) of the Judicial Charter. Instead, Graves told Student C's representative that it was *solely within the discretion* of the panel itself as to whether witnesses were allowed to appear. (This "rule" has never been documented despite repeated requests. It falls in the category of "Graves' Rules.")

Student C's representative was incredulous at this statement, and reminded Graves of the Judicial Charter. In response, Graves insisted the representative was wrong, and that under Stanford's rules, witnesses were allowed *only* if "permission was granted" by the panel.

When pressed by Student C's representative, Graves pointed to a provision that the judicial panel is the arbiter of the relevance of a witness' testimony [Exhibit 33, p. 4]. However, this provision does not say that witnesses are not allowed. It is not an effort to contravene the express provisions of Section II(A)(15) of the Judicial Charter. It does not in any way suggest that it is totally discretionary to hear from witnesses.

This section merely means that, like a judge in a courtroom, it is the panel that makes the ultimate ruling on any relevant or irrelevant evidence (this, of course, raises the question as to why Yuen led the students to believe *he* was the one to whom evidentiary objections should be asserted). This provision does not say *at all* that the panel has the total discretion to decide if witnesses may testify or not, nor could it given the Judicial Charter. Over objection, the panel may have to decide whether certain questions are relevant, but there is nothing that allows Morris Graves or even the panel to preclude witnesses.

Yet, without aggressive representation, the students would *not* have brought any of their

witnesses to the hearing. And as it was, when they did, Graves and others still did *everything* they could to keep the witnesses from testifying.

Graves was consistent throughout in his effort to deprive the students of the Judicial Charter-created right to call witnesses. As discussed above, in the very first email to the students, his office told them they could not talk to witnesses [Exhibit 38]. Had the students not ignored that directive, they would have had no witnesses.

Graves continued to insist there was no right to present witnesses, both before and during the hearing. When Student C's representative told Morris Graves in his office minutes before the start of the November 29 hearing that most of the 12 independent witnesses were available and prepared to testify, Graves reiterated that they would not be allowed to testify, *unless the panel decided they wanted to hear from them*. Graves was obsessed with precluding the students from utilizing witnesses to defend themselves.

The first witness called by the students was Erica Do. The panel expressed no objection to hearing from her, even after Graves erroneously advised them it was solely *their* decision whether they wanted to hear from her. Prior to witness Do entering the room, Graves told the panel a declaration had been submitted from Ms. Do, and they were the sole determinator as to whether she could also come in and testify. Graves was simply wrong, had been told he was wrong, but remained adamant witnesses could not come in unless they received special permission. Graves made no effort to conceal his desire to keep witnesses from the panel. Nevertheless, the panel chose to hear her.

Student Do had submitted a declaration indicating she had sat in the gap between Student C and Student L, right behind them. If they had been cheating, it would have taken place in her face about 18 inches away. [See Exhibit 9 for her view, a most compelling piece of evidence.] She was obviously the most crucial witness of the 12 independent witnesses.

In her declaration, she had testified where she sat and that she had not observed cheating. Remember, this declaration was prepared very early on in the case in an effort to convince Judicial Officer Rick Yuen from even filing the charges. It was not intended to flesh out all of the testimony. Ms. Do would have to appear to give credibility to her testimony, and fill in all the details.

Hearing from witnesses is very important. A trier of fact can determine the credibility of a witness by how they respond to questions, their body language, and their interaction with the questioners, and how they handle cross-examination.

From the beginning, one panelist, a professor in the Economics Department, was clearly and openly hostile to having Erica Do testify. On at least one occasion, he said, "You're not telling us anything new," although she was, in fact, fleshing out detail not provided in the declaration. Lodged as Exhibit 51 is the set of questions for witness Do, which would have taken about five minutes without interruption. They were designed to show facts not in the declaration, such as the fact the classroom clock was located at a point in the room that would have taken her eyes right into the area where the alleged cheating was occurring,. She testified she was looking

at the clock frequently because there were only minutes left to finish the scantron.

On multiple occasions three panel members, led by the economics professor, openly expressed hostility that a witness was in the room testifying to something they believed had been covered in a declaration (which four individuals presumably never read given their votes for conviction). The professor at one point said, “This is a total waste of time.” In the middle of this, rather than reminding the panel members of their appropriate role (letting the students put on their evidence without interruption), Graves instead interrupted to suggest to the panel that *they reconsider their “decision” to let this witness testify.*

Graves went so far as to suggest they ask the witness to leave the room and the panel deliberate further as to whether they wanted to even hear from witnesses. How does this conform to the Judicial Charter, Section II(A)(15)? Graves was to witnesses what Yuen was to student representatives. The two apparently were of the view that these hearings would proceed more efficiently with the students having no witnesses or lawyers. At Stanford University, our Judicial Charter provides otherwise.

The ability to put on a witness at a Judicial Charter proceeding is the most fundamental of rights. Yet, Graves either did not know this or intentionally sought to preclude the students from exercising the most fundamental right they have under the Judicial Charter. There can be no question he has done this before. He did not just decide in this case to initiate efforts to preclude witnesses. He attempted to preclude the students from having witnesses from start to finish.

A second witness was called. Student C rushed through his questioning because of the pressure he was receiving from Graves and the panel members, pressure that neither Morris Graves nor Rick Yuen did anything to stop. At that point, the students appreciated they were just alienating some of the panel, the three who did not want to hear from their witnesses, an attitude generated by Graves reporting to them that they did not have to hear from anybody. As a result, the students did not call any of the other ten witnesses.

#### Questions Raised By This Issue:

1. If it is a Judicial Charter right of a student is to call witnesses on his or her behalf (Section II(A)(15), then why does Morris Graves not know this?
2. Why did Morris Graves not understand that the declarations were submitted as the mandatory statements that must be submitted before a witness can appear?
3. Why did Morris Graves take one rule (that the panel is the final determinator of the relevance of evidence) and turn it into an erroneous affirmative statement that the “rules” do not allow witnesses, unless *an exception* is granted by the panel?
4. Why did Graves encourage the panel not to hear witnesses?
5. Why did Graves encourage the panel to reconsider their decision to hear the witnesses?

6. Why did Graves not protect the integrity of the process by advising the panel members they should refrain from commenting on the presence of the witnesses, and instead let the student question his witness, which was his absolute right under the Judicial Charter?
7. How was Graves trained such that he would not know this?
8. How were the panel members trained such that they would not know this?
9. Why is Graves' office telling students in the very first communication he sends out [Exhibit 38] that they cannot talk to witnesses, a right granted to them in the Stanford Judicial Charter?
10. How can Stanford University maintain academic integrity when the process utilized for that purpose precludes defense witnesses, stripping the process of its own integrity?

**2. Tanya Widmer, Whose Claimed Observations Were the Only Evidence Against the Three Students, Did Not Attend the Hearing, and the Students Were Not Notified of This In Advance of the Hearing**

What Occurred

Just as students have a right to present witnesses in their defense, they have a right to effective cross-examination of the witnesses against them [Judicial Charter, Exhibit 32, Section II – Fundamental Rights (A)(15)].

In this case, the only witness against any of the three students was Tanya Widmer, and Widmer only thought cheating was occurring because she had seen Student C moving to the desktop to his left (which was open, and used by Student C as space to fill in the scantron) and then back to his own desk (to his test booklet) before he returned to the other desk (to fill in more bubbles on his scantron). Given that she was the only evidence, stacked up against 15 witnesses, it would be important to cross-examine Widmer to demonstrate that she did not have a good view, did not see the scantron, and to show the deficiencies in her ability to view the scene (and understand what she was seeing) compared to the other 15 witnesses (the three students and 12 independent percipient witnesses).

The students had taken and submitted photographs of the entire exam room. They had photographs taken from the positions they believed Widmer to have been located, and placed students in the seats so they could question Widmer on her ability to observe [these photos are reflected in Exhibits 18-20]. They also wanted to question Widmer with respect to the scantrons and the test booklets.

Morris Graves scheduled the hearing. He did so on very short notice and *without*

consulting with the students to see if it would be a good date for their three representatives or any of their witnesses. At the time, according to Student C, Graves had said, “We don’t schedule around representatives” (notwithstanding the student’s right, under the Judicial Charter, to have them).

The students went with the date on short notice. They filed their materials on time. They submitted 15 witness statements. They showed up. They got their representatives there. They got their witnesses there. When it was time for the Reporting Party (whoever that might be in this case – the students were never sure) to put on his or her case, Graves announced for the first time that Tanya Widmer was not on campus. She would be testifying by phone, according to Graves.

Graves never gave any explanation as to why he scheduled the hearing when Widmer would not be on campus, why she was not required to be at the hearing, and why he had not raised this problem in advance of the hearing. Graves reported to the panel that Widmer was a “Complaining Party,” so it seems reasonable that she should have been there in that capacity, but certainly in the capacity of a witness to be cross-examined.<sup>4</sup>

The students would have objected in advance had they known Widmer was not going to be at the hearing. Effective cross-examination, as with the effective presentation of a witness, requires the witness to be there in the presence of the trier of fact.<sup>5</sup>

It was absolutely necessary to personally interact with Widmer on the evidence (specifically the photographs). Challenging her ability to observe was the critical point of her cross-examination. Yet, Graves had not sent Widmer *any* of the exhibits submitted by the students, even though he had possessed them well in advance of the hearing.

With Widmer not in the room, the panelists were not able to judge her demeanor. Neither were the students able to cross-examine her with diagrams or photographs, because Graves had not provided them to her. The students were denied their right of effective cross-examination.

Further, as she was testifying, Graves announced she only at 17 more minutes that she was available and made clear any lengthy cross-examination would not be possible.

