

- [3] *Dude, Where're my Rights? (Part Po-Po)*; 9/20/2007 Chronicle editorial; detailed the effects of recent changes to the judicial code on students' interactions with local law enforcement.

Dude, where're my rights? (Part Po-Po)

Duke took quite a bit of flak during the past year because it failed to stand up for its students' due process rights.

It seems someone was asleep at the wheel, as the University (vis a vis the Office of Judicial Affairs) may now be actively undermining those rights through its own policies and practices.

In the fall of 2005, "Judicial Affairs began systematically initiating formal disciplinary action for all allegations of undergraduate misconduct occurring off-campus," Director of Judicial Affairs Stephen Bryan wrote in a 2006 memorandum. Previously the University only pursued off-campus violations that constituted a "direct or indirect threat to the University community."

Elliott Wolf 9/20/07 7:47 AM

Comment: Memorandum accompanying 05-06 disciplinary statistics, page 1

This practice was made possible by a Durham Police Department policy requiring officers to forward citations issued to students to Judicial Affairs and a similar Alcohol Law Enforcement Agency policy.

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Comment: 1999-2000 bulletin, page 18

"Duke asks us that we keep them informed. We make a copy of the booking sheet and forward it to the [District] Captain," said Durham Police Sgt. Dale Gunter, a supervisor in the police district surrounding East Campus.

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Comment: 9/17 interview with Sgt. Gunter

In itself, this practice is little more than a transparent, petty attempt to pacify members of the Durham community at students' expense. In conjunction with other policy changes enacted between 2000 and 2006, however, it creates a dangerous set of incentives for law enforcement agents that undermine crucial, Constitutionally-imposed limits on their behavior.

When dealing with any suspect, an officer must (1) respect his/her right against unauthorized search and seizure [fourth amendment], (2), collect evidence sufficient to prove his/her guilt beyond a reasonable doubt [common law rooted in the fourteenth amendment] and (3) personally bear witness against him/her [sixth amendment]. No violations of these or a myriad of other Constitutional protections can be used against a defendant.

The government is not allowed to break the law in the course of enforcing it, and the Constitution was carefully crafted to ensure that government officials have no incentive to do so. This is America.

Except, apparently, in the case of Duke students. Officers know that any one of us can be punished even if they fail to afford us our most basic of Constitutional rights. The judicial code has never required that students be proven guilty beyond a reasonable doubt, and the other two of the aforementioned protections were expunged from the code.

Consistent with the fourth amendment, the 1999-2000 Judicial Code explicitly excluded “evidence obtained through unlawful search and seizure.”

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Comment: 1999-2000 bulletin, page 32

The University’s current position with regard to such evidence: “We will not ignore information because some other agency obtained it illegally. Our interest as an educational institution is education,” Vice President for Student Affairs Larry Moneta said. To that end, the University has pursued judicial action against students on the basis of illegally obtained evidence on numerous occasions—most notably against 75 students cited by Alcohol Law Enforcement agents in 2005 following an illegal search of a home in Trinity Park.

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Comment: 8/31 interview with Larry Moneta

And in the 2006-2007 judicial code, *written the year after the lacrosse incident*, a student’s right to “confront any witness presenting information against him or her” was downgraded to a right to “rebut” witness testimony. This allows the University to, among other things, take action against a student on the basis of a police report without requiring the officer to personally corroborate the facts of the case or be confronted by the accused.

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Comment: 2005-2006 bulletin, page 44

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“I’ve never been summoned [to a hearing] and we don’t do that. I can’t tell you about any officer that has,” Gunter said.

At the very least, the University is not doing everything in its power to ensure that Duke students are afforded the same rights as every other Durham resident. At the worst, it is actively encouraging law enforcement officers to violate students’ rights by providing a means to punish students with neither due process nor accountability.

Where we stand on that continuum is wholly dependent on the integrity of law enforcement officers, whom University officials inexplicably, and blindly, trust.

“Overall we have expectations that officials—be them university, city or state—respect appropriate parameters in carrying out their duties,” Bryan wrote in a March memorandum denying a Duke Student Government request to exclude illegally obtained evidence from University judicial proceedings.

Elliott Wolf 9/20/07 7:51 AM
Comment: Response to 3/28 request from DSG (memo from me)

Last week, Bryan completely discounted students’ well-documented complaints of mistreatment by law enforcement officers, arguing (circularly) in the Herald-Sun, “given that a lot of these students are under the influence of alcohol, there’s a propensity to question whether they have an accurate perception of what happened.”

Elliott Wolf 9/20/07 7:52 AM
Comment: 9/13 Herald Sun story, “sweeps net charges for 22 at Duke, complaints,” by Ray Gronberg.

“For the administration to take the position that students are not being mistreated, I think they have their head in the sand,” Bill Thomas, a local attorney who successfully suppressed the evidence obtained in the illegal ALE raid, said.

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Comment: 9/17 interview with Bill Thomas

He added, “Given the events of the last year and a half, one would certainly think that Duke University would have a great appreciation for due process.”

One would hope.

Next week: the coup de grace. All documents on which this column is based are online at <http://www.duke.edu/~egw4/>