

[5] Transcript of 8/16/2007 interview with Stephen Bryan in preparation for *Dude, Where're my Rights?* series.

**Transcript of Interview with Stephen Bryan
August 16, 2007**

EW: So, just to clarify, I want to take you through a number of procedural changes to the handbook that were made over the past

BB: I Can't promise that I'll know or remember everything but I'll try

EW: But you've been here since 99 and you came in as the assit to KC Wallace. When did you come in as the associated?

SB: 2004, 2005. Probably in '04

EW: So I want to start with procedural rights. The 99 bulletin refers to, "the accused enjoys the right against self incrimination and the right to remain silent before during or after the hearing; no inference of guilt may be drawn from the silence.

SB: Let me back up and give you an overview. I came in in Feb of 99, so if you look at 99-200; that's when we started to work concertedly to remove all of the legalistic kind of language. You know we had the judicial code before we simply had policy. The judicial code of the undergraduate community—it just had a litany of what the violations were. It was very codified. And we used terms like guilty or not guilty. That too much set it up as a criminal type process. It's not a criminal process. Over the last eight or nine years we've worked to take out all of the legalese. There used to be probabl cause, now there's just information. There is still in there the ability to remain silent but we don't phrase it that way.

Elliott Wolf 9/27/07 4:26 AM

Comment: No justification aside from mutual exclusivity of legalistic/educational.

EW: Well the way that you phrase it is, um, "the student has the right to determine the extent to which they share information," but there's no specific guarantee that the extent to which they share information will not be interpreted as a sign of their guilt. So if you call in a student and they refuse to talk to you, how will you take that?

SB: We ask, then we ask the student to write a statement. The challenge with that is that often, when these cases move forward, it's really in a student's better interest to talk about the incident because the board's ultimately going to making decisions on sanctioning if they find the students responsible. It can be nothing but helpful to a student if they're sharing what they may have learned, what the night was like for them, but the bottom line is that we've never taken away a student's ability to say "I would prefer not to talk about what happen"

Elliott Wolf 9/2/07 4:02 AM

Comment: Different procedurally than before; contradicts later statement that the practices are the same, only the statements in the bulletin are different.

Elliott Wolf 9/2/07 4:04 AM

Comment: Contradicts later statement (and pretty obvious fact) that students wouldn't behoove themselves to provide information that the University doesn't have.

EW: But it would prejudice them in their sanctioning of they were ultimately found responsible?

SB: First the board makes a determination of responsibility, and so, if it gets to the point where it gets to the board, and my threshold is that there's sufficient information to believe that a violation may have occurred, students can still say "I don't wish to share

Elliott Wolf 9/2/07 4:27 AM

Comment: Corresponds to wording of PC

anything,” and that’s fine, but the whole point of our disciplinary process is to help the student learn from their choices and decisions, and they’re not engaged in that process, then the board can’t draw that out. |

Elliott Wolf 9/2/07 4:04 AM
Comment: Seems intentionally vague; “draw out?”

EW: But it might influence the board in finding responsibility or in sanctioning, or both?

SB: Well we have the clear and convincing standard. First of all, I screen out stuff. If there’s cases in which I don’t think there’s sufficient evidence to move on, I’m not going to send that forward. There’s already I’ve looked at it, I’ve learned what I can, and I send it on to the board. So if I send it on to the board, there’s that minimum threshold met. I can’t think of any, maybe you have something in mind, but I can’t think fo any circumstances where a student has gone before the board and said, I don’t want to address that.

EW: My feeling with DSG, I am a student, as the more guaranteed rights I have, the better, if less rights are specifically enumerated, that’s a problem for me.

SB: So, what is your concern? What’s the change from whatever you just quoted me, to what’s in the bulletin today?

EW: Well I think there is, there’s the fact that, inference of guilt, it’s guaranteed, no matter what you say the practices, there was a guarantee that it wouldn’t be used.

SB: Elliott, you’re making....

EW: My feeling is that why would that have been removed if the University.....

SB: You think there’s a nefarious effort on our part to |

Elliott Wolf 9/6/07 5:52 AM
Comment: ; first “trust me”

EW: The thing is, Stephen, my instinct, I can’t trust the system. The system is inherently flawed, the system must be kept accountable, because you need these procedural rights to ensure that students aren’t unduly subjected to adjudication, students are not harassed in the process.

SB: I’m telling you that there’s no difference in that statement, in its operation and its application today than before. You can create a conspiracy if you want, but there’s no difference. |

Elliott Wolf 9/2/07 4:29 AM
Comment: Contradicts fact that judicial officer used to have to begin a meeting with a statement of rights and a guarantee that the exercising of those rights wouldn’t result in prejudicial treatment. Also contradicts changes in what’s allowed to be taken into account during sentencing. “Acceptance of responsibility” not part of sentencing criteria in 1999

EW: But, the thing is, both then and now, if a student refuses to talk, if they try to remain silent, it will prejudice them in their sentencing.