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<sup>4</sup>This might explain why Graves announced at the hearing that there were two complaining parties: Widmer *and* Huang-Devoss (who saw nothing). This creative addition of yet another non-Reporting Party/Complaining Party meant there would be somebody in the room to prosecute the case.

<sup>5</sup>For example, in the California court system, courts of appeal can often review matters *de novo* (with no deference to the trial judge) on the trial record. One thing on which an appellate court will always defer to the trial judge is the *credibility of a witness*. This is because, as often stated in case decisions, it is the trial judge who has actually had the opportunity to see and observe and hear the witness in person, something that cannot be done by members of the court of appeal. No one could observe Widmer in this case, the only witness who could get these students kicked out of Stanford University and permanently impact their lives and careers.

### Questions Raised By This Issue:

1. How could the case proceed against the students when the only witness (in fact, the only evidence) against them was not present at the hearing?
2. Assuming the case could proceed without a Reporting Party (Student X), how could it proceed without the “Complaining Party” (Widmer)?
3. Should the students have been consulted about proceeding in the absence of Widmer?
4. Could the case proceed in the absence of Widmer, given that she was the Complaining Party and the only witness?
5. Were the students afforded their right, guaranteed by the Judicial Charter, to cross-examine this witness?
6. If Graves knew the witness would be absent and appearing by phone, why did Graves not send the exhibits to her so she could be properly cross-examined?
7. Why did Graves allow restrictions be placed on Widmer’s time?
8. Why did Graves not tell Widmer or Huang-Devoss that they could not call Widmer as a witness, when he repeatedly told the students and their representatives, and even the panel, that the students were not entitled, as a matter of right, to call a witness?
9. Did Widmer submit a witness statement, as required by the Judicial Charter?
10. Prior to the testimony of Widmer, why did Graves not tell the panel they could exclude Widmer as a witness and simply rely on her written statement (her comments in the submission of Huang-Devoss), as he did when the students sought to present witnesses?
11. The students were required to submit witness statements before their witnesses could testify; why was Widmer allowed to testify even though no one had submitted a witness statement from her?
12. Given that there was no Reporting Party in this case (the student claimed anonymity and pulled out of the case), who was responsible for submitting Widmer’s witness statement?
13. Why, as in several other instances, were the accused students treated differently than the Stanford University employees who were prosecuting the case?

### 3. **Morris Graves and the Panel Chair Interfered With Questioning**

#### What Occurred

The Judicial Charter, Section II (Fundamental Rights) (A)(15) mandates that all charged students will have an opportunity “to cross-examine witnesses against them.” The word “cross-examine” has to mean something, because the Judicial Charter uses it.

Asking a question of one’s own witness is called direct examination. Cross-examination is the process of allowing an opposing party to test and challenge the statements of a witness by examination (*cross-examination* versus direct examination). Different rules generally apply to direct examination and cross-examination. For instance, in courts, leading questions are allowed on cross-examination (because the witness is considered to be “hostile”); leading questions are not allowed on direct examination of one’s own witness, who is presumably friendly.

Even when questioning one’s own witnesses, you are entitled to ask questions that might elicit a yes or no answer. You can ask specific questions. There is no requirement that you ask open-ended questions. In fact, questions that call for a narrative are generally *not* allowed.

Student C accepted the responsibility for all three students for the cross-examination of the witnesses presented by the University and for examining the 12 eyewitnesses. His outlines for the examinations of Cammy Huang-Devoss and Tanya Widmer are lodged herewith as Exhibits 52 and 53. Both of these are relatively short in terms of questions. They were all very to the point. There is nothing wrong with any of the questions.

Student C was initially allowed to cross-examine. However, the panel chair (his training is discussed below) then cut off Student C on multiple occasions and would not allow answers to many questions.

For example, in the HumBio Department the faculty usually number exams. Course Coordinator Huang-Devoss acknowledged that the purpose of numbering the exams was to be able to recreate a seating chart in case of cheating. Student C wanted to establish this, and then ask follow-up questions as to why Huang-Devoss, who took it upon herself to “investigate” before submitting the matter to Judicial Affairs, had not taken advantage of the ability to create a seating chart to identify witnesses sitting by the three students so she could ask them if they observed cheating.

Had Huang-Devoss utilized the numbered exams as intended, she could have created a seating chart. Had she created a seating chart, she would have identified the 12 independent witnesses first. Had she done so, and questioned them, she never would have filed the case. The Responding Parties would not have been put through this ordeal. Student C wanted to raise the possibility that Huang-Devoss had not utilized the numbered booklets to create a seating chart because she was afraid, or knew, witnesses would not support her.

The panel chair cut off this line of questioning in its infancy, incorrectly stating that no one is supposed to be talking to witnesses and therefore she should not have to answer the

question. He precluded her from answering the question. If there was actually a rule other than a Graves' rule, then Huang-Devoss could have provided that answer if, in fact, that was why she had not sought out witnesses. The chair cut off what would have been an effective line of cross-examination. Graves did nothing to prevent that.

When Student C asked Huang-Devoss whether Student C's representative had contacted her (within half an hour of the end of the test) to encourage her to compare scantrons (which would have shown his state of mind and been corroborative of his innocence), the Chair told her not to answer. Graves did nothing.

Graves at one point cut off Student C when he attempted to draw witness Do's attention to his last two minutes in the exam. He told Student C, "We don't allow" that type of question.

What Graves was communicating was that the only questions allowed were those that asked the witness for an open-ended or narrative response.

The panel chair also cut off Student L when he sought to cross-examine Widmer. Student L asked Widmer whether she had ever spoken to him (the line of questioning would have shown she did not observe, or accuse, him of cheating). The panel chair quickly refused to let Widmer answer, saying, "That's not for her to do."

#### Questions Raised By This Issue:

1. Why did the Chair and Graves not understand the concept of cross-examination?
2. In how many other cases, and how many other students, have been cut off from questioning witnesses because Morris Graves or the panel chair believe questions are inappropriate?
3. Graves never cut off questioning by Huang-Devoss, even questioning that attempted to intimidate or mislead students (see Huang-Devoss's questioning and misconduct below). Why was she allowed to ask any question, but Student C was told "We don't allow questions like that?"
4. Where is the rule, referenced by Morris Graves, that precludes students from asking questions of witnesses at a Judicial Charter hearing, given the express provisions of the Judicial Charter allowing cross-examination?

#### **4. Morris Graves and the Panel Chair Precluded the Students From Objecting to Inadmissible Evidence**

##### What Occurred

Inadmissible evidence was allowed to come in at the hearing. Graves and the panel chair, early in the hearing, told the students they could not object. Consequently, they had no

mechanism to address the issues as they came up. This began within minutes of the start of the hearing, with the first witness discussing what Student X had said.

Judicial Officer Rick Yuen redacted the statements of Student X from the report that had been sent by Course Coordinator Huang-Devoss, while leaving in the reference to Student X having initiated the complaint about cheating. That still violated the Judicial Charter.

The reference alone, even without the student's statement, had the effect of adding a second witness against the students, without the students having any right to cross-examination. From the Huang-Devoss statement, everybody on that panel understood that *both* a student and Widmer had observed what they believed to be cheating. Graves, Yuen, Huang-Devoss and Widmer, all participated in signaling to the panel there was a corroborating witness, even though under the Judicial Charter makes absolutely clear that the panel should never have known about Student X.<sup>6</sup>

Yuen presumably made clear to all witnesses that they could not reference the statements

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<sup>6</sup>The accused students were able to quickly determine who Student X probably was, if there was a Student X at all. In his efforts to reach out to witnesses, and going behind him, Student C eventually arrived at a student who was in the exam sitting a few rows behind Student C. She was a friend of Student L. From an unfortunate social encounter during the school year, she had a great deal of hostility towards Student C. When contacted soon after the exam, she initially told Student C that she observed no cheating and would be a witness. However, when he followed up and wanted a declaration, she started making up nonsensical reasons as to why she was busy and could not sign the declaration, and finally refused to sign at all. It would not take a Stanford student to figure out this was our Student X.

All of a sudden, things made sense. This student was a friend of Student L (who under Widmer's theory of cheating was the principal cheater), yet Student X claimed Student C was cheating from Student L. She had a great deal of hostility toward Student C because of the past social problem with Student C. She had a motive to falsify a claim. Her claim (that Student C was cheating off of Student L) made no sense. Even Widmer and Huang-Devoss knew that. Student C was the highest performing of the three students. Also, what Widmer saw would not have supported *that* theory of cheating. Huang-Devoss, at the hearing, claimed Student X said it had been "continuous" and the student was bothered by it (although that was not in Huang-Devoss' original statement and there is no evidence she even talked to Student X), further testimony that would have been contradicted by an examination of Student C's test booklet (where he premarked the answers early in the exam) and his scantron (which he was hurriedly filling out only in the last ten minutes of the exam).

Had Student X been required to appear (assuming there was a Student X and it was this student), she would have been aggressively cross-examined on her motivation. It would have been clear why her focus would have been just on Student C (her social enemy) and not Student L. By redacting her statement but leaving reference to her in Huang-Devoss's statement, Yuen and Graves were able to buttress the testimony of Widmer by giving her a *seemingly* corroborating witness, without the witness having to face cross-examination.

made by Student X when she reported what she saw on the day of the test. Only her name would remain, according to Yuen and Graves, so that the panel would know the faculty had not been improperly proctoring. All of this, of course, was over the objection of the students, who requested that Student X's name be redacted in its entirety [Exhibits 42, 43, 44, and 47]. The Judicial Charter clearly requires there be no reference at all to Student X if Student X wanted to retain his or her anonymity [Judicial Charter, Exhibit 32, Section II(B)(6)]. In fact, the case should have been dismissed if the student wanted to retain his or her anonymity.

