

University Wire

Free press questioned after American U. incident

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By Brett Zongker, The Eagle

A disciplinary conference board found Senior Ben Wetmore responsible for theft and other violations of the American University Student Conduct Code after he videotaped Tipper Gore's April 8 speech in Bender Arena.

Confronted by plainclothes University Police officers during the speech, Wetmore was asked to leave the arena. He initially refused to leave because the officers refused to identify themselves, he said. Once outside Wetmore was informed that recording the event was prohibited, but he refused to hand over his tape. A struggle ensued, and University Police wrestled Wetmore to the ground, seized the tape, and took Wetmore into custody, The Eagle previously reported.

Wetmore, the administrator of www.benladner.com, has been critical of the administration on his Web site since it was established. He has used the site to post photographs of AU President Benjamin Ladner's residence among other things. His Web site has been referred to numerous times during the judicial process, though it is completely irrelevant to the charges and incident at the Gore event, he said.

He says he had planned to give the tape of the Gore event to ATV or show it to people who could not attend the event.

Civil libertarians and student press advocates have expressed concern over the charges and sanctions imposed by Judicial Affairs and Mediation Services against Wetmore.

"Documents that have described the charges are enough for us to be concerned," Mark Goodman, executive director of the Student Press Law Center, said. "The university has no copyright, no real ability to enforce anything. If the student had actually used copyrighted material in a way that is not fair use, Tipper Gore may have had a valid claim."

Goodman said the notion that a university could "claim that a student gathering information at a public event is theft, even if it is videotape," is troublesome. "It appears to me the reason they are enforcing this against Ben is because they don't like what he is saying," he said.

Filming the president's University-owned residence is a "reasonable part of news-gathering" and should not be held against him, Goodman said. Officials have warned that Wetmore's "harassment" of Ladner could result in further judicial action, Wetmore said.

AU is not trying to stifle a free student press, Gail Hanson, vice president of Campus Life, said.

"The part of this that was handled in Campus Life and Judicial Affairs was a disciplinary matter," she said. "It wasn't a policy matter or a matter of freedom of the press or not."

Wetmore was charged with seven violations of the Student Conduct Code including conduct which threatens the health or safety of any person, theft of property or services or knowingly possessing stolen property, disorderly conduct, and willfully failing to comply with the directions of university officials. He was found responsible for five of the seven charges, according to Judicial Affairs documents provided by Wetmore.

The proceeding denied him an impartial panel, equal access to the evidence and failed to consider the responsibility of University Police officers in the incident, Wetmore said.

The conference board that heard the case included Katsura Kurita, director of Judicial Affairs and Mediation Services, her law clerk, and a graduate student representative who once voted to have Wetmore impeached from the General Assembly, he said.

Wetmore also said that he was denied equal access to his videotape, which captured much of the struggle between he and University Police officers.

Kurita said she could not discuss the specifics of Wetmore's case due to confidentiality requirements. "There wasn't equal access to the evidence at all," Wetmore said. "We got to see it once."

The tape helps to prove that a reasonable conversation did not take place before officers pushed Wetmore against a wall and then to the floor face down, he said.

"If you look at the tape from the time we leave the double doors of Bender Arena to the time that you see David Lazarus' hand on my arm controlling the situation was about 15 second or less," Wetmore said.

The Judicial Affairs conference board sanctioned Wetmore with one year of disciplinary probation which removed him from his elected position as Anderson Hall president, he is required to complete an Independent Learning Contract on the topic of "conflict resolution" which includes writing papers and making a presentation, and the board sanctioned 40 hours of community restitution which will consist of "set-up and clean-up of events that occur in the Bender Arena," according to a letter from Kurita to Wetmore. Though the sanctions may be appropriate for being responsible for five of seven charges, Wetmore should have only been held accountable for two or three of the charges, said Matt Hall, director of the Student Advocacy Center, who advised Wetmore during the conference board. Hall questioned the nature of the sanctions as well.

"Cleaning Bender is a punitive punishment," he said. "Judicial Affairs always says they are interested in

educating student to help them make better decisions. I don't think that picking up garbage will help him learn anything."

Kurita responded to The Eagle in a written statement, explaining that sanctions are determined based on the following factors: significant mitigating or aggravating factors on the particular case; demeanor of the student; past disciplinary record of the respondent; nature of the offense; precedent; and severity of the damage, injury or harm resulting from it.

Hall, who advises many students on the AU judicial process, said his biggest problem with Wetmore's case was the third member of the board "who has a history with Ben," he said. "I think hands down, if you have any background with the student, whether it was casual contact or not, if you have contact with the student, you shouldn't be a board member," Hall said.

Kevin Malecek, president of the Graduate Student Association, testified at Wetmore's request, as to the nature of the relationship of the board member in question.

"I think it would have been better for them to pick someone else," Malecek said. "I'm not going to impugn her because I think she's a fair person, but I think it would have been better for their situation to pick someone else."

