

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Middle District of North Carolina

\_\_\_\_\_  
Ryan McFadyen, et al.,

*Plaintiff*

v.

\_\_\_\_\_  
Duke University, et al.,

*Defendant*

Civil Action No. 1:07-cv-953-JAB-JEP

(If the action is pending in another district, state where: )

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Dr. Larry Moneta  
c/o Ellis & Winters, 100 Crescent Green, #200, Cary, North Carolina 27518

**Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Exhibit "A" Attached.

Place: Ekstrand & Ekstrand LLP  
811 Ninth Street, Suite 260  
Durham, North Carolina 27705

Date and Time:

09/21/2012 6:00 pm

**Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/15/2012

CLERK OF COURT

OR

\_\_\_\_\_  
/s/ Stefanie A. Smith

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) Ryan McFadyen, Matthew Wilson, and Breck Archer, who issues or requests this subpoena, are:

Robert C. Ekstrand (NC Bar No. 26673) and Stefanie A. Smith (NC Bar No. 42345), Ekstrand & Ekstrand LLP  
811 Ninth Street, Suite 260, Durham, North Carolina 27705

Phone Number: (919) 416-4590 Email Addresses: rce@ninthstreetlaw.com, sas@ninthstreetlaw.com

Civil Action No. 1:07-cv-953-JAB-JEP

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc:

## Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

### (c) Protecting a Person Subject to a Subpoena.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

#### **(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

#### **(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

### (d) Duties in Responding to a Subpoena.

#### **(1) Producing Documents or Electronically Stored Information.**

These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### **(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

# **EXHIBIT A**

## **DEFINITIONS**

As used in this subpoena's Exhibit A, the following words and phrases have the following meanings:

1. "Civil Action" means the above-captioned civil action styled as *McFadyen, et al. v. Duke University, et al.*, and contained in the Middle District as File No. 1:07-CV-953-JAB-JEP.
2. Any defined term herein used shall have the meaning given to it in the Second Amended Complaint in this matter, unless otherwise defined herein. The Second Amended Complaint is available online through the PACER website (<https://pacer.login/uscourts.gov/cgi-bin/login.pl/>). Alternatively, if you would like a copy of the Second Amended Complaint, you may contact the attorney who signed the subpoena, and he or she will provide you with a copy.
3. "Document" is used in its broadest possible sense, and includes, but is not limited to, Electronically Stored Information (defined below), every item listed in the Federal Rule of Civil Procedure 34(a), and any written, printed, typed, computerized, programmed or graphic matter of any kind or nature, however produced or reproduced, including files maintained electronically, and all mechanical or electronic sound recording or transcripts thereof, however produced or reproduced, including but not limited to, letters, notes, emails, memoranda, reports, envelopes, summaries of conversations or conferences, studies, analyses, bulletins, instructions, inter- and intra-office communications, charts, graphs, photographs, anything stored on personal data machine such as a mobile phone, palm pilot, iPhone, iTouch, iPad, Android, Blackberry, or any similar device, and all forms of data compilations and recordings. A draft or near-identical copy of a document is a separate document within the meaning of this term.
4. "Electronically Stored Information" or "ESI" means all electronic communications (e.g., e-mail, texts, posts, blogs, and the like), electronic documents, or any other form of electronically stored information--including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form for production pursuant to this subpoena.
5. "Missing" documents or electronically stored information include any document or ESI that was, but is no longer in your possession, custody, or control. When called for in this subpoena, you must identify the missing material as such, and for each missing document and all missing electronically stored information, you must state whether it is:
  - a. missing or lost;

- b. destroyed;
  - c. otherwise disposed of, and, if so, in what manner; and
  - d. for each instance, explain the circumstances surrounding any authorization for such disposition and state the approximate date thereof.
6. "Plaintiffs" shall mean the named Plaintiffs in this action, Ryan McFadyen, Matthew Wilson, and Breck Archer.
7. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to make requests inclusive rather than exclusive.
8. The term "all" means everything, tangible or intangible, known to you or which can be discovered by diligent efforts.
9. Where appropriate, the use of the singular shall include the plural, the use of the plural shall include the singular, the use of the masculine shall include the feminine, and the use of the feminine shall include the masculine.
10. "Relate to" or "relates to" means referring to, reflecting, containing, pertaining, referring, indicating, relating, showing, describing, evidencing, discussing, mentioning, or concerning.
11. In answering this subpoena, furnish such information as is available to you, not merely such information that is known by, available to, or in the possession of your employees, representatives, servants, or agents, including your attorney or any agent or investigator for you or your attorney (unless privileged).
12. For any document no longer in your possession, custody, or control, identify the document, state whether it is missing, lost destroyed, transferred to others or otherwise disposed of, and identify any person who currently has custody or control of the document or who has knowledge of the contents of the document.
13. If you claim privilege as grounds for objection in response to any part of this subpoena, identify:
  - a. the names and address of the speaker or author of the document;
  - b. the date of the communication or document;
  - c. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;
  - d. the form of the communication or document (i.e. letter, memorandum, invoice, contract, etc.);
  - e. the title and length of the document;

- f. the names and addresses of any person currently in possession of the document and a copy thereof;
- g. a detailed description of the communication or document; and
- h. the nature of the privilege claimed.

14. "March 14, 2006 Email" is the text alleged to have been sent from Ryan McFadyen's email account during the early morning hours of March 14, 2006 and published in the application for the warrant to search Ryan's residence and vehicle, which Durham Police obtained and executed on March 27, 2006. The search warrant which contains the text of the email has been attached for your reference. The text of the email can be found on the page of the attached search warrant with Bates No. Pls.00008400 at the bottom right corner.
15. "Duke University Administrator" includes all employees of Duke University's Office of Student Affairs, Duke University's Office of Judicial Affairs, President Richard Brodhead, Members of Duke University's Board of Trustees, staff of Duke University's President's Office, Provost Peter Lange, John Burness, Richard Riddell, Joseph Alleva, Christopher Kennedy, Aaron Graves, Robert Dean, Kemel Dawkins, Paul Haagen, Chris Cramer, and members of the Crisis Management Team (defined below).
16. "Crisis Management Team" includes President Richard Brodhead, Provost Peter Lange, Executive Vice President Tallman Trask, Senior Vice President for Public Affairs John Burness, Vice President for Student Affairs Larry Moneta, Chancellor for Health Affairs and CEO of DUHS Victor Dzau, Secretary of the University Allison Haltom, Chair of the Athletic Council Kathleen Smith, and Vice President for Institutional Equity Ben Reese.
17. "Communication" is used in the broadest sense and includes, but is not limited to, the actual or attempted imparting or interchange of thoughts, opinions, or information by speech, writing, signs, or electronic medium, whether or not a thought, opinion or other information is actually received or understood by the person(s) to whom it is directed.
18. "Judicial Affairs Report" is the Report titled *An Examination of Student Judicial Process and Practices*, authored by the Academic Council Student Affairs Committee, addressed to President Richard Brodhead and Professor Paul Haagen, Executive Committee of the Academic Council, and dated May 1, 2006. The Chair of the Committee that produced this report was Prasad Kasibhatla. The Judicial Affairs Report is attached for your reference (Bates Nos. Pls.00008273-8286 at the bottom right corner).
19. "Ryan's Parents" include Sherri and John McFadyen.
20. "Matt's Parents" include Melinda and Peter Wilson.

21. "Breck's Parents" include Madolin and Robert Archer.
22. The terms "You" and "Your" refer to Larry Moneta, including all persons acting on your behalf.