In any event, while testifying, Widmer started talking about what she was told by Student X. Graves and Yuen allowed her to provide this testimony. They did nothing to immediately stop her.

Student C immediately objected. The panel chair cut him off, stating "There will be a moment for you later on" (as he turned to page 2 of his "script," that portion of the Judicial Affairs-created template where the students are asked to testify). Student C was at first frozen by this statement. His representative told him to object again so and say that he was objecting to Widmer testifying about something that even Rick Yuen had redacted as irrelevant.

When Student C made his second objection, it was Morris Graves who stepped in. Graves actually said: "We don't allow objections." He then let Widmer continue a little further to testify as to what Student X had said. Under the rules, nothing she said should have been coming into evidence.

This was not simply a slip of the tongue by Graves. The night before, in a telephone conversation with Student C's representative, he had made the exact same statement. Student L's representative was also present for that conference, which was conducted on speaker phone. When Student C's representative was talking about objectionable materials that may have to be addressed with the panel, Graves said, "We don't allow objections..." before quickly switching to something else. At the time, Student C's representative felt that Graves had just slipped up (by the way he quickly changed subjects), but he made the exact statement to Student C at the hearing when he attempted to stop the inappropriate testimony by Widmer about what Student X had said.

It was only after Graves had allowed all this testimony in that he finally cautioned the panel that this testimony was actually irrelevant and they should not consider it. Graves sat there and listened to Widmer testify for several sentences about Student X without cutting her off. He made the cautionary instruction only *after* he had let her get everything into evidence. And, he gave it in a way that failed to get the message across.

Later, Huang-Devoss expanded on what Student X had said. She was the one who testified that Student X had claimed Student C had been cheating off of Student L "continuously" and was very "bothered" by it. Even though Yuen had ruled prehearing that the statements of Student X should not be allowed into evidence, and communicated that to Huang-Devoss, Huang-Devoss testified about Student X's comments because she saw that Graves had allowed Widmer to provide this inadmissible evidence. Graves sat by once again, handling the issue exactly as he had when Widmer violated the pre-hearing ruling. Student C could not object, as

Graves and the panel chair had both announced objections were not allowed.

Student C made no other objections at the hearing. He had been told not to.

Questions Raised By This Issue:

1. If Rick Yuen had ruled the testimony of Student X inadmissible prior to the hearing, and everybody was aware of this, why did Yuen and Graves allow both witnesses against the students to tell the panel what Student X had said?
2. Why did Graves and Yuen not jump in immediately to stop the discussion?
3. Why did Graves and Yuen force the student to object?
4. Why did the panel chair not know what an objection is?
5. Why doesn't the panel chair, or anyone on the panel, have any sense of the concept of inadmissible evidence?
6. If Graves was aware that the panel is the final determinator of the relevance of evidence, why has he never trained the panel or panel chair on this concept and how to handle it?
7. Why do Graves and Yuen not understand the concept of objections, which is the way of framing an issue of relevance to be determined by the panel?
8. Why did Graves tell the student and his representative that objections were not allowed?
10. How do students keep irrelevant, prejudicial, or other inappropriate evidence from coming into the hearing panel if they are cut off when they try to object, and the University employees do nothing to stop the evidence on their own?
11. Since Graves knew the evidence was objectionable (he eventually told this to the panel), why did he let it go on instead of stopping it immediately?
12. Why, when telling the panel it was irrelevant, did he not make a strong statement that it should not be considered *at all*, and tell them it had been ruled inadmissible?
13. Graves and Yuen intentionally let all of this come into evidence, even though the prehearing determination had been made the statements were inadmissible. What will happen to them because of this?

**5. Did Allowing Inadmissible Evidence Into Evidence, and By Precluding Student C From Objecting to It, Make a Difference?**

What Occurred

Of course it did. It was mentioned on *multiple* occasions by panel members. Late in the day, probably two hours after Widmer had given her testimony, a professor asked Student C: “Why would Student X make this up?”

It was clear, at least to this professor, that Student X’s testimony of cheating was very important. Graves’ milk toast, belated cautionary instruction had no effect on her. She was troubled by Student X’s statement. She could think of no reason why Student X might make something up. Forget the fact that it should never have come into evidence had Rick Yuen and Morris Graves been doing their jobs.

Morris Graves’ reaction to this question was interesting. Student C started to answer. Student C’s expression made very clear he was happy he was asked this question because now, finally, he would get to tell the story and explain why Student X might fabricate a story. *Only when it became apparent that Student C was probably about to identify Student X, and attack her credibility, did Graves step in.* Then, he cut off the answer. Immediately. Widmer was not cut off. Huang-Devoss was not cut off. But Morris Graves made sure that Student C was not allowed to answer the question that was clearly on everybody’s mind and articulated by the professor, which was, why would Student X lie?

Student C knew why Student X might lie. He was prepared to give the answer if asked. He was asked. The other two had been allowed to get in inadmissible evidence, but when he attempted to respond to it, only then was Graves prompt to cut off any answer. Only then, when the student was testifying. Only when the students spoke did Graves jump in quickly to cut something off.

Even then, a student on the panel followed up. He wanted to ask Student C about Student X. The panel had clearly become focused on Student X based on testimony as to which Student C should have been able to stop by objection.

Questions Raised By This Issue:

1. Why did Morris Graves preclude objections?
2. Why Did Rick Yuen not jump in, as the Judicial Officer who had redacted the information and knew it was inadmissible, and stop the discussion of Student X?
3. Why did the panel chair not understand what an objection was?
4. Why does Morris Graves believe objections are not allowed in Stanford judicial proceedings?

5. How would a student keep out objectionable evidence if not allowed to object during the hearing?
6. If the judicial panel is the ultimate determinator of relevant evidence, how do they know they are supposed to determine if something is or is not relevant if students are precluded from objecting?
7. Why did Morris Graves and Rick Yuen let both Huang-Devoss and Widmer testify as to what Student X said (even though both knew it was inadmissible), but then immediately cut off Student C when he attempted to explain Student X's motives after it became clear the panel had become enamored of Student X's "testimony"?
8. By precluding Student C from objecting to the objectionable evidence (what Student X told Widmer), the testimony of Student X was allowed into evidence through others, but without any cross-examination. Then, when the student tried to respond to the Student X statements (in response to a direct question), he was cut off. Just what is going on at Stanford?

## **6. The Judicial Panel Was Not Trained and Exhibited Inappropriate Demeanor**

### What Occurred

The panel chair was not trained to competently conduct the hearing without substantial assistance. He appears to have been provided none. His performance raises serious issues as to whether such panels should be chaired by students who are both transitory and lacking in experience.

This is Graves' job. The Judicial Charter, Section III(D)(3)-(5), places responsibility for training panels on the Judicial Affairs. This panel was not properly trained.

On the biggest evidentiary issue of the day (when Widmer and Huang-Devoss were testifying with respect to what Student X had to say even though that had been ruled inadmissible), he did not even have a clue that he should be stopping it. Apparently no one had briefed him on this issue. Although that should have been self-evident given that Student X had chosen to remain anonymous, he clearly had not been briefed by either Graves or Yuen on the evidentiary ruling that had been made prior to the hearing.

While the students now know that the panel is to be the ultimate arbiter of relevant evidence, Yuen had led everyone to believe that he was the one who could make that determination, given the way he discarded the expert's report without identifying the expert, and given his agreement that the redaction had to be made to eliminate what Student X had to say (while refusing, over objection, to eliminate the reference to Student X).

When Student C initially objected to Widmer's testimony, the panel chair turned to page

2 of his “script” given to him by the University. It is on page 2 of the “script” that the students are asked to tell their version of events. The panel chair thought Student C was trying to give his testimony, notwithstanding that he clearly said “Objection.” The Chair said, “We’ll get to you later.” The Chair had never been taught about objections.

At times, the panel chair got excited and took on the appearance of an advocate. For example, when Student C had established through questions to Widmer that she was not standing where she had led the panel to believe she had been standing when making her observations, it was the panel chair, jumping in and acting almost as an attorney for the complaining parties, who attempted to undo what Student C had established in his cross-examination.

The panel chair made clear he had not read the students’ materials. When Student C finally testified and explained how he was turning to his left during the test only to use the popup desk on his left for his scantron, and then returning to his own desk to get more questions so he could again turn to the left and use the neighboring desk for his scantron, the panel chair, with a look of amazement on his face, said something to the effect of: “Maybe that’s what Widmer saw.” In fact, this was the principal description of the event given by Student C in his materials and would not have caught anybody by surprise *if they had read the materials*.

There were substantial demeanor issues with respect to two other panelists, most significantly the economics professor. Even though no one disputed that Student C had been taken out of the room when he was only on question 19 (out of 42), and even though it was undisputed that the students had more similar wrong answers after Student C was out of the room, this professor at one point announced to the room that “all he needed to know” [paraphrasing] was how many similar wrong answers the students had and that he could (again paraphrasing) convict them without hearing any other evidence. Another student panelist also took a fairly aggressive and clearly hostile position to the students. The other three panelists hardly talked, other than the other professor who asked why Student X would lie.

Student C’s representative has participated in dozens of administrative hearings. He has never seen panel members with, at times, such inappropriate demeanor, particularly the economics professor. However, at no time did the panel chair or either Graves or Yuen, obligated to protect the integrity of the system, step in to caution the panelists. There was no effort at all. It was apparent they did not care or even understood anything was wrong.

The fact that on this record four individuals could believe there was “no other explanation other than guilt” for what occurred, demonstrates that those four individuals did not understand at all the burden of proof in this case or the import of the evidence. This suggests a woeful failure to properly train panel members.

