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Do campus tribunals wield too much power?

Some experts say yes, object to their secrecy, but rules also vary from school to school

By John Higgins
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A Summit County jury found Charles Plinton not guilty of selling drugs to a confidential informant in 2004.

A few weeks later, a University of Akron disciplinary board found him ``responsible'' for ``selling drugs to a confidential informant.''

The difference between those two words -- guilty and responsible -- may not sound meaningful to the average person.

But it's a distinction that begins to explain the secretive world of college justice in which campus committees may re-try the facts of serious crimes after criminal courts have already decided them.

Critics see the hearings as unaccountable Star Chambers marshaled to advance political and ideological agendas.

``Campus tribunals are the ultimate `kangaroo court,' an affront to the rational thinking that is supposed to underlie the academic enterprise,'' said Boston-area attorney Harvey A. Silverglate.

He co-authored *The Shadow University* with Alan Charles Kors and helped found the Foundation for Individual Rights in Education.

Disciplinary hearings are not trials; they are more akin to union grievance procedures and other types of administrative law hearings that have much looser rules.

Students usually aren't going to get a lawyer for one of these hearings. The university's representative may advise the panel on how to conduct the hearing; in criminal court, the prosecutor would never advise the judge on how the trial should proceed.

Criminal trials are open to the public and subject to public scrutiny. Student privacy laws keep most campus hearings closed to the public and the records confidential, known only to the student or perhaps a student's parents, depending on age.

To lower students' expectations of due process, universities are advised to use nonlegalistic language to describe their procedures.

It's not *defendants and trials;* it's *respondents* and *hearings*.

It's not *evidence,* it's *information*.

Students are not found *guilty;* they're found *responsible* or *in violation*.

They aren't *sentenced*, they're *sanctioned*.

Changing the word ``evidence'' to ``information'' is an attempt to avoid defamation lawsuits because hearing boards cannot accuse students of committing crimes, Silverglate said.

``It's meant to keep people from expecting that the campus system is like the criminal justice system in the real world and from expecting a decent level of fairness,'' Silverglate said.

Universities once kept an even tighter leash on students, standing in place of the parent.

That control loosened with the social revolutions of the 1960s, but made a comeback in the 1980s and 1990s as universities attracted more diverse student bodies and sought to provide an educational refuge from racism, sexism and other social evils.

What's changed, said Silverglate, is that campus hearing boards are now deciding serious criminal matters, especially hot-button issues such as date-rape, sexual harassment and hate speech.

``If the student is convicted in the criminal courts, the schools throw out the student, relying on the court's judgment,'' Silverglate said. ``If the student is acquitted, most schools re-try the student, convict him, then punish or expel him. It is a completely loaded deck.''

Evidence standards are lower

The National Center for Higher Education Risk Management consults with universities throughout the country on how to lower students' expectations of due process by removing words that evoke the criminal justice system.

Brett A. Sokolow, an attorney and president of the Pennsylvania-based nonprofit, said he hasn't worked with the University of Akron.

But he's not surprised that a student found not guilty in a criminal court would still be found ``responsible'' at the university level.

``By definition, a college's lower evidence standard means that they will often find a student in violation of the conduct code for an offense that results in a not-guilty verdict in court,'' Sokolow said.

It may be legal, but is it fair? Sokolow thinks so.

``I think many people realize we're not convicting students of crimes, and that colleges need more latitude to ensure safety within a closed, trusting community,'' Sokolow said.

The higher courts have given universities a wide berth in enforcing their own policies, but they do require some due process. Evidence against a student in an administrative hearing should at least be ``substantial,'' he said.

That standard is considerably lower than ``beyond a reasonable doubt,'' the highest level that criminal juries need before convicting someone.

The ``substantial'' standard is even lower than ``preponderance,'' which simply means that guilt is more likely than not -- 50 percent of the evidence plus a little.

Sokolow figures that the substantial standard is satisfied if a third of the evidence points toward guilt. That's a very rough estimate, Sokolow said, but it's still less than half.

``Because no one goes to jail, the standards are more relaxed,'' Sokolow said. ``The more serious the consequence, the more process is due. The courts do not consider suspension or expulsion as extreme deprivations of liberty or property, comparatively speaking.''

Evidence standards alone are no guarantee of due process because they can mean different things to different jurors, but standards do provide a guide.

``More than half of colleges use preponderance,'' Sokolow said. ``Many use clear and convincing. A small number use substantial evidence, but it is the minimum standard required by law.''

Standards vary for Ohio universities

Ohio law requires state universities to use the preponderance standard in all cases involving

violent offenses. For other offenses, the standards vary from school to school.

Case Western Reserve applies the preponderance standard. So does Kent State University, Ohio University and Youngstown State University.

Ohio State University applies ``preponderance'' to academic misconduct such as cheating and plagiarism.

For nonacademic matters, such as drug dealing and rape, OSU uses the more rigorous ``clear and convincing'' standard, which is just one notch below the highest standard: ``beyond a reasonable doubt.''

The University of Akron's standard is ``substantial'' -- the lowest allowed -- which it defines as ``evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred.''

What's reasonable is of course a subjective judgment, but the fact that a student can be found ``responsible'' when more than half the evidence says he's not strikes Silverglate as absurd.

``I have no doubt that some campuses have absurd systems meant to achieve *political* rather than *rational* results,'' he said.

Professor calls hearing `aberration'

Plinton's former department head, Professor Raymond Cox, said a higher standard of evidence probably wouldn't have helped Plinton.

The panel that heard Plinton's case decided 3-2 that he was ``responsible'' for ``dealing drugs to a confidential informant.''

``That's kind of scary, but that's the reality,'' said Cox, who has a background in administrative law. ``Clearly you had three people who said `I believe cops.' That's a 100-percent statement.''

Cox said the university is ``very, very sensitive'' about drug use on campus.

``They're going to bend over backwards to avoid making a mistake that permits people to stay,'' he said. ``It does give you pause.''

He said he generally supports the university's hearing process, and believes the Plinton case was an aberration. Cox sat on hearing boards during the 2004-05 school year and always thought of Plinton when he walked into the room.

``The process is limited by the strengths and weaknesses of the people sitting in judgment,'' Cox said.

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