Victory for Due Process: Student Punished for Alleged Sexual Assault Cleared by University of North Dakota; Accuser Still Wanted for Lying to Police

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GRAND FORKS, N.D., October 18, 2011—A student convicted of sexual assault and banned from campus by a University of North Dakota (UND) tribunal is free to return to school this week. After a year and a half, UND officials have determined that the university’s finding of guilt against student Caleb Warner was “not substantiated” in the face of the evidence. That same evidence led North Dakota law enforcement to charge Warner’s accuser last year with making a false report to law enforcement—a charge for which she is still wanted by the police. UND finally reexamined Warner’s case only after the university’s behavior was exposed by the Foundation for Individual Rights in Education (FIRE), to which Warner had turned for help.

“Using a shamefully low standard of evidence, the University of North Dakota branded Caleb Warner a criminal. Meanwhile, based on the very same evidence, law enforcement officials charged Warner’s accuser with lying to them and issued a warrant for her arrest,” said FIRE President Greg Lukianoff. “Cases like this vividly demonstrate the need for due process and fair procedure on campus, as well as a renewed recognition that fundamental rights are important for both victims and the accused.”

The incident that led to Warner’s punishment took place on the night of December 13, 2009. Sometime before February 9, 2010, Warner’s accuser reported an allegation of sexual assault
to the university and the Grand Forks Police Department. UND held a hearing for Warner on February 11, 2010, and informed him on February 16 that he had been found guilty of “Violations of Criminal or Civil Laws, Sexual Assault, and Interference [with members of the university community].” He was banned from campus and suspended from the university for three years.

In finding Warner guilty, UND used the weak “preponderance of the evidence” standard (50.01% certainty) to determine guilt or innocence—the very same standard recently imposed upon every federally funded college in the country under an April 2011 regulation from the federal Department of Education’s Office for Civil Rights.

UND’s reliance on the “preponderance of the evidence” standard lowered the accuracy of the proceedings so much that the police and the university arrived at very different results. Using what the university later insisted was the very same evidence, UND’s campus tribunal convicted Warner of sexual assault, while the Grand Forks Police Department determined that Warner’s accuser had lied about what had happened.

In fact, on May 13, 2010, the Grand Forks County District Court formally charged Warner’s accuser with “False information or report to law enforcement officers or security officials,” a Class A misdemeanor, and issued a warrant for her arrest on May 17, 2010. To date, Warner’s accuser has failed to appear to answer the charges against her.

“When you only have to be 50.01% sure about the evidence, it’s easy to make a mistake or to let bias, conscious or otherwise, determine the outcome—especially in campus justice systems. Yet, the federal government is now mandating that this flaw be enshrined at practically every university in the country,” said FIRE Senior Vice President Robert Shibley. Warner first requested a rehearing on July 28, 2010, but UND refused to grant it. In the spring of 2011, Warner asked for FIRE’s help. On May 11, 2011, FIRE wrote UND President Robert O. Kelley, pointing out the university’s procedural errors and criticizing its failure to reconsider the case. On May 20, UND responded to FIRE, once again denying Warner’s request for a rehearing. This is when UND revealed that it had used the very same evidence to find Caleb Warner guilty of sexual assault that the police and prosecutor had used to charge his accuser with lying to law enforcement.

On July 15, an opinion column in The Wall Street Journal by FIRE Chairman Harvey A. Silverglate launched FIRE’s national press campaign to encourage UND to give Warner a fair rehearing. Two weeks later, UND Provost Paul LeBel finally invited Warner to appeal the finding against him. With the help of attorney Nathan Hansen, Warner submitted a new appeal on August 31.
Late last week, Warner received a ruling from LeBel announcing that “based on the specific fact of a law enforcement office filing an affidavit of belief that the complainant had provided false information to him” about the sexual assault accusation, a “continued finding of a violation of the [UND Student] Code is not substantiated.” LeBel wrote that the sanctions were “vacated.” Warner, who has been driving a delivery truck to support himself, is now free to return to his studies at UND.

“Sexual assault is one of the most serious crimes, and those found guilty carry an enormous stigma,” FIRE’s Shibley said. “Finding someone guilty of sexual assault should therefore require serious evidence and procedural protections. Otherwise, people will lose confidence in the system, with grave consequences for victims and the accused alike. FIRE hopes that Caleb Warner’s case provides a cautionary tale to other colleges to make sure their prosecution procedures are as fair and accurate as possible.”

FIRE is a nonprofit educational foundation that unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of individual rights, due process, freedom of expression, academic freedom, and rights of conscience at our nation’s colleges and universities. FIRE’s efforts to preserve liberty on campuses across America can be viewed at thefire.org.

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