The economics professor announced that he did not want to hear from the very first witness put on by the students, saying on multiple occasions she was saying nothing new or “wasting” his time. Another student joined in as well. They were hostile, and made clear they were very unhappy at the fact the students had brought even one witness into the hearing room. They were not listening. They were unaware that the students were testifying as to matters not in their declaration, and that their presence there was to give the panelists had an opportunity to

judge their demeanor, something the panelists had presumably never been informed might be important. They had made up their minds.

The economics professor should never sit on another judicial panel. The student chair should never chair another panel.

Questions Raised By This Issue:

1. Who trains panel members?
2. How large is the pool of panel members?
3. Is any special training given to panel chairs?
4. What are the written materials available for training panel members and panel chairs? Can they be shared with the authors of this study?
5. Is Morris Graves responsible for the poor training of this panel?
6. How can an economics professor, chosen by Stanford to be on a panel that will decide if a student should be suspended from school, essentially announce to the entire room that he was not going to consider any evidence other than that which *he had already determined* was the only thing important (even though he was in error on its value and import)? Or announce that the first of 12 witnesses is already a “waste of time?”
7. Why did the panelists not know a witness’ demeanor is important?
8. Why were the panelists led to believe that they could be so rude to witnesses and so intimidating to students who wanted to call witnesses?
9. Why did the Stanford officials fail to deal with the demeanor issues?
10. Has the economics professor been removed from Stanford’s available panelists?
11. Has the Chair been removed from Stanford’s available panelists?

## VIII

### HEARING CONDUCT OF COURSE COORDINATOR CAMMY HUANG-DEVOSS

Course Coordinator Huang-Devoss’ conduct included what appear to be two violations of the Honor Code. The students have raised the issues with Stanford for months. They have been ignored. They want her charged under the Honor Code.

## 1. Intimidation of Witness Do

### What Happened

The first witness called by the students was witness Erica Do. Erica Do was a critical witness, perhaps the most critical witness other than the students themselves. She sat one row behind, and in the gap between, Student L and Student C. She was leaning forward in her seat as she filled out her scantron. Her face would have been a foot to a foot and a half away from the cheating described by Widmer. She would have seen the other students' hands, scantrons, eyes, and faces. By contrast, Widmer, at 30-45 feet away, saw none of this. Witness Do said cheating simply did not happen.

Witness Do was a compelling witness. She testified that she was looking through the gap between Student L and Student C frequently to see the clock as the minutes ticked away (see the clock in Exhibit 9). The exam was almost over and she needed to complete her scantron. She would have consistently looked up right where the two were supposedly cheating and at the time Widmer claimed they were cheating. The entire cheating theory of Widmer was that Student C was turning to his left (right in front of witness Do), making eye contact and showing his scantron to Student L. Witness Do said it just did not happen.

What was the principal question Course Coordinator Huang-Devoss had for witness Do? Her question to Ms. Do was: "Would you object if I reviewed your exam and answers?"

This question had nothing to do with the case before the panel. It had no relation at all to what witness Do had testified to. It was designed for one purpose only: to intimidate witness Do and/or to suggest to the panel Do might be a cheater.

Assume for a moment you are an undergraduate at Stanford University. Three people you know are potentially going to be suspended from the University for cheating in a case where there is no credible evidence and overwhelming evidence cheating did not occur. The Course Coordinator who is prosecuting the case asks you a question that has nothing to do with the facts of the cheating case that is being heard by the panel, but instead is a question as to whether she can personally review your test and test answers on perhaps every exam you have ever taken. In the class? For the year? In all HumBio classes?

Who knows? It had to have been clear to witness Do that her questioner (Huang-Devoss) was a woman who has the power to bring charges of cheating against people and destroy their lives. This question appeared to serve no other purpose than to intimidate witness Do, other than perhaps to plant the false seed with the panel that witness Do was herself a cheater, which, had that been the motive, would have been just as malicious. The Judicial Charter specifically provides for rights of witnesses. Section II (entitled "Fundamental Rights") subsection C ("Rights of Witnesses"), provides:

"The rights of a witness in any case are:

....

2. To be offered reasonable protection from retaliation, intimidation and/or harassment.
3. To be informed, in writing, of these rights.”

Questions Raised By This Issue:

1. What “protection” was given to Erica Do?
2. Has action has been taken against Course Coordinator Huang-Devoss for intimidation?
3. Why did Morris Graves and Rick Yuen not jump in at that point and cut off the questioning?
4. Do was required to answer the question. Graves, Yuen and the panel chair did nothing to stop it. She quickly answered that she would have no objection. Did Course Coordinator Huang-Devoss then actually subsequently review her tests?
5. If Course Coordinator Huang-Devoss did not subsequently review witness Do tests, does that not make clear that she was merely seeking to intimidate her or mislead the panel? If she did review them, what was her purpose? To retaliate?
6. Has any job action been taken against Course Coordinator Huang-Devoss for this conduct?
7. If formal charges must be brought by the students (and they will bring them if necessary), why have Graves, Yuen, and the University Counsel’s Office not assisted in doing this, given that the three students have repeatedly raised the issue for months?

**2. Course Coordinator Huang-Devoss’ Conduct Threatened the Privacy and Confidentiality of Other Students**

What Happened

The three students were obviously well prepared and armed with numerous witnesses (12 independent eyewitness declarations under oath with students lined up to testify). This should have made it impossible to convict the students given the lack of evidence submitted by the complaining parties, and the “beyond a reasonable doubt” burden of proof.

What did Course Coordinator Huang-Devoss do to deal with witnesses generally, after her specific questions that had the appearance of trying to intimidate witness Do?

In what was viewed by the students as an attempt to discredit all 12 witnesses, Course

Coordinator Huang-Devoss asked Student C this question (paraphrased here): “Are you aware if any of these witnesses have Honor Code violations” of their own?

Stop and think about that for a minute. Either one or more of the witnesses did have their own cheating problems at this exam (and the question was designed to suggest multiple students had cheating problems), or none of the 12 witnesses had cheating problems in this class. However, Course Coordinator Huang-Devoss (along with Graves and Yuen) would know the answer to that question. Huang-Devoss would be privy to this information because she is the Course Coordinator.

If there were no such students, the question should never have been asked, and Graves and Yuen should have jumped in immediately. If any of the witnesses had cheated, and Student C was aware, then Huang-Devoss’ question would violate that student’s privacy.

In fact, the answer is that none of the witnesses had cheating problems in this class. Thus, Course Coordinator Huang-Devoss, who would have known that, asked a question the students believe had no purpose other than to leave the impression with the panel members that they could not trust the 12 declarations because perhaps multiple witnesses had committed their own Honor Code violations.

Course Coordinator Huang-Devoss, if anybody ever pursues her for this conduct, might say that she was aware that one of the 12 witnesses had been *suspected* of cheating. Student C knew this. He knew the student’s name. He also knows from that student that while she was suspected of cheating, there was no evidence of cheating and it was *never even forwarded to Judicial Affairs*, or charged. Thus, none of the witnesses did have cheating problems in the class, and Course Coordinator Huang-Devoss knew this when she asked the question.

Rick Yuen cut off the question, but not to suggest there were no violations, which he presumably knew. Then a panelist asked her “what she knew.” Yuen cut the question again, suggesting he had to “protect the interests” of these witnesses. This reinforced there must be one or more cheaters in the witness group.

And, what if Student C had answered and said something to the effect of: “Oh, you are referring to Student A who was suspected as potentially cheating, but was cleared. Why are you even raising this, Ms. Huang-Devoss?”

At that point, Student A’s identity would have been revealed as somebody who was turned in for, or was suspected of, cheating. Course Coordinator Huang-Devoss knew that the case had never been pursued. Yet, she risked identifying that individual in the hearing, violating that student’s rights of privacy and confidentiality. The students believe her intent was to plant the false seed that some of the witnesses had cheated, something she knew to be untrue.

#### Questions Raised By This Issue:

1. Course Coordinator Huang-Devoss pursued conduct capable of violating the rights of privacy of Student A. Has action been taken against Course Coordinator

Huang-Devoss for this conduct?

2. If Course Coordinator Huang-Devoss knew there were no other cheating problems, does that not make clear that she was merely seeking to intimidate the witnesses or mislead the panel?

### **3. Offering the Inadmissible Testimony of Student X**

#### What Occurred

The original report of cheating by Student C prepared by Course Coordinator Huang-Devoss [Exhibit 37] quoted only Tanya Widmer with respect to the statements of Student X. Course Coordinator Huang-Devoss did not represent that she had spoken to Student X. She relayed only what Tanya Widmer had heard from Student X, which was not very detailed.

Before the hearing, Yuen redacted those statements. They could not be used because Student X wanted to remain anonymous, so her issue was withdrawn.

Yet, at the hearing, it was Course Coordinator Huang-Devoss, late in the hearing, who proffered that Student X had sat by *bothered for an extended period* watching Student C cheat off of Student L. It had “bothered [Student X],” said Course Coordinator Huang-Devoss. Huang-Devoss said Student X had said it had been “continuous.”

Huang-Devoss had never submitted a statement, as required, preceding this testimony. There was no prior indication that she had communicated with Student X. If she was passing on what Widmer had said, it was something Huang-Devoss had not included in her original statement. Just as significantly, Course Coordinator Huang-Devoss, the complaining party, knew that Rick Yuen had redacted the statements of Student X. She knew this was inadmissible evidence. She knew Student X had asked to remain anonymous and therefore, nothing about Student X could come into evidence. In fact, before she testified she had heard Graves tell the panel that Student X’s comments were irrelevant.

