

[6] 3/28/2007 DSG memorandum to Stephen Bryan requesting the exclusion of evidence obtained illegally by local law enforcement from University judicial proceedings.

Duke University

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MEMORANDUM

TO: Stephen Bryan

FROM: Elliott Wolf

DATE: March 28, 2007

RE: Evidentiary Standards in University Judicial Proceedings

It is our understanding that the Office of Judicial Affairs will pursue judicial action against a student based on evidence collected by law enforcement officers that was illegally obtained or otherwise insufficient to serve as the basis for criminal prosecution. Although Duke's current policy is designed to hold students responsible for infractions of undergraduate policy off-campus, we feel that it has several unintended consequences that outweigh any merits of the current policy.

Evidentiary standards exist in the legal system in order to protect the Constitutional rights of citizens as they are investigated and prosecuted. The rule of law requires that the government not break the law in the course of enforcing it, and the legal system's burden of proof emphasizes the notion of innocent until proven guilty. Under normal circumstances, police officers have no incentive to cite individuals on the basis of illegally obtained or otherwise weak evidence because it will not result in prosecution.

Duke's willingness to use any evidence, regardless of how it was obtained, undermines those crucial protections. It gives police officers an incentive to issue criminal citations to students on the basis of illegally obtained evidence or evidence that would otherwise not stand up in court because the University will adjudicate the student involved regardless of the strength or nature of the evidence.

This ultimately encourages the Durham Police Department and other law enforcement agencies to treat Duke students differently than other members of the community—something that is both antithetical to recent efforts to better integrate Duke students with the rest of the Durham community and, more importantly, unfair to students. Such differential treatment has been documented in numerous instances, including the lacrosse case and cases handled by Sgt. Mark Gottlieb, among others. Although such differential treatment cannot be directly tied to this specific policy, the University should not support it in any capacity.

In addition to promoting unprofessional or illegal behavior on behalf of law enforcement, this policy also seems inconsistent with Duke's mission of educating students about the importance of upholding the law. It is ideologically inconsistent that the University use illegally obtained evidence in its efforts to educate students about the importance of following the law. The University should condemn illegal behavior by police officers just as it condemns illegal behavior by students.

Thus, we request that the Office of Judicial Affairs no longer use illegally obtained evidence in judicial proceedings against students. We also request that a policy specifically prohibiting the use of such evidence be posted on the Judicial Affairs website so that it is clear to the Durham Police Department and other agencies or interested parties that the University uniformly condemns violations of the law—not just those committed by students.

We recognize that is impractical for the University to use the same burden of proof as the legal system in all of its judicial proceedings. However, some balance must be struck in dealing with criminal citations in order to avoid creating a moral hazard for police officers in violating students' Constitutional rights. We have insufficient information at this time to propose specific guidelines, but it would be helpful to meet with you and examine past case files to determine a reasonable set of guidelines that might govern the University's use of evidence obtained by police officers off-campus.

CC

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Richard Brodhead
John Burness