

# JUSTICE FOR ALL?

## The jury's still out on college judicial boards

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IMAGINE CLOSED JUDICIAL proceedings, operating in complete secrecy, in which the accused has no right to counsel, witnesses or appeal. Picture a rape victim who has no right to attend her case's hearing or to warn others of her attacker's identity or punishment — no rights except those the court chooses to grant, which in many instances are few.

Such proceedings couldn't operate in the United States, right? Wrong. In fact, closed judicial proceedings with confidential records operate on college campuses across the country.

### A private matter

In 1974, Congress passed the Family Educational Rights and Privacy Act. One part of this legislation, known as the Buckley Amendment, prohibits schools from releasing a student's records — except to other schools or administrators — without that student's consent. Such records are grades, classes, counseling and disciplinary records.

Most campuses also conduct confidential disciplinary proceedings, saying that Buckley protects campus records and must therefore protect the proceedings that create those records.

The closed disciplinary records — which include any sanctions against a student, from underage

drinking to sexual assault — are under attack by students and administrators who question the law's fairness.

The Campus Courts Task Force (CCTF), a national journalism organization, opposes the Buckley Amendment.

"Despite its best intentions, the judicial hearing environment is ripe for abuse when there is nobody from the public to witness it functioning," says Gordon McKerral, president of CCTF.

Carolyn Carlson, founder of the CCTF, has testified before Congress in support of the Open Campus Security Log Act, which would require campuses to maintain daily crime logs and keep them open for public inspection.

"If these courts were public, then students could see for themselves that everybody gets treated fairly — that they're not being treated differently because of what fraternity they happen to be in or what race they are or what sex they are or anything," Carlson says.

Bill Kibler, a past president of the Association for Student Judicial Affairs, disagrees, saying that open hearings may cause judicial boards to cater to public opinion and render unjust decisions.

"I'm not convinced that if you opened the doors and shined the light of the media, things would change dramatically," Kibler says.

The ambiguity of campus judicial boards adds to the confusion. Because they aren't legal entities, judicial boards aren't required to provide students with the rights afforded by due process, and schools can take only minimal action, like suspension or disciplinary probation, against the students.

"One of the reasons the [campus] court doesn't have standards as high as a court does is because it doesn't have the authority that a real court does," Kibler says. "The most

authority it has is to kick someone out of school."

### Crime and punishment

Max Fraad-Wolff knows the campus court process firsthand. As a junior at Vassar College in 1994, he was accused of leaving a harassing message on another student's answering machine.



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MAX FRAAD-WOLFF,  
GRAD STUDENT, U. OF  
MASSACHUSETTS, AMHERST

"Once I was accused, it was over," says Fraad-Wolff, who compared his experience to the Salem witch trials or the McCarthy Red Scare. "[Administrators] were able to turn me into something that made the Antichrist look like a choir boy."

He says the college judicial board denied him the presence of his lawyer or parents. He wasn't allowed to show evidence that his accuser first blamed someone else but then withdrew the complaint. The board also refused to allow a voice analysis of the tape, and the school confiscated his personal notes from the six-hour hearing.

Fraad-Wolff was eventually found neither innocent nor guilty.

"I was basically sentenced to a limbo," says Wolff, now a grad student at the U. of Massachusetts, Amherst. "Any judicial system that works this way is a disaster."

### Conflict of interest

In 1995, Christy Brzonkala accused two Virginia Tech football players of raping her. She did not press criminal charges but, at the advice of her parents and friends, decided to let the campus judicial system handle the case.

Virginia Tech's judicial board suspended one of the two defendants, finding him guilty of sexual misconduct. Four months later, after an appeal and another seven-hour hearing, his violation was downgraded to probation and a one-hour educational session before he was allowed back on the football team.

"It was the most agonizing seven hours of my life," Brzonkala says. "I was shafted. I didn't have any clue what was going on."

Brzonkala, now a student at George Mason U. in Virginia, filed a civil suit against Virginia Tech as well as the two football players. The suit was dismissed and is now in the process of being appealed.

Eileen Wagner, Brzonkala's lawyer, says Virginia Tech was simply trying to cover itself and the millions of dollars in revenue that the school gets from the football team.

"When you put the university into the role of advocate for the victim, advocate for the accused, investigator, judge and jury, you're just opening yourself up for a conflict of

interests," Wagner says. "They turned the rules into a pretzel in order to restore eligibility of a star football player."

Wagner says when schools take the law into their own hands, they are only concerned with serving themselves and that they use the secrecy of the Buckley Amendment to protect their own reputations rather than to protect students' privacy.

"It was really a kangaroo court," Wagner says of the school judicial board. "They absolutely mauled Christy in the process. It's absolutely horrifying what went on."

### The verdict

As a result of a 1993 Georgia Supreme Court decision, the U. of Georgia is one of the few schools whose student judicial hearings are open to public scrutiny. The school's student newspaper, *The Red and Black*, sued the school, arguing that Buckley only covers records, not proceedings. The courts ruled in favor of the school newspaper.

The U. of Georgia decision has paved the way for others in the fight to bring judicial boards and campus crime under public scrutiny. The student newspapers at the U. of Miami, Ohio, and at the U. of North Carolina are both involved in litigation against their schools for more access to campus judicial records and campus court hearings.

The federal government is getting in on the act, too. In September, the House of Representatives passed a resolution urging the Department of Education to enforce the timely reporting of campus crime.

Since the Georgia Supreme Court decision, the Department of Education has maintained that Buckley does not cover judicial proceedings. As a result, campus court proceedings cannot be closed in the name of Buckley, as most colleges claim.

"If you're a student at a campus, and you march up to a hearing and you say, 'I want to be allowed to sit in on this hearing,' and that judicial officer says, 'No, we can't let you be in here because the Buckley Amendment prevents it,' they're not telling you the truth," McKerral says. "It's wrong."

*The dynamic duo of Brett Vermilyea and Amy Helmes are the college equivalent of Sam Donaldson and Diane Sawyer. (But Brett has better hair than Sam.)*