Yet, Course Coordinator Huang-Devoss intentionally injected previously undisclosed comments of Student X into the hearing, knowing that the students had no ability to cross-examine Student X. Given the absence of this detail in Huang-Devoss’ original statement [Exhibit 37], the fact that Widmer never discussed this detail, and the lack of evidence Huang-Devoss ever spoke to Student X, the students question whether she was truthfully relaying anything from Student X. They believe she made it up. They know she knew she should be offering nothing about Student X.

#### Questions Raised By This Issue:

1. If Course Coordinator Huang-Devoss knew Student X was not to be mentioned, was she intentionally trying to introduce inadmissible evidence to influence the panel?

2. If Student X actually said made these additional statements, why were they not in the original report?
3. Why did Morris Graves and Rick Yuen not jump in at that point and cut off the testimony?
4. Has any action been taken against Course Coordinator Huang-Devoss for this conduct?
5. If Student X actually said this (continuous cheating by Student C), something that is demonstrably false, can Student X be pursued for false charges? Has she?
6. If students get to make cheating charges and have the case go forward while they remain anonymous, what protects against malicious prosecutions?

#### **4. Course Coordinator Huang-Devoss Sought to Create Another False Impression On An Issue That Was Totally Irrelevant**

##### What Occurred

A tactic utilized by Course Coordinator Huang-Devoss was to plant impressions with the panel, some, or all, of which she should have known to be false. This included items 1 and 2 above, and perhaps item 3.

The last example of this was a question raised she asked of Student C. It was objectionable because it had nothing to do with the examination in question. The three students were taking another HumBio exam the very next day after the test on which they had been falsely accused of cheating. The students were not charged with cheating on that exam. No one had charged the students with cheating on that exam.

When they went to take that test the next day, the students were scared. The day before they had been cheating when they had not cheated. They were facing possible suspension from the University and a lifetime of disgrace associated with the charge.

It is amazing the students were able to take the test in the other course the next day. It goes without saying that the students made a point to sit nowhere close to each other.

One can presume that the officials responsible for administrating that test were aware of the claims of cheating by these three students and were watching them like a hawk. The students do not know for sure, but it is safe to assume that is what occurred. They understood Huang-Devoss had responsibility for that class as well.

The students did, in fact, sit nowhere near each other. Even though it was irrelevant to this hearing, Course Coordinator Huang-Devoss asked Student C whether he had sat by the other

two students. He quickly answered that he had not. The questioning, having nothing to do with the exam at issue, should have been stopped. Graves, Yuen, and the chair all let it continue. The students could not object. They had been told objections were not allowed.

Course Coordinator Huang-Devoss was prepared. She then asked Student C if he knew the number on his exam booklet (as noted above, the students have numbered exam booklets so that a seating chart can be created, if necessary). He stated he did not know. Course Coordinator Huang-Devoss asked him if in fact it was a certain number, a number only two off from one of the students – either Student L or Student R. He said he did not know that, but he had not sat by them. He then told the panel that he had come in late to the exam, after the booklets had been handed out, took a seat on the aisle halfway up the row, and someone walked over and gave him a test booklet.

His late arrival explains why he might have a test booklet that was numbered close to one of the other students, even though he sat nowhere near the student. Course Coordinator Huang-Devoss presumably knew they had not sat close together because the students would have been observed the next day. The test the next day had nothing to do with the test that was the subject of the cheating allegations. Yet, Huang-Devoss (as with the other issues) asked the question anyway to plant a seed in the minds of the panelists, a seed that might have helped get these kids thrown out of Stanford University, ruining their lives.

#### Questions Raised By This Issue:

1. Why did Morris Graves and Rick Yuen not jump in at that point and cut off the questioning?
2. Did Course Coordinator Huang-Devoss know the three students did not sit close to each other at the exam the next day? If she did, does that not make clear that she was intentionally trying to again plant a false seed to influence the panel?
3. Has any action been taken against Course Coordinator Huang-Devoss for this conduct?

## IX

### POST-HEARING CONDUCT BY THE OFFICE OF JUDICIAL AFFAIRS AND ITS ATTORNEY

#### A. Efforts to Preserve the Record

##### 1. **Graves Got Caught In the Middle of Improperly Destroying the Entire Record in This Case**

###### What Occurred

The Judicial Charter itself provides that the entire record of a proceeding before the panel by Judicial Affairs shall be maintained for a year. This responsibility is specifically assigned, by the Judicial Charter itself, to the Judicial Affairs (Graves) and Judicial Officer (Yuen) [the Judicial Charter is Exhibit 32; see Section III(F)(4)].

The students and their representatives were understandably shocked and upset at the conduct of the hearing. A joint decision was made by them right after the hearing to prepare this study so that appropriate University officials, the Committee on Judicial Affairs, the student body, and the Trustees if necessary, could use this as a case study to see how these proceedings are carried out and the complete lack of any procedural due process for the students.

Student C's representative contacted Morris Graves mid-afternoon on the day after the hearing, November 30<sup>th</sup>. This was approximately 18 hours after the results of the hearing had been read. He asked Graves to preserve the record, unaware that Stanford's procedures already guaranteed that it would be preserved for a year.

Graves announced that he had "shredded most of the file." Student C's representative was incredulous. Graves responded that this was the "rule" for the students who were acquitted. To "protect" the students, Graves said they automatically destroyed the files, and he had destroyed most of this file. This conduct violated the Judicial Charter (section III(F)(4)).

In fact, once again, as with many of the Graves' Rules, this was not the rule at all. And, the only people who would be "protected" by destroying this particular file were Graves, Yuen, Huang-Devoss, and some panelists.

Student C's representative then asked if there was still a recording of the hearing. Graves answered there was, but *it was about to be destroyed as well*. In fact, not only would that have to be preserved for a year as part of the record, the Judicial Charter itself specifically provides that upon request after a hearing, the students will be provided "a verbatim record of their judicial hearings, excluding panel deliberations" [Judicial Charter, Exhibit 32, Section II(A)(17)]. This could only be accomplished if the recording was preserved.

At this time, Graves had not asked anyone if he could destroy the file. Student C's representative was insistent that no more destruction of the file take place. Graves stated he

could not agree to that. Student C's representative made clear that Graves was placing himself in the position of violating the students' rights. Even then, Graves stated he would have to "speak with his superior" and see if he could preserve the recordings. He never said he would preserve any of the rest of the record. Student C's representative had to write to memorialize the request to both Graves and Yuen [Exhibit 54]; the students quickly wrote to both Graves and Yuen as well [Exhibit 5].

#### Questions Raised By This Issue:

1. If students are advised in writing that the record will be preserved from a year, why was Morris Graves destroying it less than 24 hours after the hearing?
2. If students are advised in the Judicial Charter itself that they will receive, upon request, a verbatim record of the judicial panel hearings, why was Graves prepared, within 24 hours of the hearing, to destroy the recording? How would he then prepare a transcript?
3. Has Morris Graves ever read the Judicial Charter?
4. How many other student records have been destroyed by Graves under the mistaken assumption that the Judicial Charter allows something that it specifically prohibits?
5. Who trained Morris Graves?
6. Who supervises Morris Graves?
7. Was Graves destroying the file in this case because he appreciated the improprieties at this hearing, or does he actually improperly destroy the file in every case?
8. Why does Morris Graves believe there are "rules" to support almost everything he does, but he can never identify the rules when asked?

## **2. Student R Was Threatened When He Requested the Name of a Panel Member**

After the hearing, the three students and three representatives advised Graves they were going to take advantage of these charges to prepare a case study of how Judicial Affairs currently operates at Stanford. In an effort to identify the panel members for the study, Student R sought the identity of the full panel. Graves provided it, but had originally left out the name of the panel chair when identifying the panel.

On February 5, 2012, Student R then asked for the identity of the panel chair [Exhibit 56]. Graves provided it, but at the same time advised Student R, by email, that he was "prohibited from communicating with any member of your judicial panel" (Student R had never said he was

going to contact anyone on the panel) and that if Student R did contact somebody on the panel, he would be in violation of the Fundamental Standard [Exhibit 48]. Graves said that if *either* Student R or any of the students' representatives contacted a panel member, the panel member could file a formal charge under the Fundamental Standard for "harassment or intimidation."

Student R had not intended to contact the panel chair, but he was concerned, once again, that Graves was making a representation of a rule that did not exist, and was threatening and attempting to intimidate Student R.

Student R asked Graves to identify the rule which prohibited students from contacting panel members [Exhibit 58]. He wrote: "Could you please direct me to where on your website it states I cannot contact panel members post hearing, as I am unable to find this piece of information." Graves *ignored* the request, instead saying the student should "schedule an appointment" if he had additional questions [Exhibit 59].

Student R continued to press Graves for the rule which prohibited any contact with panel members. He wrote: "If you do not have any authority for your statement that the rules prohibit post hearing contact with the panel, then there is nothing to discuss in person. Please advise if I am in error." [Exhibit 60]

Graves responded, "You are in error," [Exhibit 61] but failed to cite any rule. He never has. For the first time, he claimed that it was the "Office of Judicial Affairs" that could "prohibit" contact with the panel, even without a rule [Exhibit 61]. And, Graves said Lauren Schoenthaler in the University Counsel's Office would back him up. Four months later, neither Graves nor Schoenthaler have provided any authority for Graves' claim.