SB: I’m saying that a student’s cooperation in the process can only help them. |

EW: You have two possible scenarios, one I cooperate, and one I.....

Elliott Wolf 9/2/07 4:29 AM
Comment: Quotable; not true 😊

SB: You can't make a blanket characterization, every case is different, every panel may be composed of different people. We have fundamental principles that we train them on, but I can't sit here and tell you. Because I've been in cases where a student was an absolute jerk to the panel, and it was clearly in their best interests to talk about what they learned, and that pissed the board off, and we have a board that's comprised of people—students faculty and staff—and there's some emotion there. I'm there to check to make sure, and as a matter of fact, I've been in there when the panel says, if this guy really pisses us off, we're going to suspend him for three semesters, but I say no, you've got to look at the case, the circumstances.

Elliott Wolf 9/2/07 4:30 AM
Comment: not codified anywhere. And also, highly suspect that he's there **during deliberations**

EW: But there's still no guarantee that the precedent will be followed. You guys aren't willing to state unequivocally that you won't make a determination on the basis of how egregious the violation was, and have that be the end of it?

SB: Then what's the point of having a system of students, faculty and staff engaged in a process where students are called before the board to ask about their behavior. If you input a behavior and output a sanction, it's very difficult because you have all kinds of variables involved. There may be different motivations, there may be aggravating circumstances, there may be mitigating circumstances, you can't simply input a behavior and output a response.

EW: But you're saying that even if you could, the response is not based only on those things—only on the behavior, only on the facts of that violation.

SB: There are several variables that are involved with what goes into sanctioning: student's previous disciplinary history, the type of incident, the student's posture during the course of the process—so it's not a cut and dry kind of thing. We have guidelines, and we have on our website what typically has happened. But the board can deviate if there's a justifiable reason to do so. The checks and balances are in the appellate process, if a student appeals, that's another body that reviews it and asks if the board's reasoning is sound.

Elliott Wolf 9/6/07 5:53 AM
Comment: Perhaps quote this, still seems intentionally vague.

EW: But, the thing is, in the current system, regardless of any changes, in the current system, if you choose to utilize your right to remain silent, it is likely that it will adversely affect your outcome?

SB: Well, no. you can't say that either because, if there's an incident that they're investigating and I have no information beyond what the student can provide, I'm not going to forward it because there's not enough information. I think the student should think through the potential ramifications of cooperating. I think where it becomes more detrimental to a student is in lack of cooperation before the board. Because at that stage it's already been reviewed once by me, and now the board's looking at it, and we have a panel of typically five folks who look at it. So, personally I think, at that point, It's better for that student to offer his perspective to the board.

Elliott Wolf 9/2/07 4:09 AM
Comment: Contradicts earlier statement that "a student's cooperation in the process can only help them."

Elliott Wolf 9/2/07 4:10 AM
Comment: Note: one way to ensure the board doesn't screw it up is to codify it; make the practices standard (this is why procedural rights exist)

EW: The 1999 bulletin also says that “interviewing the accused begins with a notification by the judicial officer or designee of (1) a right to remain silent, (2) a right to an advisor, and (3) a right to waive knowingly one or both of those rights,” so do you actually tell students what their rights are in the judicial process without any prodding, or do you just ask them to cooperate, and that’s it?

SB: Typically, most of the stuff you have to understand, is that this is in an administrative hearing. [It starts with] an email to the student, that says, we’ve received this information, here are potential policy violations, and we’d like to talk about it. Come on in. And the vast majority of those students are accepting responsibility for the behavior. It’s routine. They got into an argument with a parking lot attendant.

EW: But you don’t just summarily.

SB: When I did the administrative hearings, I had at the bottom of my email signature, a statement that said “for information on the disciplinary process, see the bulletin and information and regulations and the web site. I’d say that most students didn’t look at that information.”

EW: But, if I look at it as the process has gotten worse that, when the process used to begin with a statement from you or whoever that the student has “this, this and this right,” and that was then, and now they have to look at your email signature, go online, look at a version the bulletin of information and regulations that is less specific about their specific rights under the process, that is not a positive development.

SB: Let me ask you this, if you’re cited on a city street, do you expect the police officer or the DA to let you know, listen we wanted to let you know.

EW: This is Miranda. Given the nature of the legal system, when you go before the court, it’s likely have a lawyer. And it’s likely that you....

SB: Did someone tell you that you could get a lawyer?

EW: I feel that the basic tenants of the bill of rights are better know to the American populous than the [Duke] judicial code.

SB: You make it sound like we’re trying to pull the wool over students’ rights.

EW: You have gone from specifically, intentionally informing students of their rights.....

