

[4] *Dude, Where're my Rights? (The Coup de Grace)*; 9/27/2007 Chronicle editorial; summarized changes to the judicial code and their overarching implications.

Dude, where're my rights? (The Coup de Grace)

The catatonic horse I've been beating for the last three weeks will be dead by the conclusion of this column. I promise.

A quick recap: Since 1999, the Office of Judicial Affairs has watered down or eliminated every major due process right afforded students facing adjudication; it has so broadened its policies and procedures that almost any student could be summarily subjected to judicial action for any reason; it has eliminated all representative student involvement in making and enforcing undergraduate policy; and lastly, it has begun colluding with local law enforcement in ways that arguably undermine students' basic constitutional rights.

Elliott Wolf 9/27/07 5:07 AM

Comment: 9/6 article

Elliott Wolf 9/27/07 5:07 AM

Comment: 9/13 article

Elliott Wolf 9/27/07 5:07 AM

Comment: 9/20 article

These changes were detailed in my three previous columns, posted at <http://www.duke.edu/~egw4/>. What happened is clear. Why it happened is not.

Director of Judicial Affairs Stephen Bryan, Dean of Students Sue Wasiolek and Vice President for Student Affairs Larry Moneta offered varying justifications for these changes. I gave Bryan a chance to explain them from Judicial Affairs' perspective in this space next week, but he declined. A rough transcript of my interview with him, in which he defended the changes while frequently contradicting himself and making demonstrably false statements, is posted online.

Elliott Wolf 9/27/07 5:09 AM

Comment: Email exchange on 9/4

The sole cogent rationale presented was the belief, as stated by Bryan, that a system with enumerated procedural rights and stringent procedures precluded students from "[accepting] responsibility for their behavior, and we can't get to the ultimate goal of helping students learn from their actions and help them be better citizens and think through their moral development."

Elliott Wolf 9/27/07 5:09 AM

Comment: Interview with Bryan, Pg 5

This pits Student Affairs' doctrine against every basic tenet of Western Civilization and, as dramatically demonstrated by Duke Student Government, the better judgment of our peer institutions.

Elliott Wolf 9/27/07 5:14 AM

Comment: 9/6 article by Nate Freeman – "Document shows decrease in rights"

Faithfully fulfilling the role of "bureaucrat," Judicial Affairs has managed to expand its role to include lawmaker, investigator, and in all cases that are handled through the administrative hearing process, judge, jury and executioner. It has amassed more power than any one entity should have, particularly without any codified limits on its authority.

Bryan was correct in arguing that, legally, "we don't have to give you any rights." As he noted, students have "a contractual relationship" with the University, and we agree upon matriculation to abide by the University's policies, whatever they may be. In making that argument, however, he devalues students' status as members of the University community, suggesting that we aren't entitled to even a semblance of self-determination or an assurance that we won't be jettisoned at the whim of the administration.

Elliott Wolf 9/27/07 5:10 AM

Comment: Bryan Interview, page 5

Elliott Wolf 9/27/07 5:11 AM

Comment: Ibid, 5

But students once were.

The protections Judicial Affairs deliberately expunged from the code ensured that students were presumed innocent and treated as such; they afforded students who were actually innocent every opportunity to exonerate themselves; they reassured students that they would not be subjected unduly to judicial action; they helped ensure law enforcement officers and University officials had no incentive to overstep their bounds; and they invested the wider student body in the Undergraduate Judicial System.

No self-respecting bastion of academic freedom should voluntarily dismiss these ends, particularly Duke at this point in its history. And given that the vast majority of students adjudicated probably did violate University policy or the law, procedural protections formerly precluded critics (like me) from raising questions about the fairness and accuracy of a process that is ultimately indispensable for the University.

All of this is a significant price to pay to preserve the “teachable moment,” as Bryan described it, that a student being adjudicated experiences. But ironically, Judicial Affairs has greatly undermined the very thing it was trying to cultivate.

Elliott Wolf 9/27/07 5:11 AM

Comment: Ibid, 6

A failure to respect basic due process rights is almost certain to engender frustration and resentment, rather than genuine contrition. Convicted students who were treated fairly and respectfully by the judicial system can do little else besides “think through their moral development.” Conversely, those who felt “Nifonged” by a complete disregard for due process have every reason to be frustrated about the system, not about their alleged misdeeds.

Elliott Wolf 9/27/07 5:12 AM

Comment: End of above quote

And by expunging the University’s equivalent of the rule of law, Judicial Affairs is now using violations of University policy and the law (namely illegal searches and seizures) to “educate” students about the importance of upholding University policy and the law.

Elliott Wolf 9/27/07 5:12 AM

Comment: University expunged protections preventing them from using violations the 4th amendment or the University statement on privacy to adjudicate students.

Some education.

Thankfully, following a request from DSG President Paul Slattery, Dean of Undergraduate Education Steve Nowicki has agreed to “bring this dialogue out into the open and take a careful look at it.” All we have to do is look to our past and to our peers.

Elliott Wolf 9/27/07 5:13 AM

Comment: 9/20 article by Nate Freeman – “Nowicki to address judicial policy”

But until that happens, the Undergraduate Judicial System warrants neither our support nor our cooperation.

Until written protections are in place to ensure that accused students are treated fairly, students should resist cooperating with the system in every way possible. Until we have a judicial system worthy of Duke University, staff and faculty members should think twice about referring students to the one we have. Until the University sees the value of due process in its own judicial system, there is ample reason to doubt its commitment to due process in the criminal justice system.