#### Questions Raised By This Issue:

1. Is there or is there not a rule which precludes students from contacting panel members?
2. If there is no such rule, why did Graves tell Student R there was such a rule?
3. If only harassment of a panel member could potentially constitute a violation of the Fundamental Standard, why was Graves misrepresenting that *any contact* would constitute violation of the Fundamental Standard?
4. If the rules prohibit destruction of the file for a year, guarantee a transcript of the proceedings, and allow students to talk to panel members, why was Graves claiming there were rules calling for the destruction of the file, destruction of the recording of the hearing, and precluding contact with panel members? Why does he believe such rules exist? If he does not believe such rules exist, why does he claim there are such rules?
5. Was Graves attempting to cover up his conduct, or the conduct of others, by repeated misrepresentations and destruction of the file after the hearing?

6. Did Graves violate Honor Code prohibitions against intimidation of Student R from exercising his rights? If so, what repercussions has he faced?

**B. Efforts to Deal with Wrongdoing of Cammy Huang-Devoss**

On behalf of all three students, Student C's representative has attempted to determine whether the Office of Judicial Affairs has pursued charges or any action against Cammy Huang-Devoss with respect to her conduct at the hearing, including her intimidation of witness Erica Do, and her other conduct as described above [Exhibit 62]. Graves ignored these requests. No information has been forthcoming as to what, if anything, the University intends to do about Cammy Huang-Devoss.

Neither have Graves or Yuen given the students any indication they (the students) need to do anything further for an Honor Code violation to be pursued against Huang-Devoss. All three students want Huang-Devoss pursued for Honor Code violations.

**Questions Raised By This Issue:**

1. Has the University done anything about Cammy Huang-Devoss's conduct?
2. If they observe violations of the Honor Code by a faculty member during the judicial process, do the University employees (Graves and Yuen) have any obligation to act on their own?
3. Is it necessary for a student to file an Honor Code charge against a faculty member in order to initiate action against a faculty member, or should that be self-initiated by responsible University employees who observe the Honor Code violations ?
4. If it is necessary for a student to file a charge to initiate an action against a University employee who has violated the Honor Code, why, under these circumstances and after multiple requests, have Graves and/or Yuen, or University Counsel, not advised the students of this prerequisite?
5. All three students want Huang-Devoss charged with Honor Code violations. Do they now need to do anything more?

**C. Efforts to Get Information From Judicial Affairs**

When the three students and three alums decided the University Office of Judicial Affairs could benefit from a case study of these three innocent students who nevertheless were aggressively pursued and almost convicted on charges of cheating, Student C's representative

raised the issue with Graves of working together, cooperatively, to analyze what may have gone wrong in this case. This initial conversation occurred on the day after the hearing, as Graves was shredding the file. Graves said he would be happy to participate and would meet with all six of the individuals responsible for this report when they were all together on campus in February.

On December 5, 2011, Student C's representative wrote to Graves asking for the "annual reports" and other statistics promulgated by the Office of Judicial Affairs, which under the Judicial Charter [section III(F)(3)] are supposed to be shared with the "University Community" [Exhibit 63]. Apparently alumni and students are not part of the University Community as this request has been ignored by both Graves and Counsel Schoenthaler for five months.

On January 24, 2012, the Student C's representative wrote separate letters to both Graves and Yuen [Exhibits 64 and 65] attempting to schedule a meeting for February 3, 2012, when all three students and alums could meet with Yuen and Graves. The author suggested the three students and author would prepare a summary of the facts of what had occurred at the hearing and submit those in advance to Yuen and Graves, so they could agree or disagree with respect to the underlying factual predicates for this report. Graves and Yuen could make recommended changes, corrections, or additions.

The goal in reaching agreement as to the underlying facts was to avoid a dispute on facts that detracted from the important personnel and policy issues raised by this study. On this issue, Graves and Yuen chose not to participate.

From the beginning, Yuen made clear he wanted *nothing* to do with post-hearing cooperation with the three students and three alums. He responded immediately by suggesting the author should contact Lauren Schoenthaler, in the University Counsel's office, regarding the "Judicial Affairs process." Yuen has never cooperated with this process since then. Ms. Schoenthaler has not communicated anything on his behalf, although she has had all the letters to Yuen and Graves since February – three months ago.

Graves did not originally take the same position. He had said he would meet in February when he spoke to the author on November 30, 2011.

On January 27, 2012, the author forwarded a request to Graves and Yuen [Exhibit 62] requesting the following:

1. All rules that allow a case to go forward where the reporting student wishes to remain anonymous;
2. What action, if any, were the Judicial Affairs employees going to take against Cammy Huang-Devoss?
3. What procedures support Graves' position that objections are not allowed at Judicial Affairs hearings?
4. What procedures support Graves' position that cross-examination questioning is

not allowed at these hearings?

5. Under what authority Graves was proceeding when he was destroying the file?
6. All training materials for panels;
7. Statistical information concerning cases generated by the University and cases charged;
8. Documentation of any other cases, such as this, that proceeded even though there was no complaining student.

Neither Yuen or Graves has ever responded to this letter. Neither has Lauren Schoenthaler in the University's Counsel office, who has had a copy of this request since February and who promised in February "the University" would respond to all the requests. No one has. The Stanford Judicial Charter obligated both Graves and Yuen to provide much of the requested information to the students and alumni. The Judicial Charter [see Exhibit 32], Section III(F)(4), provides: "Working jointly, the Judicial Affairs and Judicial Officer will...summarize and report judicial cases to the University Community."

On January 31, 2012, the author followed up with Yuen to see if a meeting could be scheduled for February 10, 2012 to go over what happened in the hearing process [Exhibit 67]. Yuen chose not to respond. He never has.

On February 2, 2012, a letter went to Graves proposing a meeting for February 10 [Exhibit 68]. Graves had earlier said he would meet with the students. He did not respond.

On February 9, 2012, the authors again wrote to Graves, identifying 99 separate facts that the three students and Student C's representative agreed had occurred at the hearing [Exhibit 29]. The request was that Graves review these facts and see if he disagreed. The goal was to get an agreed-upon set of facts for this case study.

Graves was asked to identify those facts with which he disagreed. He has never identified any in particular. On his behalf, Schoenthaler has said he does not agree with *all* of the facts, but she, too, has never challenged any particular one.

On February 23, 2012, Student C's representative was contacted by Lauren Schoenthaler, stating she would be representing *both* Morris Graves and Rick Yuen. She asked for authorization from the students so she could speak to this author. She was quickly provided those authorizations [Exhibit 70].

All information requested of Yuen or Graves since the hearing in November has been ignored. None of the University's statistics have been supplied. None of the many "rules" cited by Graves have ever been provided.

### Questions Raised By This Issue:

1. Does the Judicial Affairs office have any obligation to cooperate with students after the process has concluded, particularly where the students and alumni have been cooperative throughout with the Office of Judicial Affairs and acquitted?
2. Does the lack of response from Graves with respect to all of his many “rules” suggest that there are no such rules?
3. Can we assume from the refusal to contest any of the 99 facts in the letter of February 9 that Graves, Yuen, and the Counsel’s office do not disagree that the three students and the author are correct in describing the facts relating to this hearing?
4. Is it University policy to not cooperate with students and alums when requesting statistical information concerning the Office of Judicial Affairs, or specific information on their hearings and representations made by the Office of Judicial Affairs? If so, why is that University policy? What objective of the University does that serve?

### **D. Efforts to Get Cooperation From the University’s Counsel’s Office On This Issue After That Office Claimed to be “Representing” Graves and Yuen**

#### **1. The Counsel’s Office Has Not Provided Any Meaningful Assistance, Either**

After Yuen and then Graves turned this matter over to Lauren Schoenthaler, the three students and three alums dealt with her.

By February 23, 2012, Schoenthaler communicated that “the University” would be responding to requests for information [Exhibit 70]. She wanted releases. Two were provided [Exhibit 69]. Schoenthaler said all letters would receive a response [Exhibit 70]. She just never said when. As of May 16, 2012, neither Judicial Affairs nor Schoenthaler had responded to any of the requests, starting with the request in the initial letter of December 5, 2011.

On February 27, the authors corresponded with Schoenthaler, introducing themselves and this case study [Exhibit 71]. That letter enclosed the unanswered letters to Graves and Yuen of December 5, January 27, and February 9.

Schoenthaler asked for additional time, claiming conflicts and trips [Exhibit 73]. However, on March 2, 2012, she assured the authors she would be “responding to your letters” [Exhibit 76]. Ten weeks later there had been no response.

Student C’s representative arranged to speak with Schoenthaler on April 3, 2012. Student C’s representative stated he wanted to submit this report to Stanford by May 1 and would need

any input from her by the 20<sup>th</sup> of April.

Student C's representative asked Ms. Schoenthaler if she could get the information that had been requested from Yuen and Graves. She said she would, but did not know if she had the letters, although her February communication made clear she did.

Schoenthaler also suggested she did not have releases. A release had previously been sent. As with the letters, she asked the release be sent once more. Three releases were sent, one for each student [Exhibit 73], on April 3, 2012.

The authors then *again* forwarded the letters of November 30, 2011, December 5, 2011, and January 27, 2012 to Schoenthaler on April 3, 2012 [Exhibit 73]. Schoenthaler promised she would work with the authors to get them the requested information by May 1, 2012. Over six weeks later there has never been any response.<sup>7</sup>

#### Questions Raised By This Issue:

1. Does the Counsel's office represent Yuen and Graves?
2. Does the University have a conflict in providing attorneys to Yuen and Graves?
3. Why do Yuen and Graves need an attorney?
4. Although the Judicial Charter allows students to have representatives and they did have in this case, Yuen refused to directly communicate with those representatives even though the students asked that he communicate with the lawyer. He always communicated directly with the students even when the inquiry would come from their attorney representative. Nevertheless, he became upset when he received direct communications from the attorney after he had referred the attorney to his lawyer. Why does Yuen have a double standard?
5. Should the University's Counsel's office be cooperating with these three students who were acquitted of charges, when there is evidence of serious misconduct by University employees?
6. Should the University's Counsel's office be cooperating with the three alums, all of whom have shown their interest in, and commitment to, Stanford by making substantial volunteer and monetary contributions to the University?