### **DOCUMENTS AND TANGIBLE THINGS REQUESTED**

1. All Documents relating to the disciplinary proceedings of Matthew Wilson between May 24, 2006 and October 1, 2006.
2. All Documents relating to Matthew Wilson's Appeal of the Undergraduate Judicial Board Hearing panel's decision between May 24, 2006 and October 1, 2006.
3. All written communications (or documents that refer to non-communications) exchanged between You and any Duke University Administrator relating to the disciplinary proceedings of Matthew Wilson between May 24, 2006 and October 1, 2006.
4. All written communications (or documents that refer to non-communications) exchanged between You and any Duke University Administrator relating to Matthew Wilson's Appeal of the Undergraduate Judicial Board Hearing panel's decision between May 24, 2006 and October 1, 2006.
5. All written communications (or documents that refer to non-communications) exchanged between You and Matt's Parents relating to the disciplinary proceedings of Matthew Wilson between May 24, 2006 and October 1, 2006.
6. All written communications (or documents that refer to non-communications) exchanged between You and Matt's Parents relating to Matthew Wilson's Appeal of the Undergraduate Judicial Board Hearing panel's decision between May 24, 2006 and October 1, 2006.
7. All Documents relating to the disciplinary proceedings of Breck Archer between August 1, 2004 and August 1, 2005.
8. All Documents relating to Breck Archer's Appeal of the Undergraduate Judicial Board Hearing panel's decision between April 1, 2005 and August 1, 2005.
9. All written communications (or documents that refer to non-communications) exchanged between You and any Duke University Administrator relating to the disciplinary proceedings of Breck Archer between August 1, 2004 and August 1, 2005.

10. All written communications (or documents that refer to non-communications) exchanged between You and any Duke University Administrator relating to Breck Archer's Appeal of the Undergraduate Judicial Board Hearing panel's decision between April 1, 2005 and August 1, 2005.
11. All written communications (or documents that refer to non-communications) exchanged between You and Breck's Parents relating to the disciplinary proceedings of Breck Archer between August 1, 2004 and August 1, 2005.
12. All written communications (or documents that refer to non-communications) exchanged between You and Breck's Parents relating to Breck Archer's Appeal of the Undergraduate Judicial Board Hearing panel's decision between April 1, 2005 and August 1, 2005.
13. All Documents relating to the disciplinary proceedings for Duke University students charged with Driving While Intoxicated or Driving While Impaired from August 1, 2005 to the present.
14. All written communications (or documents that refer to non-communications) exchanged between You and any Duke University Administrator relating to the disciplinary proceedings for Duke University students charged with Driving While Intoxicated or Driving While Impaired from August 1, 2005 to the present.
15. All Documents relating to the interim suspension of Ryan McFadyen from March 27, 2006 to October 1, 2007.
16. All Documents relating to the March 14, 2006 Email from March 14, 2006 to October 1, 2007.
17. All Documents relating to any investigation of the March 14, 2006 Email from March 14, 2006 to October 1, 2007.
18. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to the interim suspension of Ryan McFadyen from March 27, 2006 to October 1, 2007.
19. All written communications (or documents that refer to non-written communications) exchanged between You and Ryan's Parents relating to the interim suspension of Ryan McFadyen from March 27, 2006 to October 1, 2007.
20. All written communications (or documents that refer to non-written communications) exchanged between You and Glen Bachman relating to the interim suspension of Ryan McFadyen from March 27, 2006 to October 1, 2007.



21. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to the March 14, 2006 Email from March 14, 2006 to October 1, 2007.
22. All written communications (or documents that refer to non-written communications) exchanged between You and Ryan's Parents relating to the March 14, 2006 Email from March 14, 2006 to October 1, 2007.
23. All written communications (or documents that refer to non-written communications) exchanged between You and Glen Bachman relating to the March 14, 2006 Email from March 14, 2006 to October 1, 2007.
24. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to any investigation of the March 14, 2006 Email from March 14, 2006 to October 1, 2007.
25. All Documents relating to the email<sup>1</sup> sent by Chauncey Nartey to Mike Pressler from March 27, 2006 to September 1, 2006.
26. All Documents relating to any investigation of the email sent by Chauncey Nartey to Mike Pressler from March 27, 2006 to September 1, 2006.
27. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to the email sent by Chauncey Nartey to Mike Pressler from March 27, 2006 to September 1, 2006.
28. All Documents relating to the Judicial Affairs Report from March 14, 2006 to September 15, 2006.
29. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to the Judicial Affairs Report from March 14, 2006 to September 15, 2006.
30. All Documents relating to the attached Application for Disclosure of Customer Account Information and Order. (The Application for Disclosure of Customer Account Information and Order are attached for your reference with Bates Nos. Pls.00008401-00008402 at the bottom right corner.)

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<sup>1</sup> The email which was sent from Chauncey Nartey to Mike Pressler on March 27, 2006 which contained the subject line "WHAT IF JANET LYNN WERE NEXT???" has been attached for your reference (the document has Bates Nos. Pls.00022346-00022347 at the bottom right corner) for this request and requests 26 and 27.

31. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to the attached Application for Disclosure of Customer Account Information and Order. (The Application for Disclosure of Customer Account Information and Order are attached for your reference with Bates Nos. Pls.00008401-00008402 at the bottom right corner.)
32. All Documents relating to the Ryan McFadyen Situation/Timeline<sup>2</sup> from March 14, 2006 to September 15, 2006.
33. All written communications (or documents that refer to non-written communications) exchanged between You and any Duke University Administrator relating to the Ryan McFadyen Situation/Timeline from March 14, 2006 to September 15, 2006.

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<sup>2</sup> This document was authored by Eric Van Danen and has been marked as Confidential by your counsel, Ellis & Winters LLP. Please contact Ellis & Winters, LLP for access to this document so that you can comply with this request and request 33.

File No. \_\_\_\_\_

STATE OF NORTH CAROLINA

In The General Court of Justice  
Superior Court Division

SEARCH WARRANT

Durham County

In the Matter of: 610 N. Buchanan  
Durham PD Report # 06-08310

Ryan McFadyen  
2C Edens Dormitory # 204  
Duke University Durham, NC

Date Issued: 5/27/06  
Time Issued: 5:00  
 AM  PM

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

Name of Applicant  
Investigator B.W. Himan

Name of Additional Affiant

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

Name of Additional Affiant

RETURN OF SERVICE

I certify that this Search WARRANT was received and executed as follows:

You are commanded to search the premises, vehicle, person, and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

Date Received: 5/27/06  
Time Received: 5:01  
 AM  PM

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

Date Executed: 5/27/06 6:01 pm  
Date & Time of Return: 3/28/06 3:58 pm

I made a search of 2C Edens Dormitory Room 204  
Duke University Durham, NC  
as commanded.

This Search Warrant is issued upon information furnished under oath by the person or persons shown.

I seized the items listed on the attached inventory  
 I did not seize any items.

Date: 27 70/11/06

Signature: Kenneth J. Stephens

This warrant was not executed within 18 hours of the date of issuance and I hereby return it not executed.