SB: We have from a system that was very legalistic and took the emphasis off of what our goals were to a system where, “listen, we’re in a community where we all make mistakes, we want to help you learn from those mistakes.”

EW: I think the legalistic version’s better, because it guarantees procedural rights, and procedural rights are important to me.

Elliott Wolf 9/2/07 4:32 AM

Comment: Another difference between then and now; stated that nothing changed in reality. Also really, really sad that Miranda-esque rights consist of rearing an email signature.

Elliott Wolf 9/2/07 4:34 AM

Comment: Interestingly, Sgt. Gunter says he recommends lawyers to people he cites.

Elliott Wolf 9/2/07 4:56 AM

Comment: Again calling me paranoid

Elliott Wolf 9/2/07 4:12 AM

Comment: This argument is circular, and it implies an assumption of guilt. Approach goes something like “you made a mistake, cooperate with us...what if they didn’t do anything?”

SB: But this is not a legal process

EW: I don't want to get into a debate.

SB: you're not guaranteed any rights.

Elliott Wolf 9/2/07 4:34 AM

Comment: quote

EW: Wait, wait, say that one more time.

SB: I'm making that in reference to the constitution. You're not guaranteed rights in a private institution. A private institution, particularly an institution like duke, you are a member of the community, you know its actually a contractual relationship, so we don't have to give you any rights, but, we do,

Elliott Wolf 9/2/07 4:35 AM

Comment: every one of them has been cut down in one way, shapoe or form

EW: But the thing is though, it's not a question of whether the university has a legal requirement to give us rights; Christine used to work at an institution where she had to enforce Vatican II. That's not the issue. The issues are the prerogatives of the university, as the broader university is defined—all of the notions of academic freedom, personal freedom, rights—you could say that the primary goal of any community is to protect the rights of its members, and with PSM, all kinds of other stuff, universities have an interest, and their existence is predicated on upholding rights, and so, you can't downplay the role of rights as far as the university mission is concerned.

Elliott Wolf 9/6/07 5:54 AM

Comment: Doesn't seem to recognize any of this;

SB: What I'm saying is that when you choose to come to Duke, you assume a responsibility, and it's a privilege, not a right to be a member of the institution, and we, as an institution, if you violate these expectations, it's not a legal process, you don't have the same legal procedures that you see on CSI.

Elliott Wolf 9/2/07 4:14 AM

Comment: Maybe quote. This downplays the status of students in the community. Are we like tenured faculty, or can we be tossed for being "difficult?"

EW: But they used to, why did they used to?

SB: The previous code was written by the Law school in the judicial review of 1996, and that was a lawyer mindset. That's the mentality of lawyers, everything is a legal problem.

Elliott Wolf 9/2/07 5:13 AM

Comment: He's accepting that as axiomatic; I don't think that's necessarily true, especially given his earlier statement that most people don't even read the judicial code. Also saying that if they learn something, they accept responsibility; later says that if they don't accept responsibility, they don't learn. That's irrelevant if they didn't do anything

EW: I like it.

SB: Well great, become a lawyer. What happens, Elliott, is that when you have a legalistic framework people act legalistic [sic]. And what happens then is you have folks who come in who can't accept 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 instead. Instead you have a student focusing on "what do I do to get off." And what do they learn from that, they learn to get off.

Elliott Wolf 9/2/07 4:58 AM

Comment: ****The main hole in the argument is here; if procedural rights are in place, the only instances where students would get off would involve violations of those procedural rights. This same end (students not "getting off") could be achieved by scrupulous adherence to the policy. The only plausible scenario for what he's describing is that people's rights were violated, they got off, JA didn't like that, so they tossed the rights.

EW: But, if you take something like the evidentiary standards argument. One of the components of that is, if you take the formerly granted right of the exclusion of evidence that was obtained illegally.

SB: The formerly granted?

EW: The 99 judicial code granted it. You take an incident where a police officer violated a student's rights or an RA or res life official violated the privacy policy and then entered a student's room and found something, the question is then is it consistent for the university to take that violation of legal standards/ethical standards and use that wrong to supposedly right the other wrong that was discovered?

SB: The practice is that when students/staff have violated the privacy policy, we've not taken formal disciplinary action. But that doesn't mean that we haven't called that student in and had that "teachable moment." We tell the student, the RA crossed the line here, and we're not taking formal action. The bottom line here is.....

Elliott Wolf 9/2/07 4:59 AM

Comment: "quotable moment." KC Johnson had fun with that phrase....

EW: But why isn't that explicitly spelled out in the policy that you guys will not take action? I'm just trying to understand, from the student perspective, when there are less rights written down, guaranteed, that's awful.

SB: You can't write down everything, Elliott.

EW: So you wrote down nothing?

SB: Good god. Let's stop. What is your concern?

