

The Washington Times

Reliable Reporting. The Right Opinion.

SHIBLEY: Unwitting rapists and their oblivious victims

By - *The Washington Times* - Thursday, April 15, 2010

ANALYSIS/OPINION:

At Duke, you can be a rapist without even knowing it. A new sexual-misconduct policy, enacted in the fall, takes as one of its fundamental tenets that “real or perceived power differentials between individuals may create an unintentional atmosphere of coercion.” That’s right: To be guilty of date rape at Duke, you don’t have to force someone to have sex or even have actual power over that person - you only have to be “perceived” as more powerful by a Duke tribunal.

Not concerned yet? How about this: If either party, male or female, is to any degree intoxicated during sexual activity, he or she can’t consent to sex. If you are a student and your partner (or even your spouse) is tipsy, Duke says you have committed sexual misconduct.

Last month, my organization, the Foundation for Individual Rights in Education (FIRE), sent an eight-page letter to Duke President Richard H. Brodhead detailing the myriad problems with Duke’s new policy. The policy was introduced with fanfare from the Duke Women’s Center, whose director justified the policy by opining that campuses like Duke harbor smarter-than-average rapists.

The policy not only departs from state law and common sense when it comes to consent but also sets up procedures for sexual-misconduct hearings that differ from the procedures for every other offense.

For instance, campus offenses at Duke are generally tried before a hearing panel of three students and two faculty or staff members. In the case of sexual misconduct, however, the hearing panel is two employees and only one student. Why the difference? Duke doesn’t say, but one can hardly imagine the accused not noticing that two-thirds of the jury has Duke for a boss.

America’s Founders considered the right to face one’s accuser so important that they enshrined it in the Sixth Amendment. Yet Duke has rejected this wisdom. You can be accused of rape by an anonymous third party, regardless of the purported victim’s wishes, and you may never know who accused you.

Also remember that according to Duke, the purported victim doesn't even have to think she (or he) was date-raped, because intoxication or "perceived power differentials" can make sex nonconsensual without either party knowing.

If not for the court of public opinion, the Duke men's lacrosse players who were falsely accused of rape might be in jail today. Now, for those accused by Duke, even that option is unavailable because any information shared during a hearing can never be revealed. Were you cleared? Were you falsely accused? Don't tell anyone, or Duke will punish you for violating confidentiality.

FIRE gave Duke more than a month to respond to our letter and defend or rescind these rules. Duke has done neither. We got only a one-page response saying that Duke would think about clearing up some additional ambiguities FIRE pointed out and that Duke would consider our concerns. In the meantime, how many Duke students have been falsely convicted of date rape? We hope the answer is zero, but there's no way to know - Duke has made sure of that.

Duke is not alone in losing its grip on reality at the mention of sexual topics. At Colorado College, two students were found guilty of sexually related "violence" for "juxtaposing weaponry and sexuality" on a flier. In response to a feminist publication called the Monthly Rag, which featured topics including male castration and an upcoming lecture from a porn star, they posted the Monthly Bag, which discussed "manly" topics such as the range of a sniper rifle, "chain-saw etiquette" and a quote about a sexual position from menshealth.com. To this day, Colorado College President and former Ohio Gov. Richard Celeste stands by his decision that parodying the wrong people is a form of violence.

Duke suffered the most public lesson in recent memory of what can happen when rape allegations are not investigated carefully and fairly. One would think this would serve as a lesson not only for Duke, but for all colleges. Yet colleges continue to sacrifice the needs of justice to meet the demands of those for whom college is a chance not to educate but to indoctrinate students. A huge administrative class, desperate to justify its size by regulating every corner of students' lives, has reached into the most intimate of relations to change the very nature of how students perceive dating, sex and relationships.

Let's hope that their reach finally has exceeded their grasp. As one commenter remarked about Duke's policy, \$53,000 a year is a lot to pay to be treated like a prole from "1984." If students, parents and alumni push back, education rather than indoctrination can once again take its rightful place in our nation's institutions of higher learning.

Robert Shibley, a lawyer, is vice president of the Foundation for Individual Rights in Education (FIRE).

<https://www.washingtontimes.com/news/2010/apr/15/unwitting-rapists-and-their-oblivious-victims/>