This Search Warrant was returned to me on the date and time shown below

Deputy CSC  Asst. CSC  Clerk of Superior Court

Magistrate  District Ct. Judge  Superior Ct. Judge

Signature of Officer Making Return: [Signature] # 7754

Date: 28 MAR 2006  
Time: 2:12  
 AM  PM

Department or Agency of Officer: Durham Police Department

Signature: Kenneth J. Stephens

Deputy CSC  Asst. CSC  Clerk of Superior Court

Search warrant to be returned to 4th Court  
+ placed under seal. Kenneth J. Stephens, Judge

APPLICATION FOR SEARCH WARRANT

Inv Himan and Inv Clayton, with the Durham Police Department 505 W. Chapel Hill Street Durham, NC 27701  
(Insert name and address; or, if law enforcement officer, name, rank and agency)

being duly sworn, request that the court issue a warrant to search the person, place, vehicle and other items described in this application, and to find and seize the property and person described in this application. There is probable cause to believe that \_\_\_\_\_

See Attached \_\_\_\_\_

(Describe property to be seized; or if search warrant is to be used for searching a place)

(Check appropriate box(es) and fill in specified information)

X in the following premises. 2C Edens Dormitory Rm 204 Duke University Durham, NC Premises described on attachment titled "Locati  
(Give address and, if useful, describe premises)

See attached \_\_\_\_\_

(and)

on the following person(s) \_\_\_\_\_  
(Give name(s) and, if useful, describe person(s))

(and)

X in the following vehicle(s) See attached \_\_\_\_\_  
(Describe vehicle(s))

(and)

SEE ATTACHMENT PAGES 1-5 \_\_\_\_\_  
(Name and/or describe other places or items to be searched, if applicable)

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: The facts to establish probable cause for the issuance of this search warrant are set forth on the attached continuation page titled "Probable Cause Affidavit".

SWORN AND SUBSCRIBED TO BEFORE ME

Date 27 March 2006

Signature Kenneth J. Stephens

Signature of Applicant [Signature] #7754

Deputy CSC  Assl. CSC  Clerk of Superior Court  Magistrate  Judge

In addition to the affidavit included above, this application is supported by additional affidavit(s) attached, made by \_\_\_\_\_

In addition to the affidavit included above, this application is supported by sworn testimony, given by \_\_\_\_\_

This testimony has been (check appropriate box)  reduced to writing  tape recorded and I have filed each with the Clerk.

• If a continuation is necessary, continue the statement on an attached sheet of paper with a notation saying "see attachment."

Date the continuation and include on it the signatures of applicant and issuing official.

ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

**IN THE MATTER OF: 610 N. Buchanan Blvd. Durham, NC 27701**

I, Inv. B.W. Himan, being duly sworn depose and say that I am a Sworn Law Enforcement Officer in the State of North Carolina and have been employed by the Durham Police Department, Durham, NC since 2003.

The Criminal Investigations Division has the responsibility of follow-up investigations of crimes committed by adults and juveniles involving crimes against persons and property. The primary objectives of this Division are to provide both investigative and general support to other Divisions of the Durham Police Department in the accomplishment of establishing departmental goals and objectives. The Violent Crimes and Property Crimes Units are a part of the District 2 Criminal Investigations Division, dedicated to investigations matters of people within the city of Durham, NC concerning persons .

I have been assigned to the Criminal Investigations Division as an Investigator in District 2. I am primarily assigned the duty of investigating property related crimes. I have been involved in numerous investigations to include domestic violence assaults, robberies, sexual assaults, and homicide investigations. I have received specialized training in Law Enforcement throughout my career. I have attended the following classes related to law enforcement:

Interview and Interrogation, Police Law Institute, Field Training Officers School, Street Drug Enforcement for Patrol Officers, and Child Death Investigation. These classes are in addition to hundreds of hours of In-Service Training with the Durham Police Department.

I respectfully request that the COURT issue a warrant to search the place, person, vehicles, and any other items or places described in this application; and to find and seize the property described in this application.

**Description of Items to be seized**

1. Any clothing related to the suspect and the victim from the night of the attack
2. Any documentation identifying the suspects
3. Documentation showing residency of 2C Edens Dormitory #204 Duke University

Richard J. Stephens  
MAGISTRATE / JUDGE (Superior Court)

DATE: 2/27/06

B.W. Himan #7754  
AFFIANT


DATE: 3/27/06

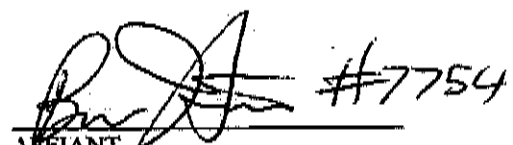
ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

4. Property belonging to 27 y/o B/F victim to include but not limited to a white 6 inch shoe.
5. Still photographs, video footage and digital recordings of the party
6. Any cameras or video devices which could contain photographs or footage of the party on 03/13/2006 to 3/14/2006
7. United States Currency totaling \$340.00 or portions of said currency (all twenty dollar bills)
8. Copies of emails that have sentences punctuated with two periods.
9. A Duke Lacrosse team jersey displaying the number 41 and/or any other items identifying player 41.
10. Any electronic data processing and storage devices, computers and computer systems including central processing units; internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, cartridges, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical reader/write devices, and related communications devices such as modems; together with system documentation, operating logs and documentation, software and instruction manuals Any e-mail correspondence, other electronic communications, memos, or documents of any type referring to *First Degree Rape, Robbery, Kidnapping, First Degree Sexual Offense, Hate Crimes, Felony Strangulation, Assault on a female, Conspiracy to commit Murder.*
11. Any other items that may constitute a crime.

Description of Crimes

First Degree Forcible Rape (N.C.G.S. 14-27.3), First Degree Kidnapping (N.C.G.S. 14-39), First Degree Forcible Sexual Offense (N.C.G.S. 14-27.4), Common Law Robbery (N.C.G.S. 14-87.1), Felonious Strangulation (N.C.G.S. 14-32 4(b) ), Conspiracy to Commit Murder (Common law Offense).

  
MAGISTRATE + JUDGE (Superior Court)  
DATE: 27 March 2006

 #7754  
AFFIANT  
DATE: 3/27/06

ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

**Description of Premises to be Searched**

The residence to be searched is located at 2C Edens Dormitory Room 204 Duke University in Durham, North Carolina. From the Durham Police District 2 Substation located at 1058 W. Club Blvd, officers will turn left traveling south on Guess Rd which turns into North Buchanan. The Officers will continue south on N. Buchanan until they reach W. Chapel Hill Street. At Chapel Hill St, Officers will turn right (West bound). Chapel Hill St turns into Duke University Rd. Officers will travel west on Duke University Rd to the 2000 block and turn right (north bound) on Edens Dr. Officers will drive to the dead end where the picnic shelter is located. Officers will exit their vehicles and cross over a wood and iron bridge. As they cross the bridge, they will follow the sidewalk to the left. Edens Dormitory is directly in front from that point if following the sidewalk straight. As officers walk to the building they will see a wood frame door brown in color on the four story stone and concrete dormitory structure brown and slate in color. The door has a sign in black with white letters EDENS 2C molded on it. As officers enter the structure they will walk up the steps and go to the second story. At the top of the stairs, officers will go through a door on the left. Officers will walk down the hall and follow the hall to the right until they come to room 204. Room 204 has a plaque on the right side of the door frame with the letters 204 on it.

**Description of Vehicle to be Searched**

1998 GMC Yukon white in color, NJ license plate [REDACTED],  
VIN - [REDACTED]. The vehicle should be parked in the blue zone parking lot of Duke University off of Wannamaker Dr. or in or around Edens Dormitory.