Other witnesses testified on Wetmore's behalf to the events that transpired April 8 and to the legal validity of the charges.

Senior Nancy Kachadorian, a friend of Wetmore's who was sitting next to him during the Gore speech said Wetmore is telling the truth when he says officers refused to provide identification.

"I didn't know they were Public Safety officers until I talked to Ben later that night," she said.

Peter Jaszi, an AU law professor, testified by videotape that Wetmore's taping of the event was not a violation of copyright law and could not constitute theft, Wetmore said. Jaszi said he had no further comment on his testimony.

"AU does define its own charges, and they're not necessarily the same as a legal charge even though they might have the same wording," Hall said.

The University's position appears to remain, however, that Wetmore was in violation of the law.

"The university considers Mr. Wetmore's attempts to record Mrs. Gore's presentation without her express permission a violation of Federal copyright law and university policy prohibiting copyright infringement and theft of property," Mary Kennard, AU vice president and university counsel, wrote in a letter to Wetmore's attorney.

Gore's contract with the Kennedy Political Union specified that "this appearance may not be recorded by any means, for any purpose," according to a written witness statement from Karen Gerlach, assistant director of Student Activities. Wetmore provided the statement to The Eagle.

"The KPU staff did not have signs posted at the event stipulating this condition nor was a clear announcement of this made at the beginning of the event," she wrote. "It was only indicated that flash photography was not allowed."

The University failed to enforce its contract with Gore when no announcement was made that recording was prohibited, Greg Lukianoff, director of legal and public advocacy for the Foundation for Individual Rights in Higher Education, said. "The idea that its illegal for him to simply tape the event is patently absurd," he said.

Brad Cheney, then director of KPU, told The Eagle in April that prohibiting videotaping has "never been an issue in the past, [but that] perhaps we should have said it."

Most KPU contracts with speakers do not have a stipulation on recording or photography, but KPU will "be more sensitive to the issue now when we do these events," Gerlach said.

Gerlach walked with Wetmore and the officers out of the arena April 8, according to her statement. A member of the Media Relations staff indicated that the tape should be secured from Wetmore so that it would not be distributed, she wrote, and Wetmore refused to turn over the tape. When Wetmore blocked the camera from the officers, the struggle began, she wrote.

"I attempted to tell Officer Lazarus and Officer Smith that this incident was escalating to a level that it didn't need to go," she wrote. "I felt like they were escalating the situation and I didn't feel that this needed to be handled this way."

Gerlach said her opinion of the situation was based on a different, student services style. "That's a different approach than police officers take in handling situations."

"Could things have been handled differently if a different person approached him first? Probably," she said. "But that's just speculation."

Public Safety conducted an internal investigation into the procedures of University Police officers, finding that they did identify themselves appropriately when confronting Wetmore, contrary to his claim and the claim of his witness. "We handled the case the best we could. I found no wrong doing on the part of any officer," Colleen Carson, director of Public Safety, said.

Carson said she felt the officers exercised restraint in the situation.

"Frankly, I think it went on a little longer than it needed to," she said. "They were trying to get

compliance for an order they were given."

Carson said the situation "started to escalate because it was not getting resolved."

The conference board did not question Public Safety procedures when responsibility for the conflict was assigned, Hall said.

"In other hearings where Public Safety has been involved, there has been definite questioning of Public Safety procedures," Hall said. "I don't remember that in this case at all."

When it came time for Kachadorian to testify at the hearing, she said it was as if the board had already made a decision before hearing her eyewitness testimony.

"I don't think they regarded me as an eyewitness for most of it," she said. "Even though I am Ben's friend, it is pretty important that I witnessed the whole interaction."

Fairness is achieved in the judicial process through the extensive training of hearing officers and the procedural protections built in to the Student Code of Conduct, Faith Leonard, assistant vice president and dean of students, said.

"I have a lot of confidence in our hearing officers because they are so well trained. [They are] trained in how to access evidence, how to evaluate a situation, and how to arrive at good decisions and good judgments."

Wetmore wrote a letter of appeal to Leonard, but he said she has not yet responded.

Leonard said she takes students' concerns very seriously but could not comment on whether she was considering his appeal.

There is no appeal built in to the conference board process that Wetmore's case was handled as, Hall said. Sanctions are capped at probation and community service.

Wetmore is exploring legal options with the Foundation for Individual Rights Education.

"We certainly will [take legal action]. We are fully prepared to take that step," Lukianoff said. "This case has generated a lot of interest in terms of the number of unconstitutional acts on the part of the University."

Lukianoff, who graduated from AU in 1996, has written a letter to Ladner, expressing FIRE's concerns about the threats to "free speech, journalistic freedom and fundamental fairness posed by the actions taken against Ben Wetmore."

"I don't want to sue my university, but they're not responsive to anything at this point," Wetmore said.
"That's how they handle things."