

Dude, Where are my Rights (Part 1) By Elliott Wolf

Relatively few things at Duke are so patently absurd that their mere enumeration stands a good chance of bringing about change.

After spending weeks in the University archives reading almost 1,000 pages of archived university bulletins and many hours interviewing various administrators, it's clear that the Undergraduate Judicial Code is one of them—specifically, the sections outlining the reach of the Undergraduate Judicial System and the procedures by which students are found “responsible” for violations.

Even more alarming is that the current incarnation of the judicial code is the result of nine years of tinkering by the Office of Judicial Affairs. Slowly but surely, it transformed (at least, on paper) an objective, transparent and responsive system into one with little transparency, dubious checks and balances, no accountability to the student body and procedures bordering on incoherent—greatly extending its reach and expunging our rights in the process. All of these changes are documented in published versions of the Bulletin of Information and Regulations.

Dean of Students Sue Wasiolek said, “having been the one constant in this process since 1979, I don't think [the judicial system has] changed.” But despite both her and Director of Judicial Affairs Stephen Bryan's similar assertion, the procedures in the judicial code have been almost completely rewritten. The implications of those revisions are so far-reaching that they require this and my subsequent three columns to even begin to explicate.

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Comment: Interview with Dean Sue, 9/5/2007

Part one —procedural rights afforded students facing adjudication:

“Probable cause:”

Then (1999): For a student to be formally adjudicated, the judicial officer had to make a finding of “probable cause,” defined as “a reasonable likelihood for believing that the accused person committed the alleged act(s).”

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Now (2007): Instead, “there must be sufficient information to believe that a policy violation may have occurred and that the alleged individual/group may be responsible” (emphasis added). This standard can be applied as follows: a large tube with an air compressor on the end may fit the University's definition of a “potato gun” (banned as of 2007-2008); the entire population of Pratt has the requisite skills and access to the necessary materials to construct such a device and launch a potato. It may have happened; one of them may have done it.

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That first, awkward conversation:

Then: Contact with the accused was initiated “with a notification by the Judicial Officer, or designee, of: a right to remain silent, a right to an advisor as defined herein, [and] a right to waive knowingly one or both of these rights.” Exercising that right to remain silent carried with it “no inference of guilt.” Should the accused not exercise that

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right, s/he was given the opportunity to submit a "written statement. . .in his or her behalf which will become part of the case record."

Now: Without any explicit enumeration of rights or access to the evidence against him/her, the accused student is sent a letter requesting a written "[explanation] of the situation" surrounding the "violation(s)." Refusal to give this statement violates the University's policy against any "failure to comply with directions, requests, or orders of any university representative," and it is used as evidence. Although the accused is granted the right to "choose the extent to which he or she shares information," there is no explicit guarantee that exercising that right will not adversely influence findings of fact or sentencing (see changes in sentencing policy below).

The secret tribunal:

Then: If a student is formally adjudicated, the Family Educational Rights and Privacy Act protects the privacy of the proceedings. A student can waive his/her rights under FERPA at any time, however, and accordingly hearings were to be "closed unless the accused requests an open hearing."

Now: "All UJB hearings are conducted in private." If a student believes s/he is being railroaded, the Duke community will have to take his/her word for it.

Looking someone in the eye:

Then: The accused enjoyed the explicit "right to confront any witness who has given a statement relevant to the pending case," and may "ask questions of any witness under the condition that the panel Chair deems them fair and relevant." Witnesses could be compulsorily summoned "upon the written request of the complainant and/or the accused."

Now: The accused only enjoys the explicit right to "rebut any witness testimony presented against him or her," not to directly confront or question witnesses. In addition, "the judicial officer may require the presence of any witness with pertinent information," but is not obliged to compel witness testimony at the request of the accused; the panel will determine "the extent to which witnesses will be permitted in the hearing."

And to top it all off:

Then: Sanctions were "commensurate with the severity of the violation," but could be compounded based on prior disciplinary history.

Now: In addition to the factors considered previously, the board may now consider "the student's acceptance of responsibility," in addition to "university interests and any other information deemed relevant." Roughly translated, current policy allows a sanction to be compounded if the accused doesn't (1) confess, (2) beg forgiveness or (3) perform a song and dance.

All of the documents on which this column is based are available at

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Comment: Sample letter

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<http://www.duke.edu/~egw4/>. Posted are a letter sent to an accused student, a transcript of my interview with Bryan, and a mathematical proof that the new standard of "probable cause" is unfalsifiable.

Next week: the rights afforded the rest of us not under adjudication.