**IN THE MATTER OF: 610 N. Buchanan, Durham N.C.**

**Probable Cause Affidavit**

On 3/14/06 at 1:22am, Durham City Police Officers were called to the Kroger on Hillsborough Road. The victim, a 27 year old black female reported to the officers that she had been raped and sexually assaulted at 610 North Buchanan Blvd. The investigation revealed that the victim and a co-worker had an appointment to dance at 610 North Buchanan Blvd. The victim arrived at the residence and joined the other female dancer around 11:30pm on 3/13/2006. The victim reported that they began to perform their routine inside of the residence. After a few minutes, the males watching them began to get excited and aggressive. One male stated to the women "I'm gonna shove this up you" while holding a broom stick up in the air so they could see it. The victim and her fellow dancer decided to leave because they were concerned for their safety. After the two women exited the residence and got into a vehicle, they were

*Ronald D. Shepherd*  
MAGISTRATE/JUDGE (Superior Level)

DATE: 27 Feb 2006

*[Signature]* #7754  
AFFIANT

DATE: 3/27/06

ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

**Probable Cause Affidavit Continued**

approached by one of the suspects. He apologized and requested they go back inside and continue to dance. Shortly after going back into the dwelling the two women were separated. Two males, Adam and Matt pulled the victim into the bathroom. Someone closed the door to the bathroom where she was, and said "sweet heart you can't leave." The victim stated she tried to leave, but the three males (Adam, Bret, and Matt) forcefully held her legs and arms and raped and sexually assaulted her anally, vaginally and orally. The victim stated she was hit, kicked, and strangled during the assault. As she attempted to defend herself, she was overpowered. The victim reported she was sexually assaulted for an approximate 30 minute time period by the three males. During a search warrant at 610 N. Buchanan on 3-16-2006 the victim's four red polished fingernails were recovered inside the residence consistent to her version of the attack. She claimed she was clawing at one of the suspect's arms in an attempt to breathe while being strangled. During that time the nails broke off. The victim's make up bag, cell phone, and identification were also located inside the residence during the search warrant. Finally, a pile of twenty dollar bills were recovered inside the residence totaling \$160.00 consistent with the victim claiming \$400.00 cash in all twenty dollar bills was taken from her purse immediately after the rape. The victim was treated and evaluated at Duke University Medical Center Emergency Room shortly after the attack took place. A Forensic Sexual Assault Nurse (SANE) and Physician conducted the examination. Medical records and interviews that were obtained by a subpoena revealed the victim had signs, symptoms, and injuries consistent with being raped and sexually assaulted vaginally and anally. Furthermore, the SANE nurse stated the injuries and her behavior were consistent with a traumatic experience.

The victim stated she did not think the names the suspects were providing her were their own. She stated one male identified himself as Adam, but everyone at the party was calling him Dan. In addition, the witness/co-worker stated the men at the party told her they were members of the Duke Baseball and Track Team to hide the true identity of their sports affiliation - Duke Lacrosse Team Members. In a non-custodial interview with Daniel Flannery, resident of 610 N. Buchanan and Duke Lacrosse Team Captain; Mr. Flannery admitted using an alias to make the reservation to have the dancers attend the Lacrosse Team Party.

The three residents stated during the non-custodial interviews that their fellow Duke Lacrosse Team Members were the ones who attended this party. They knew everyone there, and stated there were no strangers who showed up at the event.

It is the Affiant's belief the suspects used each others names to disguise their own identities and create an atmosphere where confusion would become a factor in this event should problems arise in the future where any actions or conduct would be questioned. In

Ronald J. Stephens  
MAGISTRATE JUDGE (Superior Court)

DATE: 27 March 2006

Bret Jones #7754  
AFFIANT

DATE: 3/27/06



ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

Probable Cause Affidavit

addition, further interviews showed that. The players also used numbers when calling for one and another across the room again to hide their identities.

On 3/7/2006 Sgt. Gottlieb was contacted by a confidential source. The source provided Sgt. Gottlieb a copy of an email sent by email address ryan.mcfadyen@duke.edu. The email dated March 14, 2006 at 1:58am stated:

To whom it may concern

tommrow night, after tonights show, ive decided to have some strippers over to edens 2c. all are welcome.. however there will be no nudity. i plan on killing the bitches as soon as the walk in and proceeding to cut their skin off while cumming in my duke issue spandex.. all in besides arch and tack please respond

41

The number 41 is the jersey number for Ryan McFadyen, a member of the Duke Lacrosse team.

The affiant requests that the State issue this search warrant to secure evidence related to the felonious assault and conspiracy thereafter the assault located at 610 N. Buchanan Blvd.

*Court is focused by  
AFFIANT that date  
indicated that date  
3/20/06  
31712 (wife of  
of 3/27/06)  
- informed of  
Arthur of  
500720 8/2/06  
28 MAR. 2006  
2:00 PM  
Ronald Stephens  
Judge  
Benjamin Hine  
Aff. art  
4398*

Ronald Stephens  
MAGISTRATE JUDGE (Superior Court)  
DATE: 27 March 2006

[Signature] #7754  
AFFIANT  
DATE: 3/27/06

In the Matter of 610 N. Buchanan Blvd.  
Durham P.D. Report #06-08310

APPLICATION FOR DISCLOSURE OF CUSTOMER  
ACCOUNT INFORMATION

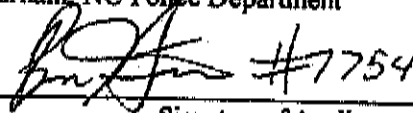
I, the undersigned applicant, first being duly sworn, say that:

1. Any and all records regarding the identification of a user with the e-mail of "ryan.mcfadyen@duke.edu" to include name and address, date account was established, account status, associated e-mail addresses, alternate e-mail addresses, registration from IP, date ID registered, and last known IP addresses is believed to be material and relevant to an on-going criminal investigation being conducted by the Durham Police Department involving a crime committed in Durham, North Carolina.
2. The information sought by the Durham Police Department is believed to be material and relevant to this investigation as the e-mail address listed above is related to an ongoing {Sexual Assault} investigation.
3. It is in the best interest of the enforcement of the law and the administration of justice in the State of North Carolina to have this information disclosed.
4. It is also in the best interest of the enforcement of law and administration of justice in the State of North Carolina that the existence of this investigation and all facts and circumstances related thereto not be disclosed to the account holder or his agents.

Therefore, it is respectfully requested that the Court issue an order directing  
Custodian of Records – Duke University Information Security Office  
Chris Cramer, Ph.D  
Box 104106  
Durham, NC 27708  
(919) 660-7003

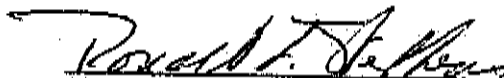
to disclose the information requested in paragraph 1.

Detective Benjamin Himan, #7754  
Durham, NC Police Department

 #7754

Signature of Applicant

Subscribed and sworn to before me this the 24 day of March, 2006.



Signature of Official Authorized to Administer Oaths

- Deputy CSC     Assistant CSC     Clerk Of Superior Court  
 Notary Public. My Commission Expires \_\_\_\_\_

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
 DISTRICT  SUPERIOR COURT DIVISION

In the Matter of 610 N. Buchanan Blvd.  
Durham P.D. Report #06-08310

**ORDER**

The Court hereby finds the following:

1. An on-going criminal investigation is being conducted by the Durham Police Department of a (Sexual Assault) committed in Durham, North Carolina.
2. The information sought by the State is believed to be material and relevant to this investigation.
3. It is in the best interest of the enforcement of the law and the administration of justice in the State of North Carolina to have this information disclosed.

THEREFORE, IT IS HEREBY ORDERED that the Custodian of Records for Duke University Information Security, provide any and all subscriber account information to include real name, screen names, status of account, detailed billing logs, date account opened/closed, method of payment and detailed billing records related to the e-mail address of "ryan.mcfadyen@duke.edu"

to:  
Detective Benjamin Himan Badge # 7754  
Durham Police Department - Criminal Investigation Division  
505 West Chapel Hill Street / Durham, North Carolina 27701  
(919) 560-4826 fax / (919) 560-4582 ext 229

and not disclose nor cause to be disclosed the existence this investigation nor of any facts or circumstances related to this investigation to its subscriber or any agent thereof.

This the 28<sup>th</sup> day of March, 2006.

  
The Honorable Judge Presiding

<b>STATE OF NORTH CAROLINA</b> In The General Court of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division  Durham County	→ File No.
	Film No.