Elliott Wolf 9/2/07 4:59 AM

Comment: Um.....

EW: The reason I'm here is I'm trying to get a specific justification for changes made over the past few years?

SB: Well what is your global goal?

EW: I am concerned about the removal of procedural rights from the Judicial process, particularly in the context of the lacrosse incident, which taught the University that it has a very big interest in upholding the rights of its students.

SB: Well what procedural rights have been removed?

EW: Well, I will....

SB: So so far we've determined that there have been no procedural rights taken away.

Elliott Wolf 9/2/07 5:00 AM

Comment: Doesn't seem to recognize what a "right" is. LOOK INTO LEGAL DEFINITION OF "CHILLING" RIGHTS; sanctioning argument might fit here.

EW: Well, right to remain silent

SB: But it hasn't changed.

Elliott Wolf 9/26/07 2:58 AM

Comment: Demonstrably false; since added failure to comply, the requirement of the statement, and the role of "composure" in sentencing.

EW: Well, I'm still not satisfied in that, if you remain silent, the fact that you shut up could prejudice your sentencing.

SB: Again, it's hard to talk to in a global scenario, but the student always has the right to tell the panel, 'I choose not to address that.' Let me put you in the shoes of the panel. If you have overwhelming information that a student did x, y or z, and the student comes before the board and says, 'I don't want to talk about it, how does that make you feel as a student on the panel. [

Elliott Wolf 9/2/07 4:29 AM

Comment: Again, a procedural right to not have anything besides your previous history and the facts of your case be used in sentencing might help. This is why these things are put in place.....

EW: And the thing is I don't really give a crap about the UJB, it's all about the student's rights who are going through the process. There are 30 members of the UJB, however many there are, there are 6,000 of us. I'm interested in the procedural rights afforded to all of us who might be put in that position.

SB: That's interesting because, to me, that raises the larger issue of what do you want your Duke degree to mean? And, do you want students who go through the process, and again it's a very small percentage of those who do, but do you want those who go through that process to take away from it that they got away from something, and that is going to be a framework for how they carry themselves later in life?

Elliott Wolf 9/26/07 2:58 AM

Comment: Irrelevant

EW: That ordeal of the process was, having to go before the UJB, it's still not fun. It's not like they just didn't have—it wasn't an official sanction. It was still a tough time for them. When I went through the process it wasn't fun. It sucks. Your priorities are to get it over with. Let me just get on with the rights.

Elliott Wolf 9/6/07 5:55 AM

Comment: Regurgitating the same stuff. Feels that standards are equivalent to minimal procedural rights, and almost "conviction rate."

SB: So so far we've determined that no rights have been taken away.

EW: Well, my definition of a right is a procedural right that is guaranteed to a student—something that the institution cannot violate under any circumstance. I am not convinced that the change in language is not a greater guarantee of the student's rights in the process. You're telling me that we haven't changed our practice. But my feeling is that if it's not written down on paper, the institution is not officially saying that we will not infer guilt, or we will not prejudice a sanction because a student chose to exercise their right to remain silent. [

Elliott Wolf 9/2/07 5:04 AM

Comment: Logically equiv to "upholding a right => codifying it"

SB: Well I don't think it's right to make that jump, but let's move on.

Elliott Wolf 9/2/07 5:02 AM

Comment: Will have to address this argument. The only condition that must hold to absolutely safeguard rights is that: "if we uphold a right, we will codify it."

EW: Illegally obtained evidence [READ STATEMENT ON ADMISSIBILITY IN OLD AND NEW CODES]. You've got the ALE stuff, obviously none of those went before the UJB, and you said that if the RA violates the privacy policy, you might still have a little talk with the student, but why not have that that statement in the Judicial Code so that we make it clear to the police or the alumni or whoever that we have an interest in the police not walking all over students?

SB: I'm not so opposed to that, but again, with the ALE situation, I'm not in a position to. The criminal process and our process again are different. [

Elliott Wolf 9/2/07 4:32 AM

Comment: ??

EW: They're only different because you made them different.

SB: I would say nationally, no university judicial process has the same goals as the criminal process.

EW: Goals, maybe not, procedures, yes. I have tons of stuff; but comparing to HYS, and stuff, if not all the procedural rights afforded to students, more than what we have.

SB: You've read through Yale's disciplinary process; I have too.

EW: I can't remember the specifics. Stanford is the one that's really cool.

SB: [BS about Drew Holbrook.]

So, the whole issue there with the illegally obtained evidence. That was a criminal determination. A judge made that determination; that didn't come until April. That was the spring. And in the mean time, we called in however many there were. If a student accepted responsibility for it, they were sanctioned, but the sanction was minimal, as long as there was no other violation wasn't recorded. But if the student said I didn't do it, they weren't responsible.

