Written by **Steve Byas** on August 24, 2016

Oklahoma Wesleyan Joins Suit Against Department of Education

"Oklahoma Wesleyan is the only school that's willing to stand up to OCR. They're brave enough to do this."

Justin Dillon, an attorney with the Washington, D.C., law firm KaiserDillon PLLC, was praising the decision by Oklahoma Wesleyan University, located in Bartlesville, to join as a plaintiff in the lawsuit of a former University of Virginia student against the U.S. Department of Education's Office of Civil Rights (OCR). The student, who is identified in the lawsuit as John Doe, is challenging the agency's interpretation of Title IX, which caused him to be found responsible by the college for sexual misconduct. Dillon and his colleague Chirs Muha are representing "John Doe" and Oklahoma Wesleyan in this suit, which is being sponsored by the Foundation for Individual Rights in Education (FIRE).

Presently, colleges and universities are required by the Office of Civil Rights to use a "preponderance of the evidence standard" when there are accusations of sexual misconduct by their students.

Up until now, institutions of higher education have meekly accepted the directive issued by the Department of Education, under threat of having their Title IX funding cut. It is understood that no college or university wants to challenge the dictates of the federal agency, lest they be singled out for retribution. This is what makes the decision of Oklahoma Wesleyan, led by its president, Everett Piper, so ground-breaking.

Piper is no stranger to controversy, having made national news when he publicly challenged recent progressive causes which are attacking free speech and the centuries-old mission of the university as a place to explore new ideas. Late last year, he rejected the idea that the university should be a "safe place," arguing that it was rather *a place to learn*. "This is a place where you will quickly learn that you need to grow up," he declared.

For those students who have bought into the liberal dogma that it is wrong for them to be exposed to viewpoints that clash with their own, Piper asserted, "This is not a daycare. This is a university!"

In a recent column, Piper stated, "Run by the State and its thought police, colleges across the land have become indoctrination camps more so than campuses of open inquiry. Propaganda and power now reign."

He zeroed in on the hypocrisy of American progressives who dominate the universities today: "The

American university is imploding in self-refuting duplicity. Safe zones are anything but safe. People are bullied by those who decry bullying. Rather than celebrate liberty, liberals now demand conformity."

Now, Piper has taken on an extremely powerful agency of the federal government on a critical issue: the right of a person to be presumed innocent until proven guilty beyond a reasonable doubt.

Many important principles are involved in this lawsuit that Piper and Oklahoma Wesleyan have joined, such as due process of law, the presumption of innocence, the right to confront one's accusers, and the exercise of general police power by the states — not the federal government, which may legally exercise only those powers delegated to it by the Constitution.

In the case of the Virginia student, a female law student filed a complaint against him in March 2015, accusing him of taking advantage of her sexually while she was intoxicated, in an incident which allegedly took place on August 23, 2013. The male student countered that the woman "did not even appear to be intoxicated that night, much less incapacitated."

After reviewing the case, the adjudicator retained by the university found in the woman's favor — using the standard of proof used in civil actions: the preponderance of the evidence — asserting that the evidence tipped "slightly" in her favor. In criminal cases, the standard of proof is "beyond a reasonable doubt," and in civil cases such as libel it is a similar "clear and convincing evidence" standard. According to the lawsuit, "After consulting with UVA's Title IX coordinator, the adjudicator sanctioned Mr. Doe to four months of counseling and a lifetime ban from all UVA property and activities."

Piper found this unfair. In joining the lawsuit, he stated,

> To sufficiently protect the rights of both accused students and their accusers, Oklahoma Wesleyan University would like the freedom to make "clear and convincing evidence," rather than "preponderance of the evidence," the burden of proof for sexual misconduct on its campus.
>
> All of our students should have the legal right to avail themselves of local law enforcement without their petition being compromised by the intrusion of the Office of Civil Rights-mandated committee of amateurs that contravenes the due process and confidentiality of the legal process.