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<sup>7</sup>This report was originally finalized May 17, 2012. It was then reviewed by the authors before submission. On May 23, 2012, Ms. Schoenthaler emailed to say she had been "reviewing your concerns." She proposed a meeting with Chris Griffith. In fact, as Ms. Schoenthaler was acutely aware, the authors have always intended to express their concerns in this case study that Schoenthaler understood they wanted to complete by May 1, 2012. In her May 23 communication, she failed again to respond to the "99 Facts." She has also failed to respond, as promised on February 23, 2012, to any of the outstanding requests for information.

7. Is the Counsel's office cooperating with Yuen and Graves in an effort to sweep this case under the rug in the hope the six students/alums go away? If not, have they nevertheless created that appearance?

## 2. Judicial Affairs' Perception of the Judicial System as Expressed Through Counsel

In a conversation on April 3, 2012 with the author of this report, counsel Schoenthaler initiated the conversation by making the following statement:

“...you have to remember that **this is a discipline system designed to correct bad behavior.**”

If Ms. Schoenthaler speaks for the Judicial Affairs office with this statement, it could explain much of the conduct in this case. If the system presupposes there has been “bad conduct,” then perhaps the office's handling of the case is perceived as the ends justify the means.

In fact, **none of the three students had ever even entered into a discipline system.** The Judicial Affairs process at Stanford is an administrative process designed to determine whether charged individuals have committed bad conduct in the first instance.

Section II(A)(3) of the Judicial Charter provides:

“Students accused of misconduct have the following rights:

...

(3) To be considered innocent until found guilty beyond a reasonable doubt.”

### Questions Raised By This Issue:

1. Does counsel Schoenthaler's comments reflect the views of Graves and Yuen in the Office of Judicial Affairs, the views of the office of the University Counsel, or just her view?
2. How can anyone associated with the Judicial Affairs process at Stanford University have such a view of the University's judicial process?
3. Does the University assume “bad behavior” has occurred just because a student has been charged?
4. Why does the University see its judicial system as being designed to correct bad behavior as opposed to determining whether bad behavior has occurred in the first

instance?

5. Who trains the Judicial Affairs people such that they could have this perception of the judicial process?

### **3. Counsel Next Stated the Students and Representatives Should Keep In Mind That the System Operates the Way It Does Because the Students “Want It This Way”**

Counsel Schoenthaler next told the author of this report that the students like the system the way it is, appearing to defend the conduct reflected in the “99 Facts,” which she had already seen. It is unclear why she believes any student would support any of the misconduct which occurred in this case.

#### Questions Raised By This Issue:

1. The Judicial Charter provides numerous protections for students that were not followed in this case. Do students support not following the Judicial Charter?
2. Do students support an evisceration of the Judicial Charter by Graves, Yuen, and others?
3. Would students be supportive of the way this process was handled?
4. Should we hold a student symposium to gauge support for the misconduct identified here?

### **4. Counsel Defended Violation of the Rules**

Student C’s representative and counsel Schoenthaler discussed just one aspect of this report during their conversation on April 3, 2012. It was the issue of destroying the file.

The Judicial Charter requires the file be kept for a year. In addition, every student, upon request, can receive a transcript of the hearing, which would require maintaining the tape recording. Nevertheless, University Counsel Schoenthaler *defended Graves’ efforts to secretly shred the file* less than 24 hours after the hearing. She said that it was designed to protect the students, because employers will sometimes ask for the files.

Let’s think about that. First, the rules require the file be kept for a year. It really does not matter what counsel Schoenthaler, Graves, or Yuen believe is in the best interest of the students. Their job is to follow the rules, just like everybody else. If they think the rules hurt the students, they should go to the appropriate parties and see if they can get the rules changed.

Second, an acquitted student would be happy to have an employer look at the file. It would support what the student is telling the prospective employer about their conduct in the

case.

The easy way to deal with this is to change the rules *if there is interest in doing so*. Alternatively, students could be asked to sign a waiver allowing the documents to be destroyed early. Instead, here the officials charged with protecting the University's academic integrity break the rules and then justify their behavior. And, the University Counsel's Office defends them, instead of defending the rights of the students.

## **5. Counsel Made a Case as to Why Students Need Attorneys to Represent Them**

The six authors sought to meet with Graves and Yuen. Both ultimately refused, referring the matter to University Counsel Lauren Schoenthaler. As to the reason Graves and Yuen wanted a lawyer to speak for them, Schoenthaler wrote:

“I would hope that you would appreciate your *appearance of power* to my clients...and respect their wishes to include their attorney in a dialogue with you.” [Exhibit 72; emphasis added.]

Thus, while Graves and Yuen readily acknowledged their intimidation at a mere request to participate in a dialogue of *their* conduct, and wanted their attorney to speak for them, the Judicial Charter precludes the students from having the same right when their very status as a student and life's reputation is challenged. Presumably, Graves and Yuen will now support an amendment to the Judicial Charter to allow students to have their representatives speak for them in the judicial process.

### Questions Raised By This Issue:

1. How can University officials ignore rules, on the basis that their motives are good?
2. Do University officials not have to follow the rules like students?
3. Why is the Counsel's office supporting the violation of rules that are designed to protect students?
4. Why would the University not seek a waiver from the student if it wanted to destroy the files early?
5. If Graves was just doing what students wanted, then why was Graves arguing with the Student C's representative the day after the hearing when the author, clearly a representative of one of the students, was insisting that the file be preserved?

## X

### INFORMATION YET TO BE OBTAINED AND NEEDED FOR EVALUATION

The following information was requested from Judicial Affairs subsequent to the hearing. All three letters that sought information were also provided to the Counsel's office. None of the requests have received any response.

#### November 30, 2011 – Letter to Morris Graves and Rick Yuen [Exhibit 54]

- A request was made to preserve the email communications between Graves/Yuen and anyone else on the case.
- It was not anticipated these would be provided to the six of us, but we requested preservation of the emails so that appropriate University officials could review them after viewing the report. The goal was to determine if there was any collusion between the two employees of the Office of Judicial Affairs and/or others, including Ms. Huang-Devoss and Ms. Widmer.

#### December 5, 2011 – Letter to Morris Graves [Exhibit 63]

- All annual reports published each year on Honor Code cases by the Office of Judicial Affairs
- Total number of cases and the outcomes
- Total number of cases reported
- Total number charged
- The outcome of the cases charged and how those were resolved (for example, plea/hearing/appeal/etc.)

#### January 27, 2012 – Letter to Morris Graves and Rick Yuen [Exhibit 62]

- Identify any rules other than the Honor Code and Judicial Charter that provide anonymity to the Reporting Party
- If there are no other such provisions, is it the position of the Office of Judicial Affairs that the student in this case withdrew his or her charge?
- If so, please explain why the case was allowed to proceed.
- Has there been any follow-up with Ms. Huang-Devoss by anyone regarding her questioning of Erica Do?

- Ms. Huang-Devoss asked one of the students about potential cheating by some of the witnesses (something she knew had not occurred, although one student had been suspected but was not charged). Has this potential breach of confidentiality been pursued by anyone subsequent to the hearing?
- Did Ms. Huang-Devoss submit a statement as required by your procedures before testifying?
- Did the charged students receive that statement?
- Can you identify that statement?
- If you provided it to the students, please provide the documentation that shows you did so.
- Where in the rules promulgated by Stanford University is there a provision that students or other participants in Judicial Affairs hearings cannot object to irrelevant or other objectionable evidence?
- Please identify the document and the section that precludes objections, as Morris Graves stated at the hearing.
- Where, anywhere in the rules promulgated by Stanford University as it relates to Judicial Affairs hearings, does it describe the types of questions students may ask?
- Please identify the exact document and section which discuss the types of questions allowed and not allowed.
- Are training materials for panel members available to the Stanford community, including students and alumni?
- If so, provide a copy of the training materials.
- Provide the statistics of how many cases come to the Office of Judicial Affairs, and how many of those are declined versus how many are actually charged.
- Provide a breakdown for the last three years with respect to the number of cases charged that were brought by a non-student being the complainant versus those cases charged where a student was the complainant.

## **XI**

### **RECOMMENDATIONS**

## 1. Personnel Action

The Office of Student Life should review this case and take any personnel action it deems appropriate.

## 2. Recommended Judicial Charter Changes

### A. Students' Representatives Should Be Allowed to Defend the Case on the Student's Behalf

Currently, students may select anyone to serve as their “representative,” but Stanford will only deal with the student. The representative may sit in on the hearing, but cannot participate.

Students should be allowed to retain attorneys, or any representative of their choice, and they should be allowed to participate in the process. Under the current rules, students are entitled to representatives, but they can play no role other than following along and whispering in students' ears.

Counsel Schoenthaler's comments to Student C's representative were most telling. She was arguing to Student C's representative how intimidated or threatened the Director of Judicial Affairs and the Judicial Officer were in dealing with an attorney, an attorney who had already made clear that no litigation was pending. Ms. Schoenthaler conveyed to Student C's representative that under such threatening circumstances it is understandable that these gentlemen would want an attorney *to speak for them*.

Students are in an even more intimidating and threatening situation. Many of them do not tell their parents. They are confronting life altering charges, often alone. They do not know who to turn to for representation. Then they are told their representative can play no active role in the hearing.

Not only should students be allowed to have representatives act on their behalf, the University should assume the obligation to develop sources of representation for these students. This could include local pro bono attorneys or alumni who are willing to serve as representatives.