EW: But they're still coming into a system where their cooperation is something that plays into the sentencing. Well we expect them to respond to the allegation. If they can come into a situation where they know they can remain silent without prejudice, of course they're going to shut up, they're going to get off, and that's great.

And why isn't that guaranteed in the judicial code?

SB: Why don't you work with me over the course of the spring when we get the next version of the code out there?

EW: I mean, I have sent so many friggen memos and so many emails asking you guys to enshrine the protection into the code. If you guys haven't gotten the message of what we're interested in....

SB: You saw my whole response online.

EW: I'm interested in changes in practice and changes in stuff that's specifically in the judicial code.

SB: You're interested in turning the process into a legalistic one.

EW: If legalistic means holding procedural rights above, what you perceive to have been the actual finding of fact, then yes, rights are more important than punishing a student for that specific incident.

SB: We have expectations, we expect students to abide by those expectations, if they don't, we hold them accountable. That's the crux.

Elliott Wolf 9/2/07 4:39 AM

Comment: Contradicts his very next sentence. DSG sent multiple memoranda with multiple requests in 2006-2007, all of which were denied, and merely treated as "requests for information."

Elliott Wolf 9/2/07 4:34 AM

Comment: Still has yet to prove that legalistic is bad. Statement relies on that – no evidence presented.

Elliott Wolf 9/2/07 5:06 AM

Comment: Natural question here is: what are the expectations on the judicial process? What happens if those standards aren't upheld?

EW: Rights notwithstanding, we hold them accountable?

SB: If you look at the courts, the courts say private institutions have to notice of the charges and an opportunity to respond. That is it. That is it. And we provide ample safeguards for our students in this system so that no one is railroaded in the system is held accountable for something that they didn't do.

Elliott Wolf 9/2/07 4:40 AM

Comment: Sidestepping the issue by reverting to the University's legal rights, but I'm going to take that as a 'yes'

EW: But you're suggesting that you don't need procedural rights if you didn't do it.

SB: I'm saying that we would hope our students would accept responsibility for their behavior. Some students will choose not to. So we have a process in place that, while respecting their right to remain silent, and to seek advice, we're not going to railroad. But we have a process in place that does more than gives notice and provides an opportunity to respond and reach a fair conclusion.

Elliott Wolf 9/2/07 5:14 AM

Comment: Presumption of guilt?

EW: It's more given the situation that the university has just been through, does the university want to hold itself to the standard of 'we do more than the federal government requires,' or does it want to hold itself to the standard that 'we afford our students basic fundamental rights which we will not violate.'

SB: See, I think you're thinking, you're associating any rights, with all rights, and we strike a balance, because, like I said, if we move to the same kind of system like we have in the courts, it becomes a very legalistic model. We already have attorneys now representing a number of our students, and they lose sight on what this process is about, and it becomes focused on "getting off," and that fosters a very different mentality in what we want our students who find themselves in the position of acting contrary to the university's expectations, to learn from the process.

Elliott Wolf 9/26/07 3:01 AM

Comment: Um....

EW: But I assume that if you're taking it to the level of the UJB, you think they're responsible.

Elliott Wolf 9/2/07 4:35 AM

Comment: What about proving your innocence? Still suggests an assumption of guilt.

SB: No, I have a lower threshold, more often than not it's a very easy thing for me to see, because the evidence is usually really clear. It's usually more difficult in cases where someone says they saw somebody look on someone else's test. But there I have a lower standard. I'm not going to send a case forward where I think the evidence is weak.

Elliott Wolf 9/2/07 4:36 AM

Comment: And expunge all heretical thoughts, and serve Christ.

SB: But if you're on one side thinking that they did it; I have a minimum threshold to meet, and I'm sending it forward for the board to decide.

Elliott Wolf 9/2/07 4:43 AM

Comment: This point brings up the notion that all slam-dunk cases could be undermined by the lack of procedural rights.

EW: Witness confrontation. It might have been '05-'06; I think '06-'07 was the first year, yeah, affirmed accused students' right to rebut witness testimony, not necessarily confront witnesses. And when the judicial code itself; it formally....

Considering the specific wording of the PC standard ("something may have occurred and the accused may have done it"), anything has to go forward regardless of how weak the evidence is. JA not following its own policies.

SB: There was some witness testimony that wasn't in person; it was written testimony, and it's hard to confront, confront meaning cross-examine if you will.

Elliott Wolf 9/2/07 4:45 AM

Comment: Another contrast from before; PC used to say that a reasonable person believed that they did it. The person making that "reasonable" judgment was the judicial officer. Standard is now lighter than it was.

EW: But that was a convenience thing. Obviously the person who wrote whatever they wrote.

