Criminal Clients & The Campus Judicial System

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Why is this information critical?

• SLS does a substantial amount of criminal law advising for our clients.
  – How many of your new intakes this semester have been criminal law intakes?

• For many of our clients, the response of the criminal justice system has only minor implications for their long-term plans.
  – Pre-Trial Diversion: “pay your fee, keep your nose clean for a year ("kinda of"), and maybe do some community service or attend a class” and you have no record of a conviction.

• The response of the campus judicial system can be much more serious.
  – Which would your last client be more upset about: PDP or suspension from the University?
Why is this information critical?

- We are not providing the highest quality service to our clients if we limit our advice to only criminal law.
- Be sure our clients understand the whole story!
How many cases are there?

- 2004-2005 Academic Year:
  - 3398 total judicial cases processed
    - 2320 freshman vs. 216 seniors
    - 1838 alcohol cases
    - 256 illegal drug cases
    - 569 misconduct not on IU property cases
How does a case begin?

The student commits an act that allegedly violates a provision of the Indiana University Code of Student Rights, Responsibilities, and Conduct.

- The most likely violations for our clients:
  - Minor Possession of Alcohol
  - Minor Consumption of Alcohol
  - Minor in a Tavern / False Identification
  - Public Intoxication
  - Possession of Marijuana / Paraphernalia
How does a case begin?

• The Dean of Students Office becomes aware of the alleged violation.
  
  – This can be from many different sources:
    
    • Campus staff - Resident Assistants, etc. (2184 referrals)
    
    • Indiana University Police Department – their standard incident reports includes a box for student status and whether the Dean should receive a copy. In almost every case, the report will go to the Dean. (1027 referrals)
    
    • Bloomington Police Department / Monroe County Prosecutor – generally provided to IUPD for both joint jurisdiction and non-joint jurisdiction matters, and thus forwarded to the Dean. (86 referrals)
    
    • Complaint filed with the Dean of Students – sexual harassment between students, faculty complaints about student behavior, etc. (340 referrals, including UITS, staff, faculty, parking, etc.)
How does a case begin?

- The Dean of Students reviews the reports, and then sends some to the Office of Student Ethics and Anti-Harassment Programs for possible judicial action.

  – Dean of Students Richard McKaig
  – Associate Dean of Students and Director of Student Ethics Pamela Freeman
  – Assistant Director of Student Ethics Drew Chadwick
  – Office Services Assistants Nita Allgood & Cathy Loveland

- The Student Ethics Office is next door to Student Legal Services.
How does a case begin?

• Once a decision has been made to charge a student under the Code, a "notification letter" will be sent.

• The letter will include the Code sections allegedly be violated. Look them up just as you would for a criminal statute!

• This process may take some time. Just because a student has not been notified a week after the incident (the time they are normally meeting with SLS interns), it does not mean a charge will not be brought.

• This is another reason why all criminal law clients should be given this information.

• The letter will include the Code sections alleged to be violated.
The Initial Step

• Alternative Alcohol Intervention Program (AAIP)

  – Student will be informed of eligibility in their notification letter.

  – This program is used for first-time alcohol offenses in order to assess and correct dangerous alcohol use.

  – An intervention meeting will occur between the student and a trained professional in the Student Ethics Office.

  – As long as the requirements of the alcohol counselor are met, the charge under the *Code* is not pursued.

  – This is the university’s analog to the Monroe County Pre-Trial Diversion Program.
The Initial Step

• Informal Disposition

- Student meets with a Judicial Officer (from the Dean of Students Office), or with one of the Judicial Boards (J-Boards) (comprised of students from the jurisdiction)

- This process is intended to be a discussion between the student and the officer/board about the facts of the incidents and the surrounding circumstances

- A decision is made: responsible or not responsible

- If responsible, a sanction is handed down
Sanctions Possible

• Reprimand and Warning
• Disciplinary Probation
• Restitution
• Participation in a Specific Program
• Provision of a Specific Service
• Expulsion from University Housing
• Transfer to a Different Residence Center
Sanctions Possible

- Deferred Suspension
- Suspension
- Expulsion
Retention of Records

- Expulsions are permanently listed on academic transcripts and disciplinary records.

