

Criminal Clients & The Campus Judicial System

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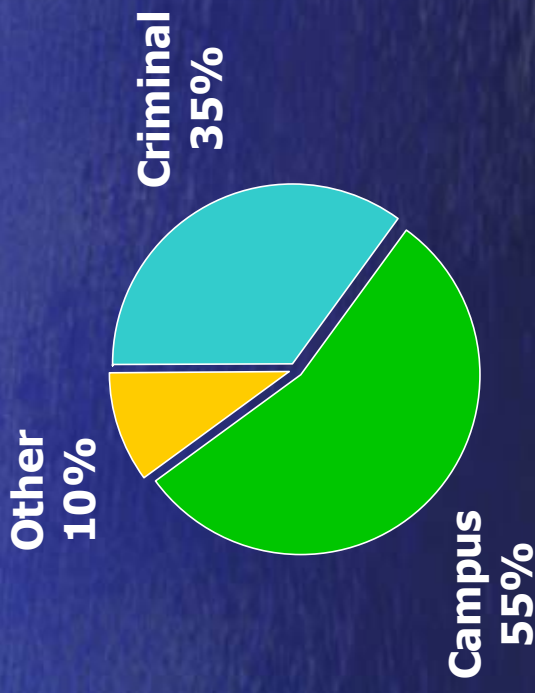
Why is this information critical?

- 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!

Implications of Actions for a Criminal Law Client



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 include 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.
 - 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. Look them up just as you would for a criminal statute!

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
- The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232(g), 34 C.F.R. Part 99
 - 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