SB: For whatever reason, that testimony is only available in written form. And the accused student can't necessarily confront and ask questions of that, but we wanted to affirm that the student has the ability to respond to that. and somewhere in there it says that witnesses that aren't available can't be the sole determination, so that statement is really meant to alert students that, when you go through the process, if there's some kind of testimony in which the person's not there, you have the right to respond to that.

Elliott Wolf 9/26/07 3:02 AM

Comment: COPS (didn't realize this at the time of the interview)

EW: But why not give the student the benefit of the doubt and say that if you don't have the right to directly confront someone who is accusing them of something, that that information shouldn't be considered?

SB: Well, because, I think they're excluding a lot of potentially valuable information.

Elliott Wolf 9/2/07 4:48 AM

Comment: He JUST SAID that that information can't be the sole or even substantial determinant. Big reason is so that police citations can be used as a substantive basis in the administrative hearing process, and maybe even in UJB hearings.

EW: One of the things I saw in the GJB procedure; there was a specific procedure for anonymous witnesses. So, what I'm concerned with is that someone makes an accusation against me, for instance, and I don't have the right to confront them directly. That brings a very visceral reaction.

SB: You're coming from the point that you think the world's out to get you. I would not send it forward; in other words, I'm not going to schedule it for a person, who has such damaging testimony, is in class. This written evidence rule, first of all is rare, because when I do the schedule I make sure we can get all of the players there. If there's something that's really damaging, and can prejudice the board, that is unfair.

Elliott Wolf 9/2/07 4:38 AM

Comment: Thanks....

EW: But why not?

SB: Elliott, you can't.

EW: Yes you can. This could be the difference between 2 and 3 or 1 and 2 semesters of suspension. I don't care about how likely this event is. I care that it is possible, given this framework, for someone to be accused of something, and that information be used in making a finding a fact against them, and that information to be used in their sentencing....

SB: How many times do you think this happens?

Elliott Wolf 9/2/07 4:39 AM

Comment: LAX argument comes in here. We have "trust me" and "this rarely comes up."

EW: I don't know and I don't really care.

SB: Because, I think you may be focusing on the wrong issues. Because, by and large, the students who come forward to the board, the cases are usually, they're either accepting responsibility or its really clear. You're focusing on nuances that, once in every blue moon might be an issue. We're not railroading students.

Elliott Wolf 9/2/07 5:20 AM

Comment: Still have to take his word for it.

EW: But I have to take your word for it. My question is, if it's once in a blue moon, then why does it really matter to you guys? Why not give the students the rights?

SB: When you have a very legalistic process, what happens, particularly with the population here at Duke, then they will go and look at every loophole, but then, you know what, I did do that, but I didn't get to follow para 3, subsection c, roman numeral 1, so that's an appealable ground and I'm going to get off.

Elliott Wolf 9/2/07 4:56 AM

Comment: ??

Elliott Wolf 9/2/07 4:39 AM

Comment: LAX

EW: This is the way that rights are upheld in society.

SB: That's great, but at a university, as selective as Duke, where we expect more of our students and we want the Duke degree to mean something, we have very high expectations.

Elliott Wolf 9/2/07 4:40 AM

Comment: Again, equating expectations with procedures for findings of fact.

EW: But this is different than the policies for which people are held accountable for. This is different than the sanction which are proscribed for a specific violations. Holding them to high standards can be accomplished by saying yes, if you did this, we're going to be very harsh, we're banning this, you might not think it's a big deal, but we do. But that's different from the question of the rights afforded a student in the process.

SB: And I'm telling you that we afford much more, many more of the rights than the supreme court has said we need to give. And we're not going to railroad a system.

Elliott Wolf 9/2/07 4:40 AM

Comment: Again, not going anywhere.

EW: Ok, let's see, the other thing, clear and convincing was first mentioned in 01-02.

SB: It's been the standard ever since I've been here. I think it's always been the standard here. And I'll tell you, if you want to give kudos to Duke, I did a survey of my colleagues around the country, and 80% of the institutions that responded have the preponderance standard, which is more likely than now.

EW: Standard has; this is one of my major structural problems with SA; SA seems to have adopted a model that seems to fit a public institution, you've got all kinds of safety nets....When we compare ourselves with different institutions, it shouldn't just be to everyone who's on your judicial listserv. It should be to the Ivy League, Stanford and maybe 2 or 3 others. It shouldn't be, well what does villanova do?

SB: That sounds kind of snobby.

EW: Well, it is.

SB: Well, I haven't done a survey with the COHFE schools, maybe I'll do that. Again, 80% have a lesser standard than we do.

EW: Um, the UJB itself. Before '01-'02, it was confirmed by DSG, and a DSG person was involved with interviewing and selecting a member.

SB: Well, on the books, that's what it was. At the time, DSG had no interest at all, it was a chore for us to get DSG interest and involvement, and then the ceremonial passing of it was, we posted the results of who was elected and what not, and DSG said OK. Really, there was no desire at that time On dsg's part to have a role in this.