- Suspensions are listed on academic transcripts during the suspension, and are listed permanently in disciplinary records.

- Disciplinary Probation is listed in disciplinary records for 5 years after graduation or withdrawal.

- All other sanctions are listed in disciplinary records until graduation or withdrawal.

  - Note that parental notification letters are authorized for drug and alcohol cases, even for 18+ students, in some situations.
Student’s First Appeal

- **Hearing Commission**
  - 1 Student (AJ/SBSC) and 2 Faculty Members (BFC)
  - Proceedings are audio-taped and are much more formal
  - This is a NEW hearing – the sanction of the previous officer or board is not known, nor does the Hearing Commission know of any previous disciplinary actions

  - This is the most common mistake appealing students make – there IS an anchoring affect
  - Sanction can be less severe, the same, or MORE severe
Student’s Final Appeal

**Campus Review Board**

- 1 Student (CJ/SBSC), 1 Faculty (BFC), and 1 Administrator (Chancellor)

- Board only considers the evidence already offered (all documents and the audio tape of the hearing below) and the statements of the Dean and the student

- Board is looking only for:
  - If the decision below was based on “clear and convincing evidence”
  - If the university provided the student with “substantially deficient” due process

- Board can affirm, dismiss complaint, set a new Hearing Commission, or impose a lesser sanction
What is against the Code?

- Academic misconduct provisions

Specific provisions for on-campus violations:

- Possessing alcohol (with some exceptions) or drugs
- Violation of any Indiana or federal law
- Actions that endanger yourself, others, or academics
- Violation of other university procedures (i.e. UITS)
- Misuse of university ID or other's identities
- Lewd, indecent, or obscene conduct
- Weapons, fireworks, violence, false reporting
- Unauthorized use or blocking of university property
- Threatening a University Judicial Officer
What is against the Code?

- General provision for off-campus violations
  - Adversely impacts the University’s mission, such as altering transcripts, trafficking term papers, etc.
  - Presents a clear danger to the personal safety of any person or property, including alcohol and drug offenses
  - Violates policies of an off-campus program, such as overseas studies regulations
What are the student’s rights?

- The right to know the charges against you

- The right to be present in a hearing when evidence is being given or testimony is being heard, and to question such evidence or testimony

- The right that the university will make a good-faith effort to compel witnesses to attend the hearing and to produce documents, at your request

- The right to refuse to answer questions without any negative implications

- The right to have an advisor present at a hearing, but he or she cannot participate in the hearing in any way
  - Note: Dean of Student staff members are excluded – no interns

- The right to be found “not responsible” unless the university proves the charge by “clear and convincing evidence”
The student’s next step

- **Indiana University Student Association’s Department of Student Rights**
  - Trained student case manager will guide the client through the campus judicial process, including filing appeals and attending hearings

- **Student Advocates Office**
  - Retired faculty and administrative members assist students in various areas of university relations, including assisting with judicial cases
Important Notes from the Deans

• The campus judicial system’s goal is to be EDUCATIONAL, not punitive.

• There are many people on campus willing to help answer questions. The system can be confusing, but there are people who can help.

  YOU can now be one of those people!
Frequently Asked Questions

• “I was arrested, did my PDP, and now the university is charging me for the same thing? Man, isn’t this double jeopardy or something unconstitutional?”

– The same thing is not being charged – one was for a criminal law violation, one was for a campus regulation. The fact that each violation arose out of the same event does not matter.

– The university is a “separate sovereign” of a sort – just like the federal and state governments can both charge for different crimes for the same event, so can the state of Indiana and IU.
Frequently Asked Questions

• “Dude, I broke the law at a killer party off-campus. How can the school charge me since I wasn’t on their property?”

  - The *Code* applies based on the client’s status as a student, not based on the client’s location.

  - Students can be charged under the *Code* for incidents that occur outside of Bloomington, outside of the state, and even outside of the country.

  - The *Code* holds students to a higher standard than the citizenry at large.
Your Questions

• THE END