Piper bluntly accused the Office of Civil Rights of pushing a "social agenda using Title IX to coerce and intimidate schools through the threat of a loss of federal funding."

Practically every institution of higher learning in America faces this threat, whether they are public or private, because if even one student receives one cent in federal aid, the school then is held to fall under the jurisdiction of the dictates of the Federal Department of Education and its Office of Civil Rights.

At Yale, basketball team captain Jack Montague was expelled from the Ivy League school in February. The expulsion followed the decision of a five-person panel that he had had "unconsented sex" with a female student.

Amazingly, the woman never contacted local police, and no investigation into her charges was ever conducted by them. What did happen is that the woman filed a complaint a year later — not with the police, but with the college. This action precipitated an administrative process at Yale, governed by the Yale Code of Conduct. Under the code, an independent lawyer was hired, who conducted his own investigation and then turned over his findings to a five-person panel.

The panel then held a hearing, with no questions from either party in the complaint allowed. In a criminal case, "discovery" is allowed. Discovery means that the defense is allowed to see what evidence

the prosecution has obtained against the defendant. But no discovery is allowed under the Yale Code of Conduct. Additionally, no statute of limitations exists. The right of an accused person to confront his accuser does not exist. He is not even allowed to know if there is any exculpatory evidence — evidence that would help exonerate him.

If no criminal investigation was ever conducted, they why did Yale get involved at all? After all, why should any college be in the business of conducting what should be a criminal investigation? Yes, rape is a serious crime, but so is armed robbery and murder. If a student were accused of holding up a liquor store, no one would think the college should conduct its own investigation. Just leave it to the legal system, and if a student is then found guilty, it is a simple matter to expel him. And probably redundant.

The answer is predictable: The federal government is pressuring colleges to conduct these types of inquisitions, regardless of what local law-enforcement authorities have determined.

There is no way of knowing which Yale student was telling the truth in the case. That should be left up to the criminal justice system — not a college, and not federal bureaucrats at the U.S. Department of Education.

Title IX of the Civil Rights Act requires that colleges receiving any federal funds must follow certain guidelines in the conduct of their "extracurricular" activities, such as sports, debate, and the like. In the past few years, the Office of Civil Rights of the U.S. Department of Education has determined that this also requires colleges to be proactive in the fight against sexual assaults on their campuses.

While few would tolerate sexual assault anywhere in American society, this historically was considered a matter for local law-enforcement authorities to investigate. But if colleges refuse to conduct these types of investigations on their own and mete out punishments in the form of expulsions and the like, they could face revocation of their federal aid.

Unlike Oklahoma Wesleyan and President Piper, most college officials will not take any chances, but will err on the side of expelling any accused student. Otherwise, the Office of Civil Rights of the Department of Education could then decide that the college is not following Title IX's requirement, arguing the college *should have* expelled the student. Last year, 124 colleges were under investigation by the Department, examining whether they had properly handled such cases. The path of least resistance is to simply expel the supposed offending student.

These cases should cause grave concern to anyone who believes in the concept of due process of law. While college officials do not have the power to imprison a student they find "guilty" in their proceedings conducted under the watchful eye of the federal government, their decision can ruin a student's academic career and reputation, and may also diminish future job opportunities.

Of course, there exists no constitutional authority for the federal government to do what it is doing. Furthermore, it is an effort to take over the general police power, which is left with the states as part of the "reserved powers" found in the 10th Amendment.

And while Yale is a private college, many of the institutions of higher learning where these types of cases occur are public. As such, they are agents of the state government, and should be required to follow due process of law, with all the procedural safeguards one expects when one is accused of a crime.

It would be helpful if scores of colleges and universities across the country joined President Piper and Oklahoma Wesleyan in challenging this federal overreach. However, it is certainly understandable that

they do not. While it is indeed difficult to fight city hall, at least you can move to another city.