DEGREES OF JUSTICE

UA supports student's suspension

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campus judicial process that determined that Charles Plinton had "sold drugs to a confidential informant" despite a jury's verdict that he did not.

The university agreed to answer e-mailed questions.

Using informants on campus 'rare'

Hulk was given a fake schedule of classes and paid $50 for every drug deal he could set up.

The university does not inform parents that confidential informants with criminal records might be living among their children and will not say now whether such informants are on campus today.

"While the use of a confidential informant on campus is rare as far as we know, the university will not compromise the safety or integrity of possible criminal investigations by commenting on the tactics being employed by law enforcement agencies, especially in regard to the use of undercover agents," according to the university's response, e-mailed by spokesman Paul A. Herold.

The operation was in response to "reports of illegal drug sales in and around the residence halls. . . . As part of that operation, a confidential informant was placed in one of the residence halls in February-April 2004.

"Both graduate and undergraduate students lived in that facility. The confidential informant was selected by the SCDU, in strict accordance with its policy."

Only five university officials knew about and approved the operation: the chief of university police and his supervisor, the director of residence halls and his supervisor and the general counsel.

Proenza wasn't told about the use of the confidential informant, though he did support working with the task force to combat campus drug use.

"The president of the university usually is not involved in the tactics of law enforcement on campus or in the day-to-day operations of our student judicial system," the university wrote.

The university said it did not receive any complaints about Hulk's conduct on campus.

"At least six arrests were made as a result of using the confidential informant, with criminal convictions resulting in every case but one."

The one that didn't result in a criminal conviction was Plinton, who came to Akron highly recommended for the master's program in public administration and had received a tuition waiver and a stipend for research work in the department.

It is uncommon for students in his program to live in campus dorms, but Plinton was from out of state and needed inexpensive housing. Hulk was assigned a room in Wallaby Hall right next to Plinton, who allegedly sold Hulk marijuana on March 3 and March 11 while police observed from a distance.

Plinton didn't call alibi witnesses

A doctoral candidate testified in the criminal case, however, that Plinton was working with her in the Polsky building on March 3 at the same time police said he was across campus selling marijuana to Hulk. A professor who pays students out of grants involving public money signed Plinton's time sheet more than a month before he was arrested.

Either Plinton was at work or he was selling drugs on March 3, yet neither the supervising professor nor the student has ever been asked by the university to explain this discrepancy.

The university said it was up to Plinton to have them testify in his defense.

"If Plinton – and his attorney – felt that their alleged testimony was key evidence to present in Plinton's defense, they had the obligation to introduce those witnesses at the hearing board," the university wrote.

Plinton did submit his not-guilty verdicts, signed time sheet and cell-phone records indicating no calls from Hulk to set up drug deals.

Plinton did not have an alibi for March 11, but police say that the same person sold drugs on both days, so if it wasn't him on March 3, then it couldn't have been him on March 11 either.

Plinton was found not guilty of felony drug trafficking in Summit County Common Pleas Court on Aug. 6, 2004.

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Nevertheless, Charles Plinton and his attorney, Robert Meeker, appeared before the five-member university hearing board that month to answer the allegation that Plinton had "sold drugs to a confidential informant."

Plinton had to represent himself, although Meeker was allowed to attend as a silent adviser. He was not silent and objected that the hearing was unfair.

Tape of university hearing lost

The Beacon Journal and Plinton's family asked for a copy of the official tape recording, but were told the tape had been lost, although the seven-page fill-in-the-blank report of the hearing was available.

The university explained that "in the year and one-half between the time of the hearing and the request for the records of the hearing, the university's Office of Student Judicial Affairs, which maintains disciplinary records, was moved several times.

"Though it appears that the tape recording of that hearing was lost during transit, the entire paper record of the hearing exists intact."

One of the main criticisms of campus hearing boards is that they use a lower standard of evidence to determine culpability than criminal courts do.

The standard in civil court is preponderance, i.e., 50 percent plus a little more of the evidence tips the scales against the defendant.

Ohio requires that all state universities use this standard for violent offenses. Otherwise, the University of Akron uses the "substantial" evidence standard, which is lower than preponderance.

In other words, the majority of the evidence may point in favor of the student, but the student can still be found "responsible" for violating the student conduct code.

"While that standard is less rigorous than those required in criminal or civil courts, it is a common standard of evidence used in the disciplinary process of many colleges and universities nationwide," according to the university.

The university said it didn't believe its treatment of Plinton was unfair – in part because he never appealed the hearing board's finding or sought reinstatement.

"Given these facts, it is the university's contention that Charles Plinton was treated fairly in the university's handling of his case in March-September 2004."

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Charles Plinton and his attorney, Robert Meeker (above), appeared before a five-member university hearing board. Meeker was allowed to attend only as an adviser. He objected that the hearing was unfair.

Campus

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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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BACKGROUND FROM SUNDAY ON CHARLES PLINTON'S CASE

Charles Plinton was a graduate student at the University of Akron who came highly recommended from Lincoln University.

Just before the end of the 2004 spring semester, police charged him with felony drug trafficking.

A jury found him not guilty in August 2004, but a university disciplinary panel deemed him "responsible" and suspended him for a semester.

Plinton returned to his home in the Philadelphia area. He killed himself on Dec. 12, 2005.

MORE ONLINE

You can find Sunday's story about Plinton on Ohio.com.