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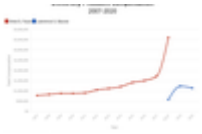

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For Ad Board, Burdened Proof?

By Mercer R. Cook and Rebecca D. Robbins, Crimson Staff Writers
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Part III of a four-part series analyzing how successful the 2009-2010 reforms have been in making the Administrative Board's disciplinary process more educational, transparent, and empowering for accused students. Part I, Part II, and Part IV were published Oct. 23, 24, and 26.

Despite its best intentions, Harvard's Administrative Board has long had an image problem.

"The deans and the members of the Board take very seriously confidentiality and privacy, so I think people think there's this Star Chamber-esque ethos that pervades the Board," said former Ad Board member Paulette G. Curtis '92, alluding to the notoriously corrupt and secretive Renaissance-era English court.

In fact, Curtis said, "students might be surprised by how thoughtful the discussions are and how long they actually are." When she served on the Board during her 2002-2008 tenure as resident dean of Dunster House, Board members would sometimes spend up to an hour and a half talking about a single case.

To combat the widespread negative perception that Curtis described, the committee charged with reforming the College's disciplinary body in 2009 said

civil court, to explain to the public the level of proof it needed to find a student responsible for a disciplinary violation. The committee came up with the words "sufficiently persuaded."

At the same time, it advocated for moving student testimony from a hearing before the whole Board to a small subcommittee. That reform, some say, has made it difficult for deliberators to truly hear enough evidence to ever be "sufficiently persuaded."

This fall, as students implicated in the current Government 1310 scandal try to clear their names, critics say the closed deliberations in the Forum Room on the third floor of Lamont Library on Tuesday afternoons may not really offer due process.

SETTING THE STANDARD

Two years after the implementation of the formal standard of evidence, Jeff Neal, a spokesperson for the Faculty of Arts and Sciences, deems the reform a success. The new standard of evidence "has made the process more clear to students," he wrote in an emailed statement.

All 30 current members of the Ad Board declined to comment or did not respond to requests for comment for this series.

Despite Neal's assertion that the reform has achieved its goals, some who have been connected to Ad Board hearings say they still feel left in the dark.

Biology professor Richard M. Losick, who has advised multiple students facing the Ad Board, said that he is dissatisfied with the term "sufficiently persuaded." "It could mean anything," he said.

Matthew L. Sundquist '09, a former Undergraduate Council president who served on the reform committee, said the group believed the wording it came up with was "demonstrative and indicative of the care and consideration that we thought would go into decisions."

But Michael R. Schneider, a lawyer who has consulted with students involved in Ad Board cases, pointed out that Harvard's standard of proof has no legal

recognized terms—like “beyond a reasonable doubt” or “clear and convincing evidence”—so that students could better understand how they are being judged.

Neal, who declined to speak by phone or in person about the Ad Board, wrote that the Board does not use typical legal language because it “is not a judicial board and therefore does not use judicial procedures.”

However, many peer universities that do not identify their discipline systems as judicial do use more widely accepted terms as their standards of proof. A Stanford student must be judged guilty “beyond a reasonable doubt,” commonly thought of as a 95 percent certainty test. At Dartmouth and Columbia, there must be a “preponderance of the evidence”—typically considered more than 50 percent proof—that a student is guilty.

When Harvard’s Ad Board deliberates under its “sufficiently persuaded” standard, it requires a simple majority of its roughly 30 members or, for cases of required withdrawal, a two-thirds majority.Students who have gone through the process said they had trouble understanding the Ad Board’s standard of proof.

Natasha, a student who went before the Board for a non-academic disciplinary case and requested that her name be changed because she did not want it known that she had faced Board proceedings, said she had no idea what criteria she was being judged upon.

“Do they have a rubric I didn’t see, or were they using their judgment?” Natasha recalled wondering as she awaited her decision. “Were they basing this just off of my statement and my interview, or out of prior knowledge that they had about me?”

Daniel, a student implicated in the current Government 1310 cheating scandal, said he was dismayed when his resident dean told him the decision would come down to the “gut feeling” of each deliberator.

“‘How do I influence your gut?’” Daniel recalled wondering. “If there’s no burden of proof, you don’t even know what you have to do.”

POWERFUL PANEL

In a second effort intended in part to improve students' perception of the Board, the reform committee recommended decreasing the number of people present at an accused student's Board interview.

Although the new subcommittee hearings have been praised by some for making the Ad Board process less intimidating, critics say that the reform has had the unintended consequence of reducing the amount of evidence directly available to the full Board.

Previously, most hearings were conducted with all of the roughly 30 members of the full Board present. Now, small subcommittees of only two or three Board members conduct the student interviews for each case.

Sundquist said that the shift was motivated by two factors: a desire to make students less anxious about the proceedings, and a sense that the full Board was not needed at every step in the process.

Following a subcommittee student interview, the members prepare a report listing their findings and recommending a punishment. The full Board then meets, without the student present, to vote, taking into consideration the subcommittee's report and other evidence.

Curtis, who left Harvard before the new reform was implemented, said she thinks much is lost in the new interview format.

"It often worked in a positive way for the student that they were able to present their case in their own words and answer questions directly," Curtis said. She added that she often reflected on a student's presentation and demeanor when casting her vote.

Furthermore, now that Board members only sit in on a small fraction of interviews, Curtis said that she is concerned they have less opportunity to accrue expertise in the fact-finding process.

"Because the full Board is no longer involved in the preliminary stages or earlier on in the process, students might feel that the deck feels loaded, even if it's not," Curtis said.

communicate in writing with the Board members who will decide his fate, and he wishes could "look every single one of those guys in the eye" as he pleads his innocence.

Neal wrote that although no student has successfully appealed a decision of the Board recently, the full Ad Board "often" requests more information from the subcommittee before making a decision and "sometimes" issues a different punishment than that recommended by the subcommittee.

HARVARD LAW?

Critics say that together, the uncommon standard of proof and the small interview format fail to create an atmosphere in which students are treated as innocent until proven guilty.

Daniel said he feels he is presumed guilty because he has not yet been proven innocent. He said that the Board has asked him to provide his Government 1310 notes and study guides—materials that he threw away at the end of last semester. Daniel said he is frustrated that this lost evidence seems necessary for him to clear his name.

When asked whether the Ad Board operates under a presumption of innocence, Neal wrote, "The Administrative Board simply works to understand what happened. The board seeks as much information as possible to determine how events transpired."

But Gary Pavela, a former director of academic integrity at Syracuse University who has also consulted with other institutions on disciplinary proceedings, emphasized the importance of giving students the benefit of the doubt even in non-judicial systems.

Losick agreed. "To say that it's solely educational is a really unsatisfying rationale for not having due process and a fair, transparent system," Losick said. "I'd much rather be accused of something in the Middlesex Courthouse than at the Ad Board."

Furthermore, Losick said that the Board, as part of an academic institution, should subject charges of misconduct to the same rigorous analysis required in an academic thesis.

"This is an institution of learning and discovery, where nothing matters more than the truth," he said. "Therefore, there should be a high standard of establishing something is true."

But to Peter F. Lake '81, a Stetson University professor who studies higher education law, an academic setting does call for a different mindset than a courtroom.

"I think it's essentially important these days for academic institutions to preserve what they do best and to not be hyper-legalistic," Lake said.

Yet consequentially, Lake said, Harvard's academic fact-finding process is ill-equipped to handle a case the size of Government 1310.

He said, "It just feels to me like someone has brought a 600-pound turkey home for Thanksgiving and the oven's not big enough."

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