

[7] 4/17/2007 response from Stephen Bryan denying DSG's request to exclude illegally obtained evidence.

# Duke University

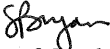
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## MEMORANDUM

TO: Elliott Wolf  
President, Duke Student Government

FROM: Stephen Bryan   
Associate Dean of Students & Director of Judicial Affairs

DATE: April 17, 2007

RE: Response to your memo regarding evidentiary standards

Events in our community over the last two years have raised significant and widespread concerns about the treatment of Duke University students in the Durham criminal justice system, from initial citation or arrest to subsequent investigation and prosecution. Understandably, these concerns may carry over to the university's disciplinary process, given that any report involving a student may potentially lead to formal disciplinary action. Thank you for giving me another opportunity to illuminate how the university responds to reports of alleged student misconduct—particularly those involving a citation or arrest—and the protections in place to promote a fair process.

First, it is important to note that the university routinely initiates the disciplinary process for reports that may be, in your words, “insufficient to serve as the basis for criminal prosecution.” Such reports may not be criminally prosecuted for a number of reasons, including: the complainant or the district attorney's office declines prosecution; the amount of evidence available does not rise to a “beyond a reasonable doubt” standard of proof; the behavior may be a violation of university policy but not illegal; or, the intervening police officer simply decides not to arrest/cite and defers to action the university may take. Most of the reports the Office of Judicial Affairs addresses do not involve criminal citations/arrests.

It is worth emphasizing that the Office of Judicial Affairs responds to *all* reports we receive or that come to our attention concerning a potential violation of policy, regardless of whether a citation/arrest was involved. The university has received numerous reports, for example, involving noise complaints against students living off campus made through Durham Police. These students have not typically been cited. The Office of Judicial Affairs follows up with them through an informal conversation. While repeated complaints may result in the formal disciplinary process, such action is rare as students usually modify their behavior or reconcile with their neighbors directly. We have met with the district commanders of Durham Police to explain how we respond

to any report we receive. It seems unlikely that there is a higher incentive for officers to cite students versus non-Duke students.

Of course, the only way to determine with certainty if Durham Police or other law enforcement agencies unfairly target our students is to examine that agency's data. Questions worth asking include: Are Duke students overrepresented in the percentage of arrests/citations for the district in which most Duke students reside? Does an officer's track record show a greater likelihood of citing/arresting Duke students versus non-students for similar behavior? I wholeheartedly support Duke Student Government in pressing for this information from appropriate city/state officials. I have heard anecdotally that students feel there is a particular Durham officer who unfairly targets students. I have raised these concerns with Captain Ed Sarvis of the Professional Standards/Internal Affairs division of Durham Police. Students with specific examples of potential abuse or misconduct can contact him at 560-4430.

With regard to illegally obtained evidence, ALE's large-scale operation and a judge's subsequent ruling about the conduct of agents were extraordinary events, unprecedented in the university's recent history. However rare it is that a judge rules that evidence against a Duke student was illegally obtained, the issue you raise still needs to be addressed: What is the university's position in using that evidence as an indication of a violation of university expectations? Since one of the purposes of our disciplinary process is to help students process the different choices they could have made in a situation, it would be antithetical to that mission to dismiss such a learning opportunity because of a technicality in how information was obtained. Remember that in the university's disciplinary process there is substantially less at stake than in the criminal justice system (a student's continuing enrollment at the university versus one's freedom). However, as you advocate, "some balance must be struck in dealing with criminal citations." Thus, one variable considered in the nature of university action taken is how that information was generated.

In the ALE case, for example, the Office of Judicial Affairs received copies of the citations and met with every student named. Many accepted responsibility for drinking underage and violating the university's alcohol policy. Those who denied the allegation were found not responsible. [The university decided not to place priority upon investigating the matter further given the minor type of violation.] The typical sanction for the violation was a warning, the lowest level sanction available. Given that students legitimately had concerns about how ALE carried out its operation, we made the decision that these violations would not be recorded on a student's disciplinary record unless there was a subsequent violation of the alcohol policy within one calendar year. This is an appropriate balance, we believe, in fulfilling our mission while acknowledging that ALE may have been too aggressive in its enforcement.

Overall we have expectations that officials—be them university, city, or state—respect appropriate parameters in carrying out their duties. In the residence halls, for example, we have a privacy policy that clearly articulates the narrow grounds under which staff may enter students' rooms without permission. To make a blanket policy that the university will not respond to information that was obtained under conditions that were not ideal would be irresponsible, especially if the information is of a nature such that someone's safety may be at risk. But, what the university can state is that thoughtful consideration will be given to how the information was obtained, and an approach that balances the mission of the university with respect for the fundamental rights afforded citizens in the criminal justice system will be taken.