In the Matter of

Name 610 N. Buchanan Blvd  
Ryan M. DUKIFAM PD Report # 06-08310  
2c Edens Dormitory #204 Duke University Durham NC

Date of Search  
3/27/06

**INVENTORY OF SEIZED PROPERTY**

G.S. 15A-254.-

I, the undersigned officer, executed a search of:

Person, place or vehicle searched  
2c Edens Dormitory #204 Duke University Durham, NC

- This search was made pursuant to:
- a search warrant issued by: Superior-Court Judge Ronald Stephens
  - a consent to search given by:
  - other legal justification for the search:

The following items were seized:

1. Piece of paper with Ryan McFadyen email 2. poster "the snake" #3, #40 in cash  
2x 20 bills 3. Kingston 4. Memory Card 5. Toshiba laptop s/n 75217469K 6. Photos and Delivery  
receipt 7. Backpack with #41 Duke 8. DVD-R 9. External Hardrive s/n serial number  
WMAM98584030 10. Laptop Dell M# make number PPO2x serial number 7xmp  
B51 11. Handwritten files and drawings 12. Office Depot DVD-Rw  
13. FujiFilm disposable camera 14. twenty dollar bill \$20.00 15. Paper - in vehicle  
suckie suckie \$5.00

AOC-CR-205 Original - File Copy - person whose property was seized

Seized Items Continued:

- I am leaving a copy of this inventory with the person named below, who is:
  - the owner of the place searched
  - the owner of the vehicle searched

- the person in apparent control of the place searched
- the person in apparent control of the vehicle searched
- the person from whom the items were taken
- As no person was present, I am leaving a copy of this Inventory:
  - in the place searched, identified on the reverse
  - in the vehicle searched, identified on the reverse.

Name and Address of Person to Whom A Copy Of This Inventory Was Delivered

Ryan McFadyen  
 2C Edens Dormitory #204  
 Duke University DURHAM, NC

The law enforcement agency identified below will hold the seized property subject to Court Order.

<b>SWORN AND SUBSCRIBED TO BEFORE ME</b>		Signature of Law Enforcement Officer <i>[Signature]</i> #7754
Date 08 <sup>th</sup> March 2006	Title of Law Enforcement Officer Investigator Bud Homan	
Signature <i>[Signature]</i>	Name and Address of Agency 505 W. Chapel Hill St Durham, NC 27701	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk of Superior Court	<input type="checkbox"/> Asst. CSC <input type="checkbox"/> Magistrate <i>[Signature]</i> COURT JUDGE	

**Acknowledgment of Receipt**

I, the undersigned, received a copy of this inventory

Date	3/27/06
Signature of Recipient	<i>[Signature]</i>

*sworn upon  
return of sw  
to court  
Roxall J. Stephens  
Judge*

**AN EXAMINATION OF STUDENT JUDICIAL PROCESS AND PRACTICES**

Report from

Academic Council Student Affairs Committee (ACSAC)

to

President Richard Brodhead

and

Prof. Paul Haagen, Executive Committee of the Academic Council

May 1, 2006

## **1. INTRODUCTION**

### *1.1 Charge to the Committee*

On April 4, 2006, the Academic Council Student Affairs Committee (ACSAC) was charged by Executive Committee of the Academic Council of Duke University to examine the student judicial process and practices. As stated in President Richard Brodhead's letter to the Duke community on April 5, 2006, the review was commissioned to address questions raised within the Duke and Durham communities about the way Duke deals with problems of student behavior and the applicability of the Duke Community Standard to social life. The charge specifically instructed ACSAC to answer the following questions:

- Do the Community Standard and the policies which apply to student behavior adequately convey Duke's values and behavioral expectations?
- Are there distinctions between on campus and off campus behaviors, and is Duke's approach to adjudication of those behaviors appropriate?
- Are there limitations in the policies which prevent various behaviors from being addressed appropriately and effectively?
- How has Duke responded when students face both criminal (or civil) charges as well as campus judicial charges? Has this created problems and should there be changes to our approach?
- Given the requirements of FERPA, how can both the Duke and Durham communities be better informed about disciplinary actions that are taken?

### *1.2 The Review Process*

This review focuses on the judicial process as applicable to undergraduate students. ACSAC began its process of review by obtaining relevant information on Duke's official regulations and policies pertaining to the student judicial process from the Office of Student Affairs. The Committee also sought written input from various individuals on campus with some connection to the student judicial process. These include the heads/chairs of Office of Institutional Equity (OIE), Undergraduate Judicial Board (UJB), University Judicial Board, the Greek Judicial Board (GJB), Appellate Board, Academic Integrity Council (AIC), and Honor Council. Written input was also received from a subgroup of Trinity College Academic Deans, Stephen Bryan (Associate Dean of Students and Director of Judicial Affairs), and Brad Berndt (Assistant Athletic Director). Written input was also received from a number of Duke faculty members in response to a request directed to the members of the Academic Council through the Executive Committee of the Academic Council. In addition, phone interviews were conducted with Ms. Polly Weiss (Office of Institutional Equity), and Dr. Donna Lisker and Dr. Jean Leonard (Women's Center). Input was also received from the Board of the Duke University Black Alumni Connection (DUBAC), by the Concerned Citizens at Duke, 2 Duke parents, and 1 Duke alumnus.

The Committee also considered the views expressed by the community outside Duke. Letters were sent to Mr. John Dagenhart (President, Trinity Park Neighborhood Association), Ms. Risa Foster (ex-President, Trinity Heights Neighborhood Association), and Dr. Nancy Hill ( President, Trinity Heights Neighborhood Association) requesting information specifically on unresolved issues relating to the process by which Duke deals with complaints about student misconduct from the residents of the respective neighborhoods. In response, the committee received letters from 2 residents of Trinity Heights and 7 residents of Trinity Park. Two of the Committee members also personally interviewed Ms. Risa Foster, who followed up by forwarding to the Committee several past email exchanges involving student misconduct in the Trinity Heights neighborhood.

Finally, the Committee received input from Durham city officials. The City Manager, Mr. Patrick Baker, and City Councilman Mr. Thomas Stith III and City Councilman Mr. Eugene Brown attended separate Committee meetings. In addition, the chair of the Committee participated in an interview with Captain Ed Sarvis of the Durham Police Department conducted by the committee exploring the lacrosse culture at Duke.

The information gathered during this process was examined and analyzed by the Committee. In particular, the following 8 committee members were involved substantially in the deliberations:

Aura Gimm, faculty, Biomedical Engineering  
Prasad Kasibhatla (chair), faculty, Nicholas School of the Environment & Earth Sciences  
Jacqueline Looney, Associate Dean for Graduate Student Affairs  
Rachel Lovingood, graduate student, Department of Cell Biology  
Marjorie McElroy, faculty, Economics  
Caroline Haynes, faculty, Associate Dean for Medical Education, School of Medicine  
Benjamin Ward, faculty, Philosophy  
Gary Ybarra, faculty, Electrical and Computer Engineering

We present below background information relevant to the charge to the Committee and a summary of the key themes that emerged during our deliberations. We follow with a presentation of key findings that are the considered judgment of the Committee, and conclude with a list of recommendations that flow from these findings.