EW: In 2001, I looked up the Chronicle article, and there was a pretty lively debate. And the other thing that I'm concerned with is, when you have the type of process where DSG is involved, at the very least the names are going to come out, and I asked you for the names of the UJB and you refused.

SB: Well, I'm not going to publish those. |

EW: Why that shift, both from the guaranteed ability of the student gov't to confirm them, whether they exercise that or not, to no transparency?

SB: It's not for lack of transparency. It's to prevent students from jury shopping. In today's age, of parents of people contacting them, we had a case a few years ago, I don't know how he found out who the board members were, was calling. And that puts a lot of undue pressure on our students.

EW: It's called accountability.

SB: I'm fine if DSG wants to have an involvement through interviewing folks; right now it's all done by the current members. There's an initial application and a screening of that.

EW: but there's no accountability. I don't know the names of the UJB myself. I know a few people on it, but I don't know the complete list. And as far as jury shopping goes, the way the challenging process works is that you [sb] pick a 5-member panel and then you can challenge any member of the panel. And as far as the combinatorics of it goes, the probability of you being able to pick your entire jury pool, and given that you require the burden of a significant conflict of interest be justified, it seems highly unlikely, almost impossible for a student to engineer their entire pool.

SB: Well, you know, it's debatable. My predecessor did that, I didn't have anything to do that, I'm open; Like ben's position, that could be a great conduit for greater DSG involvement.

EW: Before Larry came in, it said, [amendment clauses, then and now]. |

SB: I don't want to give you the impression that Larry came in; I think it was more from a practical standpoint, and I've been there, and it just wasn't effective. I can't really speak to that Elliott.

EW: I'll ask about it. I have a meeting with Larry tomorrow.

Elliott Wolf 9/2/07 4:58 AM

Comment: P0wned.....Larry's good for something (note: the UJB roster was released the day after this interview)

Elliott Wolf 9/26/07 3:05 AM

Comment: 😊

Elliott Wolf 9/2/07 4:59 AM

Comment: Old amendment clauses (pre 01-02) only allowed the bulletin to be changed on the recommendation of a "duly formed judicial review" consisting of faculty, staff and students. Now it's just under the VPSA's control.

EW: Do you see why that might be a concern to me. You've got you rewriting the bulletin every year.

SB: Every year we go to the UJB; it used to be that every summer we had a small group—DSG folks were here all summer under that stipend.

EW: But I was here last summer, Paul's here this summer. You never asked me last summer about changes.

SB: We put an ad in the paper asking anyone for changes. One of things that is going to change, and Valerie's role is to do all of the proactive things that we can't ever do because we are caught up in all of the reactive things that happen every weekend that we have to respond to. And one of those things is going to be to go to DSG, go solicit feedback on the disciplinary process, and solicit feedback.

EW: But there's still a difference between feedback and the stipulation that the policy can only be changed based on this duly-drawn committee. It used to be that student affairs didn't have the power to unilaterally change the policy on its own. Now it does. That concerns me.

SB: What I recall, early on, is that it said that, but there was no interest. Getting faculty involved, there's no interest.

EW: But why not just keep them in there?

SB: You would rather us keep them in there and not really follow them? [BS]

EW: The thing is, like DSG, I would have been just fine if my predecessor hadn't given a crap about judicial affairs, and you all left the option open for me to officially and publicly confirm them, I would have appreciated having that, just because DSG changes a lot from year to year; there are good years and bad years, that doesn't mean that---a right is all about benefiting the students. It's more, why not just leave in there?

SB: Have you ever thought about you're focusing on the wrong things?

EW: I feel like, no. I put in my—I've worked for the ACLU, I've dealt with all this lacrosse shit, as far as rights are confirmed, I've had two very formative experiences involving what happens when rights aren't upheld. And I don't trust human nature to automatically afford everyone.

SB: How are you going to develop a relationship?

EW: That's a personal thing between me and whomever I develop a relationship with. When I don't know who the members of the UJB are, how the hell am I supposed to trust them?

Elliott Wolf 9/2/07 5:22 AM

Comment: Key argument

Elliott Wolf 9/26/07 3:06 AM

Comment: DSG sent no less than 15 pages of written material to JA last year

Elliott Wolf 9/2/07 4:42 AM

Comment: If various groups have the option of exercising a right to have influence over the process, and then don't exercise the right, that's not in contravention of the procedure.

Elliott Wolf 9/2/07 4:43 AM

Comment: Only Peter Lange can pull that one on me.

SB: Elliott, anyone is welcome to stop by our office, conveniently located across from chick-fil-a, and check out the roster of UJB members; if you want me to put that statement on our website, I will,

Elliott Wolf 9/2/07 4:43 AM
Comment: Thanks.....