In the criminal system, the lowest potential infraction (a noise complaint, for example) allows representation by an attorney. Yet, a student can be suspended from school, something that will be carried with him or her for the rest of their life, and Stanford says they cannot have an attorney. Enough already.

Even if a change is not made in the Charter for this purpose, this practice of attempting to separate the student from his representative (Yuen's effort, whenever there was an impasse, to have the students come in and talk when their representative would not be involved) needs to be stopped now.

### B. The Practice of Student Chairs Should Be Ended

The Judicial Charter now provides that a student must chair the panel that hears the Honor Code violation cases. We recommend this practice be changed.

The student population is transitory. Any student serving as a panel member, and a potential chair, will be with the system only a year or two at best. With limited experience and background, we do not believe there is any way a student can be properly trained to carry out the extremely important functions of actually chairing the appellate panel.

A method needs to be developed to substantially improve the quality of the chair position. We are not suggesting this necessarily has to be a faculty member. Some schools have deans serve as their panel chairs, making them non-voting members.

Students, at the adoption of the current procedures, felt strongly about student control, presumably to protect students from overzealous and/or misguided University employees. Here, the student chair was no match for the University employees.

The chair position is very important. It is the panel that is the ultimate authority on the relevance of evidence (although Rick Yuen was asserting himself into that role in this case). That presumably should be carried out by the panel chair. Whoever makes determinations on excluding or admitting evidence should know an awful lot about the judicial/administrative system. They should understand the concept of relevant and irrelevant evidence, as well as the prejudicial impact evidence can have on parties. They should be even-handed, fair, and unbiased.

Most significantly, they should be well-trained. They need to be able to spot misconduct. They need to know what they are doing. This chair did not know what he was doing and he was getting no help from the Office of Judicial Affairs.

This is a serious issue. A better system needs to be established for guaranteeing that the chair position will be a competent, qualified, and experienced person who has handled numerous matters and appreciates the importance of what they are doing.

### **3. Judicial Affairs Processes**

#### **A. Training**

Nothing in this case suggests that anybody involved in the process (panel members, panel chair, Director of the Office of Judicial Affairs, Judicial Officer, faculty members) were properly trained. The chair was not competent. The panel's demeanor was at times awful. The University employees' conduct is described in the report.

People need to be trained on how to carry out one of the most important functions of the University. The judicial affairs process is established to guarantee the integrity to the University's academics; to do so, the system itself must have integrity. This system, as experienced by these students and demonstrated in this case study, did not accomplish that.

The University needs to review, top to bottom, how we train each component position of the judicial affairs process and develop a system to train individuals, update that training as necessary, and monitor the training to make sure it is getting done or that when problems arise, they can be addressed either by taking people out of the system or bringing them back in for additional training.

This process needs to be supervised and audited on a regular basis so that people do not develop habits that are not consistent with the rules. This may require supervisors sitting in on various aspects of the case, or communications both during and after the process with the people that go through the system.

No one has ever asked these students about their experience. They have had to initiate this contact. They had a horrible experience. There was obvious misconduct. Yet, the University has no system to elicit this from them the information necessary to see if the people who are running the system are doing their jobs.

B. Pre-hearing Issues

(i) The Charging Process Must Be Improved

We need to look at how many cases come to Judicial Affairs and how many are charged. Is the office charging everybody? They are not supposed to. The Judicial Charter contemplates that unmeritorious cases will not be charged. Yet, in this case, three unmeritorious charges were charged. As to Student R, there was no evidence at all. As to the other two students, there was only one person, 45 feet away, who saw some movement. There were 15 witnesses who saw nothing. The comparison of scantrons to test booklets showed no cheating. The comparison of the three scantrons showed no cheating. This was a case that should not have been charged.

Responsible individuals at the University should develop standards which would have to be followed by the Judicial Officer. They would have to answer for each charging decision. A system of monitoring should be created so there could be supervision and auditing of the charging decision.

(ii) Pre-hearing Evidentiary Determinations

Right now, Rick Yuen has led people to believe that he is the person who will make evidentiary determinations. The only one he made appears to be redacting information about Student X (while leaving Student X's name in the document). However, Morris Graves pointed out, correctly, that it is the panel itself that has the final say on relevance of evidence.

If procedures require that the panel itself makes the determination of relevant evidence, then you need to create a mechanism for it to do so. Every judicial and administrative process has some way to bring pre-hearing motions to exclude evidence. If you do not deal with it pre-hearing, then everybody on the panel hears it. We see what happened here, when Student X came up even with a cautionary instruction. People came back to Student X all day.

A lot of schools have the presiding officer of the panel be a non-voting member. This is usually a high level University employee. He or she then makes evidentiary rulings that are submitted in some organized fashion before the hearing. The rules spell out when those may be brought. The panel chair, or other designated person, makes the ruling. The parties abide by the ruling and the panel does not need to hear the prejudicial material if it is excluded

(iii) Preventing the Judicial Officer or Other Employees From Becoming Advocates for Conviction

In this case, there was an appearance to the students that Judicial Officer became an advocate for conviction. The University needs to create strict guidelines for the conduct of the Judicial Officer. Is he or she merely to accumulate all evidence that may exist or, as in this case, can he go out and create new evidence himself? If so, is he allowed to look at that new evidence and disclose it only if it is helpful to conviction? Or, as would appear to be the case under the Judicial Charter, is he required to share the results of that evidence with everybody even if it hurts the chance of a conviction?

Here, the Judicial Officer created some evidence (an expert), but then he made the decision not to use it, and did not allow anyone else to use it.

C. Hearing Issues

(i) Encouraging Defense Witnesses

Students should not be told (as was the case here) that they cannot contact witnesses. They should be *encouraged* to do so. The Judicial Charter allows it. The University needs to immediately root out any vestiges of the system created by Morris Graves where witnesses are discouraged, in initial emails, pre-hearing and at the hearing, and during their testimony.

As with taking affirmative steps to get representatives and lawyers for the students, the University should be taking affirmative steps to encourage the students to identify and locate witnesses. The HumBio Department numbers its exams so seating charts can be created in cheating cases. Why is that done, if they are never used? Why do students not know this is being done?

The University should develop a method so that a seating chart can be prepared after every test. The tests can be numbered; students should be required to write their names on the exam booklets before the booklets are turned in. They should be asked to write the names of the students to their right and left so that an exact seating chart can be recreated.

If a student is accused of cheating on an exam, prepare a seating chart, provide identifying information for surrounding students, and then give that to the accused student so he or she can go out and talk to everybody who sat around them. Stanford students are required to report cheating if they see it. It is an Honor Code violation not to. Consequently, non-reporting students did not see cheating, and a student ought to be able to put on those witnesses and into evidence.

Treatment of witnesses must be dramatically improved.

(ii) End the Interference in the Examination of Witnesses

Students need to be assured they will be allowed to question the witnesses they way they want to question them. Cross-examination must be allowed. The concept of objections needs to be understood by everybody, including the students (so they can make objections), the panel (so they can respond to them), and witnesses so they know how to deal with materials that have been ordered out of evidence.

(iii) Objections

Allow them. Educate the panel, chair, and parties on what they are. Assist with them. Determine who rules on them. Act on them. Enforce the rulings.

D. Post-hearing Issues

Procedures provide that each student will receive a transcript of the hearing and that the record will be maintained for a year. A better mechanism obviously needs to be put in place to ensure that this actually happens. Any destruction of the file should be only with the permission of the students during a certain period of time.

E. Supervision

The Office of Judicial Affairs needs to be supervised. A mechanism should be created to obtain feedback from participants in the process, including panel members, reporting parties, and students.

There needs to be a mechanism for auditing all aspects of the program's functions, from the handling of matters from departments, to the charging decision, to pre-hearing rulings, and the hearing itself. This supervision and auditing needs to occur in every case. It needs to occur at multiple phases of the case.

F. Honor Code Violations by Faculty or Staff

These students would have been suspended from school had they lost. Yet, to the authors there appears to have been misconduct by the faculty member involved and even the staff. What mechanism exists at Stanford for addressing their wrongdoing, if any? This needs to be addressed by the University so it is self-enforcing and does not require six months of communications to the University to potentially get some action for Honor Code violations by a faculty member.

## CONCLUSION

There was no evidence to sustain a charge of cheating against any of the three students in this case. The faculty involved refused to take any steps designed to test the claims of the anonymous Student X when the matter was first brought to their attention – if it was even brought to their attention by a student. They rejected Student C’s pleas that they do so. Had they done that, they would have known there was no case to charge.

The students expended a considerable amount of time to bring all evidence to the Judicial Officer. He appears to have ignored it. He charged three cases that never should have been charged.

Thereafter, the students entered a nightmare. According to the attorney for the Judicial Affairs office, they were now in “a discipline system designed to correct bad behavior.”

If this is the perception of the Judicial Affairs office of its mission at Stanford, it alone reflects a fundamental deprivation of the rights afforded under the Stanford Judicial Charter. These student are presumed innocent unless and until they are proven guilty. Discipline does not apply until such time as they have been determined to have committed what the University refers to as “bad behavior.”

This mindset permeated the case from the beginning. From the very first contact with the students until the very last contact (or, more accurately, the refusal to contact), the Judicial Charter was turned on its head.

Stanford has a good Judicial Charter. This case may suggest only a few needed changes to the Charter as discussed above. However, we believe there are pervasive and systemic problems in the enforcement of the Judicial Charter by the Judicial Affairs office that need to be addressed immediately.

We also believe the University should also reopen every case that has been handled by the current employees in the Judicial Affairs office. It is difficult to imagine that other students have not been confronted with similar problems, also from start to finish. Charges should be reversed where appropriate.