## **2. BACKGROUND AND DISCUSSION**

### *2.1 The Duke Community Standard (DCS)*

The DCS is the University's honor code, and articulates the core values and principles of the institution. The DCS was adopted in the fall of 2003, following a review of the existing Honor Code by the Academic Integrity Council (AIC). It is important to note that, while the DCS is a statement of broad principles, the AIC was formed with the narrower goal of improving the climate of academic integrity on campus. The DCS states:

*Duke University is a community of scholars and learners, committed to the principles of honesty, trustworthiness, fairness, and respect for others. Students share with faculty and staff the responsibility for promoting a climate of integrity. As citizens of this community, students are expected to adhere to these fundamental values at all times, in both their academic and non-academic endeavors.*

First-year students commit to the principles of the DCS at the start of their studies at Duke by participate in a ceremonial signing of a pledge immediately following convocation. The pledge states:

*Students affirm their commitment to uphold the values of the Duke University community by signing a pledge that states:*

- 1. I will not lie, cheat, or steal in my academic endeavors, nor will I accept the actions of those who do.*
- 2. I will conduct myself responsibly and honorably in all my activities as a Duke student.*

All students reaffirm their commitment to the principles of the DCS by signing a statement to that effect upon the completion of every academic assignment. The reaffirmation statement states:

*"I have adhered to the Duke Community Standard in completing this assignment."  
[Student Signature]*

The Bulletin of Information and Regulations emphasizes academic integrity in the context of the DCS. Specifically, the bulletin affirms that the DCS not only requires students to uphold the highest standards of academic integrity in their own endeavors, but also obligates students to not accept violations of academic integrity by others.

It is the view of the Committee that the DCS, in and of itself, articulates the core values of the University. However, the focus on academic endeavors in the presentation and affirmation of the DCS during the course of student life, combined with its historical basis, has resulted in the standard being perceived as primarily applicable to integrity in academic endeavors only. To the extent that the DCS is viewed as expressing general standards of behavior, it is perceived as applying principally to interactions within the University community only. It is worth noting that there is widespread agreement with regards to this assessment among the various University constituencies that provided input to the Committee.

## *2.2 University Judicial Policies and Judicial Process*

The specific rules and regulations pertaining to student conduct are codified in the University judicial policies which are published in the Bulletin of Information and Regulations. The policies cover a comprehensive range of academic and non-academic endeavors, including but not limited to: Academic Dishonesty, Alcohol, Disorderly Conduct, Noise, and Sexual Misconduct. The Bulletin of Information and Regulations also details the judicial process involved in adjudicating allegations of student misconduct.

In terms of the Duke judicial process, all cases involving violations of University policy are within the jurisdiction of the Office of Judicial Affairs, which falls within the Division of Student Affairs. The Director of the Office of Judicial Affairs reports to the Dean of Students, who in turn reports to the Vice President for Student Affairs. It is worth noting that a significant fraction of disciplinary cases are resolved informally by Residence Coordinators. During the 2003-2005 period, approximately 70% of disciplinary cases were adjudicated in this manner.

The formal disciplinary process is described in detail in the Bulletin of Information and Regulations and can involve an administrative hearing, an Undergraduate Judicial Board hearing, or a Greek Judicial Board hearing. In practice, most cases involve administrative hearings in which a hearing officer determines responsibility and imposes sanctions if appropriate. Faculty involvement in the judicial process is in the form of participation in Undergraduate Judicial Board hearing panels.

When students are charged criminally, the Office of Judicial Affairs launches an investigation, typically upon receipt of a police report describing the arrest or citation. As stipulated in the Bulletin of Information and Regulations, the judicial process may run concurrent with criminal action. However, if a student requests that the university process be placed on hold until the criminal case is resolved, this request is usually granted. If an allegation is serious and represents a threat to the university community, interim actions may be taken, such as an interim suspension. A challenge to waiting is that the criminal case is often postponed (continued) in the courts, creating an indefinite delay for the University's disciplinary process. Request for postponement have been occasionally granted when the charges have been relatively minor and deferred prosecution has seemed likely.

The Committee's assessment is that the judicial policies are quite comprehensive in scope, and clearly identify conduct that is not in keeping with the core values articulated in the DCS. Nevertheless, there is a disconnect in the sense that the judicial policies are not viewed as being grounded in the DCS. Rather, the judicial policies are perceived as a list of prohibited behaviors which can result in University disciplinary actions. In addition, the Bulletin of Information and Regulations does not highlight and prioritize judicial policies in terms of their importance in relation to the behavioral values expressed in the DCS.

The Committee also notes that there is little faculty engagement in the judicial process, and inadequate reporting of disciplinary actions to faculty governance bodies such as Academic Council and advisory bodies such as Athletic Council. These deficiencies are symbolic of the pervasive disconnect between student academic and non-academic life.

### *2.3 Alcohol and Student Misconduct*

A major issue in the context of this review is Duke's judicial philosophy related to the use and abuse of alcohol. Specifically, the Committee examined the role of alcohol in student misconduct as well as Duke's policies and approach to adjudicating alcohol-related misconduct. We provide below our perspective of the role of alcohol in student misconduct, and follow with a discussion of the extent to which Duke's judicial policies and practices are addressing these issues.

An initial perspective on the role of alcohol in student misconduct can be gained by examining the official disciplinary statistics published by the University. Comprehensive disciplinary statistics for 2003-2005 period are available on the Office of Judicial Affairs website. During this time period, of the 150-170 formal charges filed per year for non-academic judicial violations, 40-50% were specifically for violations of the alcohol policy. In addition, 350-400 student misconduct cases were handled by the Residence Coordinators each year, and a significant fraction of these involved alcohol use and abuse. Examination of the separate alcohol statistics summaries shows that roughly 300-350 violations of the alcohol policy come to the attention of the Office of Judicial Affairs every year. An examination of the judicial statistics related to off-campus misconduct during Fall 2005 is also revealing. Of the 126 violations, 107 were specifically for violation of the alcohol policy. It is worth noting that a majority of these violations arose from charges stemming from a special law enforcement campaign carried out by the North Carolina Alcohol Law Enforcement agency during the first weekend of the Fall 2005 semester. This strongly suggests that the actual number of alcohol policy violations is significantly higher than what is reflected in the official statistics. Finally, there are roughly 30-50 alcohol-related medical calls to DUPD/EMS every year; in general these numbers are not reflected in the disciplinary statistics due the health and safety amnesty clause in the alcohol policy. Furthermore, a perusal of the narrative record related to these calls reveals the severity of alcohol abuse, with a large fraction of cases involving repeated episodes of vomiting and loss of consciousness.

It is also clear that alcohol use and abuse is the major underlying factor in both off-campus and on-campus student misconduct. Conversations with the staff of the Women's Center reveal that alcohol is involved in 70-80% of the roughly 60 cases of sexual assault complaints that are received by the center per year. From an off-campus perspective, neighborhood residents and police are in broad agreement that alcohol abuse underlies most of the 'public nuisance' complaints against students. The same is true for misconduct in on-campus residences. Dean Bryan is categorical in his assessment that alcohol use and abuse is the major underlying factor in terms of student misconduct. This view is endorsed by the review Committee.

The review Committee also finds that there is inconsistent enforcement of the University alcohol policy. This inconsistency is most acutely manifested in the University's tolerance of large-scale violations of its alcohol policy at events such as Tailgate and Last Day of Classes. It is our understanding that these events, which are essentially 'sponsored' by the University, involve egregious violations of the alcohol policy that exceed in severity the violations that are generally adjudicated by the Office of Judicial Affairs. In effect, the University is violating its own written alcohol policies regarding group-sponsored social functions, which state in part *'A group is responsible for reasonable monitoring of underage drinking and may be sanctioned if the lack of monitoring leads, or could lead, to unsafe/irresponsible behavior and/or community expectations violations. Additionally, groups are expected to ensure that unsafe/irresponsible behavior and/or violations of community expectations do not occur'*.

The Committee concludes that inconsistent enforcement of the University alcohol policy severely undermines its effectiveness.