EW: It's got to be public; it's got to be transparent. You guys are less transparent than the Foreign Intelligence Surveillance Court.

SB: You're so into minutia, in incidents that are the exception rather than the norm. That I think you have not been able to see from a global perspective how much process we afford our students when their behavior is contrary or potentially contrary to university expectations. And again, if your goal, is your goal to make a difference for that one starfish...if your goal is to save that one starfish than more power to you, but these scenarios/possibilities that you're raising, just aren't an issue.

Elliott Wolf 9/2/07 4:44 AM
Comment: Skirting the issue.

EW: And there are three enemy combatants who are US Citizens....[Pause] The fact that he is even an issue, he is one person out of a population of 300,000,000.

SB: It's not the same thing, because you're talking about his life, liberty and pursuit of happiness. Here, we're talking about your ability to remain a Duke student.

Elliott Wolf 9/2/07 5:02 AM
Comment: Think he was going for the 5th amendment, but failed miserably. Declaration of Independence is not a legal document.
Elliott Wolf 9/2/07 4:44 AM
Comment: Didn't really justify this.

EW: and we had this discussion over email, if the citation results in the person paying a fine, it's a criminal proceeding. But if the judicial process results in you getting suspended or expelled, that is a lot bigger of a deal, and so, if you're arguing that life, liberty and pursuit of happiness.....

SB: Well there are fundamental rights. It's not a fundamental right to be at Duke University. By choosing to enter into our community, you are entering into a contract with the institution; the institution affords its students many rights, but we're not incumbered with mirroring what happens in the criminal courts, because one loses sight of what the purpose of an educational community is in that kind of environment.

Elliott Wolf 9/2/07 4:45 AM
Comment: Continually makes this argument; never justifies it.

EW: And that's the thing, I question the extent to which the process is truly educational, and I question the extent to which if the process is educational, its worth potentially violating rights.

SB: I wish I could give you the names of students who've been suspended. I've talked to students who've gone away for a year for academic dishonesty and we talk with them and ask, what's this experience been to you? Sometimes they are the most resistant and angry folks when they leave here, and they come back, and sitting out, away from duke every day, can be a quite reflective time, and the growth is amazing. Maybe I could ask if they'd be willing to talk about their situation.

Elliott Wolf 9/2/07 4:46 AM
Comment: Political reeducation
Elliott Wolf 9/2/07 5:03 AM
Comment: He brought it up, not me .

SB: Well, in your particular experience, you may feel like you didn't learn or grow.

EW: But this isn't about my particular experience. I still download movies if that's what you're asking.

SB: But I think, you're [inaudible], I'm not saying that the learning has to be that you stop the behavior. There are a lot of different ways that you can learn. Maybe the outcome is that you have greater understanding of the ramifications of your behavior. And the recording industry is certainly making that clear.

[back and fourth over RIAA subpoenas, unrelated]

EW: I don't want to take any more of your time, this has helped a lot. I can't underscore enough how much of an issue this is to the undergraduates, and to the alumni. The question is, when Duke has a policy that it controls, how concerned is Duke with the rights of its students?

SB: And, god forbid, please don't stir up controversy that doesn't exist. You have been the voice.

EW: There's no voices of anything on this campus; Paul is working on some stuff, and there have been a lot of people who've come to me and said 'you know, I got fucked,' and I can't know either way, but to the extent that they're the blindly educated students you're suggesting they are, they're not.

SB: I know students who have lied about their outcome and their process because it saved face, and unfortunately my hands are tied because of federal privacy laws, but I think sometimes that issues that are raised sometimes in the chronicle by a very small fraction that has a lot of reach.

EW: Well what is the platform, what am I getting at here?

SB: Well, for some of the columnists, well the quality of the writing for some of the columnists is really embarrassing. But if I stop a random student on the quad and ask— have you seen or heard about this issue in the chronicle. But I don't think that the typical Duke student is not impacted by a lot of the issues that are rased in the chronicle, they're interested in getting their degree, that internship. Going to law school; going to med school. Why do you think election turnout's so low?

[Stopped at frame 605; subsequent discussion about nature of column irrelevant to actual content]

[Section on Reslife starts at frame 638; will transcribe later]

Elliott Wolf 9/2/07 4:47 AM

Comment: If this is the case, then making the code legalistic isn't required for a "teachable moment;" only the notion of sanctions looming over one's head (I agree with the latter, it's just an inconsistency)

Elliott Wolf 9/26/07 3:09 AM

Comment: Contradicts the "growth is amazing....."

Elliott Wolf 9/2/07 5:04 AM

Comment: Um...

Elliott Wolf 9/2/07 4:48 AM

Comment: Contradicts what he JUST SAID about the chronicle having a lot of reach.