#### *2.4. Duke-Durham Issues Related to Student Misconduct*

The Committee devoted a significant portion of its time to examining issues related to off-campus student misconduct, and Duke's role in dealing with such misconduct. We provide below our assessment of the defining characteristics of these issues and the extent to which Duke is addressing the concerns of the Durham community, and identify issues that remain to be addressed.

We begin by noting that the problem of off-campus student misconduct can generally be viewed as one that is geographically restricted in the sense that most complaints seem to involve the Trinity Height and Trinity Park neighborhoods off East Campus. The complaints typically involve misconduct that can be classified as 'nuisance' associated with large parties involving up to 150-200 students at so-called 'party-houses' in the residential neighborhoods. The typical 'nuisance' behaviors include noise, public urination, and general disorderly conduct. In addition, it is important to note that residents and city officials are uniformly of the opinion that the problem is generally confined to only a small percentage of the off-campus student community. City Councilman Eugene Brown characterized this as the 90/10 problem – 90 % of the problems caused by 10% of the students. Furthermore, the City Manager and City Councilmen expressed the Durham community's appreciation of the educational, economic, and cultural contributions of Duke to the city.

To place the problem of off-campus student misconduct in context, it is worth noting that Duke has a 3-year on-campus residency requirement for its undergraduate students, and has well developed policies related to on-campus residence life. Students who reside on campus must sign a Housing License prior to occupying an on-campus residence. The Bulletin of Information and Regulation states:

*'Any conduct that reflects a serious disregard for the rights, health, safety, and security of other occupants of university housing will be reason for revocation of this license and/or disciplinary action'*

In contrast, the Bulletin of Information and Regulations does not explicitly discuss behavioral expectations in relation to off-campus student life. The philosophical approach that has been adopted is that students living off-campus have the same rights and responsibilities, and are subject to the same law enforcement sanctions, as other adults in the broader community. Duke's current approach is to give students living off-campus greater freedom in terms of behavioral choices, and intervene judicially only in cases involving arrests/citations and repeated misconduct.

In light of the differences in off-campus and on-campus housing policies, there is a clear perception among the residents who contacted the Committee that Duke has not taken sufficient ownership the problem of off-campus student misconduct. Neighborhood residents complained about the lack of adequate response from the Duke administration to their complaints. One specific suggestion was that a hotline be established for residents to report student misconduct. City officials also indicated that the law enforcement actions that had been undertaken by the city had not acted as an adequate deterrent to such misconduct. The City Manager and City Councilmen we met with were unanimous in their view that it was time for Duke to take bold new steps to address neighborhood concerns about student behaviors. It was suggested that Duke consider the approach taken by Wake Forest University, where off-campus living privileges can be revoked as a disciplinary measure.

There is some, but not uniform, recognition by the community of the steps that Duke has already taken to address off-campus student misconduct. It is generally well known that Duke recently purchased a number of houses off East Campus, and it is believed that this will ameliorate the problem of 'party houses' to some extent. There seems little awareness of the fact that the Office of Student Affairs has recently hired a full-time staff person specifically devoted to off-campus student life. There is almost no recognition of Duke's change in judicial policy whereby all students receiving citations by the Durham Police are subject to Duke's formal disciplinary procedures.

It is the Committee's view that the University has taken noteworthy steps to address neighborhood concerns regarding off-campus student behaviors. However, the full impacts of these measures remain to be determined. The Committee did not find a compelling argument in support of a hotline to report student misconduct. Nevertheless, the Committee notes that behavioral expectations related to off-campus living have not been effectively articulated in the context of Duke's core values embodied in the DCS.

### **3. FINDINGS**

#### **3.1 Do the Community Standard and the policies which apply to student behavior adequately convey Duke's values and behavioral expectations?**

*3.1.1 The Duke Community Standard (DCS), and the policies that flow from it, articulate Duke's values and behavioral expectations in a broad sense for academic as well as non-academic endeavors*

*3.1.2 The DCS is however perceived by students and faculty alike to apply primarily to academic endeavors*

*3.1.3 The DCS, and the policies that flow from it, are further interpreted as applying primarily to interactions within the Duke University community, rather than as a set of principles of good citizenship that are applicable in the broader communities of which the students are a part*

*3.1.4 There is a lack of on-going education, modeling, and reinforcement of the broad values and behavioral expectations articulated in the DCS and the associated judicial policies*

#### **3.2 Are there distinctions between on campus and off campus behaviors, and is Duke's approach to adjudication of those behaviors appropriate?**

*3.2.1 On-campus and off-campus living experiences are important parts of undergraduate life and education at Duke*

*3.2.2 Off-campus and on-campus behaviors differ both in terms of the characteristics of events that result in student misconduct and in terms of the community that is impacted by the misconduct; alcohol abuse is however the major underlying factor in both off-campus and on-campus student misconduct*

*3.2.3 Duke's philosophical approach to adjudication also differs between off-campus and on-campus misconduct, with much less oversight of off-campus conduct; but attempts are underway to minimize these differences*

*3.2.4 Law enforcement efforts that have been undertaken by the city have not served as an adequate deterrent to off-campus student misconduct*

*3.2.5 The University has taken noteworthy steps, from both judicial and non-judicial perspectives, to address the problem of off-campus student misconduct; the full impact of these changes is yet to be determined*

*3.2.6 In sharp contrast to campus residence life, sufficient attention has not been paid to articulating and educating students about behavioral expectations related to off-campus living; this discrepancy is also manifested in the differences between on-campus and off-campus housing policies*

**3.3 Are there limitations in the policies which prevent various behaviors from being addressed appropriately and effectively?**

*3.3.1 While University judicial policies are quite comprehensive, they are not presented or perceived as being grounded in the Duke Community Standard other than for academic endeavors*

*3.3.2 Inconsistent enforcement of the University alcohol policy severely undermines its effectiveness*

*3.3.3 Furthermore, the judicial policies in general are skewed towards addressing issues involving interactions within the University community, and therefore do not appropriately and effectively address breaches of good citizenship standards involving the broader community*

*3.3.4 There is little and reluctant faculty engagement in the University judicial process, symbolizing the pervasive disconnect between the academic and non-academic spheres of University life*

**3.4 How has Duke responded when students face both criminal (or civil) charges as well as campus judicial charges? Has this created problems and should there be changes to our approach?**

*3.4.1 The current Duke judicial approach when students face both criminal (or civil) charges as well as campus judicial charges seems reasonable*

**3.5 Given the requirements of FERPA, how can both the Duke and Durham communities are better informed about disciplinary actions that are taken?**

*3.5.1 There is lack of adequate reporting to, and follow-up discussion with, faculty governance bodies such as Academic Council and advisory bodies such as Athletic Council about disciplinary policies and actions*

*3.5.2 There is little awareness in the broader community of judicial steps being taken by Duke to address off-campus student misconduct*

*3.5.3 There is a lack of lasting, non-crisis based engagement by Duke with the larger community concerning off-campus student behaviors*

#### **4. RECOMMENDATIONS**

The Committee makes its recommendations regarding Duke University's judicial code, policies, and process in the wake of an acute event of student misconduct in an off-campus setting. However, we considered the event in the context of broader educational issues in designing our recommendations, and addressed the adequacy of the statement of values and expectations, the consistency of application of policies in on- and off-campus situations, limitations in the effectiveness of policies and judicial process, and the relationship between the judicial process and that of the legal system and between the University community and the Durham community at large. We endorse the University's efforts in recent years to articulate institutional values and expectations through the design of the Duke Community Standard, to build community relationships through the Duke-Durham Neighborhood Partnership and Office of Community Affairs, to partner with the Durham Police by increasing the role of Duke Police in the communities that surround campus, to gain more oversight of off-campus housing by acquiring properties that house students, and to clarify and more effectively enforce the University alcohol policy. We applaud the more recent Campus Culture Initiative as a means to involve more of the Duke community in conversation and deliberation about values and expectations. Our recommendations are aimed at systemic issues that we believe would extend and lend context to the changes already taking place to ensure that students graduate from Duke University fully prepared to be citizens of an increasingly global community.

We regard the Duke Community Standard (DCS) as a cornerstone of the identity of the University community, and as a critical, overarching statement of institutional values and intentions and a basis for judicial policies. We believe that the central tenet of the DCS should be good citizenship, and that the concept of community should be expanded to include the broader communities in which students interact, reside, or represent the University. Statements of expectations in academic and non-academic matters should flow from this broad tenet, rather than be affirmed separately. We are concerned that the current separate affirmation within the pledge suggests that academic matters are the primary focus of the DCS. In keeping with this more integrated approach under the broad concept of citizenship, we recommend that the ways in which the tenets of the DCS are communicated also be integrated, and that a single Bulletin (perhaps a Bulletin of Undergraduate Education, or BLUE) should incorporate both information on instruction and information on the critical policies that flow from the DCS. The dichotomy between academic and non-academic endeavors is also reflected in the University administration, with distinct academic and student life administrative structures. We recommend examination of the extent and consequences of this divide and consideration of a revised structure and ways to better emphasize an integrated educational experience governed by principles of good citizenship.

While changes in the statement of values and policies are important, we also believe that simply stating or pledging a set of values is only an initial step in internalizing and living them. We also recognize that, given the wonderful and growing diversity of the University community, the words used to state institutional values may not have the same



meaning for everyone. Therefore, we recommend that the DCS be a highlight of ongoing activities after orientation, including activities that challenge the students to grapple with the limits and tensions implied by the DCS and the differences in how others interpret the DCS. Faculty development around explicit modeling and reinforcement of the DCS will be important in this effort as will integration of these activities into academic and non-academic settings.

In order for students to remain aware of the DCS in all their activities, internalization of the standard must be deliberately and consistently promoted through the application and enforcement of policies that derive from the DCS. Inconsistency in the application of policies creates confusion, ambivalence, or cynicism about the validity of and commitment to the DCS. In this regard, we are especially concerned about the inconsistency of application of the alcohol policy. We recognize the complexity of developing and applying a policy that allows students to have ‘formative experiences’ in the responsible use of alcohol, encourages students to get help if they endanger themselves through using alcohol, and is consistent with the law. We also recognize that students who will go on to have serious problems with alcohol later in life are having ‘formative experiences’ on college campuses, and that most of the behaviors that cause students to come to the attention of the police, Durham community, and judicial process are alcohol-related. We therefore recommend a broad-based, Presidential-level initiative as part of the Campus Culture Initiative to explore ways to develop policies, educational programming, and a campus culture that consistently discourages the inappropriate use of alcohol.

With a DCS that broadens the definition of ‘community’, we believe that it would be appropriate to develop an explicit off-campus housing code that reflects the values stated in the DCS, to communicate that clearly at a mandatory meeting to students who register to live off-campus or to study away from Duke, and to implement systematic mechanisms for tracking and reporting disciplinary actions and legal actions against Duke students irrespective of their living circumstances. We recommend that information about such actions be communicated regularly with as much detail as FERPA allows to faculty governance bodies such as the Academic Council, advisory bodies such as the Athletic Council and ACSAC, and to appropriate bodies within the local community. Accurate information about trends in the frequency and magnitude of disciplinary issues and efficacy of current educational and enforcement efforts is key in designing strategies to improve and in engaging the local community in a reality-based partnership.

It is clear that the recent incident of off-campus misconduct by students, irrespective of the outcome of the sexual misconduct allegations, has damaged a still-fragile relationship between the University community and its neighbors, and has overshadowed the less often reported but no less dramatic positive activities of Duke students in Durham. While we recognize efforts by the Office of Judicial Affairs to be responsive to community concerns, we believe a more proactive initiative is needed to display the University’s commitment to engage the community in helping to educate students about citizenship. In order to forge a more resilient relationship between the University and local community, we recommend the development of activities intended to introduce Duke students to their

neighbors, their neighbors' concerns, and the expectations of the community regarding citizenship. The disciplinary process for students engaging in misconduct in the community could include options for direct contact and negotiation with neighbors or community service. Regular meetings of stakeholders in this relationship could be convened to discuss problems and design proactive approaches to helping students living off-campus continue to internalize and exemplify the values of the DCS in the greater community.

In summary, we believe that the University needs to refine the Duke Community Standard and pledge to reflect the core principles of good citizenship as guiding activities in all settings, and then follow that refinement with ongoing, intentional activities to promote internalization of the DCS and policies that are consistent with the DCS and consistently applied. The dichotomy between academic and non-academic activities that is currently reflected in the structure of the DCS, bulletins, and the administrative structure should be diminished through integration of those structures in order to reflect that a Duke education encompasses academic and non-academic endeavors that prepare students to be exemplary citizens of the global community. Education in citizenship should continue as students live off-campus or study elsewhere, and the University needs to proactively engage the community in partnering with us to provide and reinforce this education.

The specific recommendations of the Committee are:

- *Modify the DCS so that the central tenet is good citizenship in relation to the University community as well as in relation to the broader communities of which the students are a part*
- *Develop a comprehensive set of programs to educate students about, explicitly model, repeatedly reinforce, and promote internalization of the institutional values articulated in the DCS*
- *Create a Bulletin of Undergraduate Education (BLUE), that would be a synthesis of the current Bulletin of Undergraduate Instruction and essential topics from the Bulletin of Information and Regulations, to give prominence to the integral role of the DCS in fulfilling the mission of Duke*
- *Develop and implement a Presidential-level initiative as part of the broader Campus Culture Initiative with the goal of tackling the major underlying problem of alcohol abuse*
- *Develop an off-campus housing code of conduct and judicial policies pertaining to off-campus living that reflect the values of good citizenship articulated in the DCS*
- *Minimize the disconnect between the academic and non-academic spheres of University life to emphasize that both spheres are integral parts of the general educational experience at Duke; as a first step, rethink the administrative structure to*

*integrate student academic and non-academic life to better serve the broad educational mission of the University*

- *Codify and implement systematic mechanisms for reporting on disciplinary actions, including Duke-Durham actions, to faculty governance bodies such as Academic Council and advisory bodies such as Athletic Council*
- *Explore creative alternatives to inculcate values of good citizenship in the context of off-campus student life, recognizing that learning to live productively in the global community outside of University walls is an integral part of a Duke education*
- *Convene a group of major stakeholders (university officials, off-campus student representatives, neighborhood residents, Duke and Durham police, and city officials) on a regular basis to discuss and develop pro-active approaches to issues related to off-campus student life, with the goal of partnering in educating students in how to live within the larger community*

Redacted pursuant Privilege

**From:** Mike Pressler <[mjplax@duaa.duke.edu](mailto:mjplax@duaa.duke.edu)>  
**Date:** March 27, 2006 6:42:47 PM EST  
**To:** [spressler@nc.rr.com](mailto:spressler@nc.rr.com)  
**Subject:** FW: WHAT IF JANET LYNN WERE NEXT???

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**From:** Mike Pressler  
**Sent:** Mon 3/27/2006 5:49 PM  
**To:** Chris Kennedy  
**Subject:** FW: WHAT IF JANET LYNN WERE NEXT???

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**From:** Chauncey Nartey [<mailto:cm3@duke.edu>]  
**Sent:** Monday, March 27, 2006 2:01 PM  
**To:** Mike Pressler  
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