Student Justice Project

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Via E-Mail

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Dear Provost Boardman and Dean Griffith:

As the President of the Student Justice Project, one of my goals this year is to try to stay abreast of cases and developments in the area of Judicial Affairs all across the Stanford campus. Our group first wants to provide emotional support and volunteer legal help (through alumni) to all students who need it. Second, we want to educate both you and the community as to what actually goes on in judicial cases at Stanford, and do so in real time as each case concludes. This will remove the cloak of secrecy that has existed with our judicial processes and allow us to bring to your attention areas as to which our group sees room for improvement.

As the year progresses, we will work with students who have been through the process and get their thoughts on their experience. This will provide a running "audit" of OCS that can be shared with the community. Let me share a most recent example.

A student, who is a close friend of mine, was charged with driving under the influence. There was a suggestion he may also have caused extremely minor damage to another vehicle (with no corresponding damage to his own vehicle) in the course of a 3-point turn that he made on campus. He and both his passengers were unaware of any damage to another vehicle.

The Sheriff's deputies pulled in behind this student while he was operating the vehicle. The officer testified he was going slow and staying to the right hand side of the road. The student's residence dean referred to matter to OCS as a Fundamental Standard violation.

The student was led to believe this would be a fairly quick and informal process. He admitted to the wrongdoing (in fact, this was a self-reported incident), so there was no need for a fact-finding phase. Unfortunately, the process was not quick or informal at all. Despite the fact that the case only entailed sanctioning, it took over 6 months to process, beginning in winter quarter 2012 and not resolving until spring quarter 2013.

Jamie Pontius-Hogan was the Judicial Advisor. She led the student to believe that driving under the influence was a violation of the Fundamental Standard, and that the "standard" sanction was a one-quarter suspension. For many months, the student was under the impression that the standard sanction for his misconduct would be one quarter.

In spring quarter, however, Jamie apparently changed her mind. She notified the student the standard sanction for his conduct was a *two-quarter* suspension. She said she had one prior case to give to the panel which addressed these "standard" practices.

The student became extremely concerned. A two-quarter suspension would have dramatically impacted his life. He asked for a continuance. With the benefit of the continuance, he then asked Jamie for all precedent relating to driving under the influence for the last 10 years.

The results were startling. First, Jamie was able to quickly put together results from 69 cases. This suggested to the student that the information was already readily available.

Second, in the past 10 years, only 20% of students (14 out of 69) actually had to serve a suspension. A two-quarter suspension was not "standard," as Ms. Pontius-Hogan had represented. Not even a one-quarter suspension was standard. In fact, no suspension was the actual standard.

Several students had received degree deferrals, presumably because they were seniors when their hearing took place. Yet, even with degree deferrals, only 40% of all student received suspension or degree deferrals. And, if the deferrals were older students (21+), they were receiving only a 30-day total driving suspension from the DMV and/or the courts. The young man at issue was under 21 and therefore will likely serve two full years of a total driver's license suspension. Consequently, he was already being penalized significantly more than a senior who received a degree deferral.

In the hearing, Ms. Pontius-Hogan appears to have acted as prosecutor, not as neutral advisor. At one point early in the proceedings, the student was trying to prove he was not involved in a hit-and-run. The panel began asking him prejudicial questions that were not relevant to the alleged hit-and-run, such as "How often did you drink then, and how often did you drink the quarter of the DUI?" Ms. Pontius-Hogan waited for the student to answer a number of these prejudicial questions before stepping in and informing the student that he was not required to answer questions of this nature.

Perhaps more egregiously, immediately before the sanction portion of the trial started, Ms. Pontius-Hogan claimed that she had never seen the sanction binder the student had submitted and needed to make some last minute corrections. The sanction binder was submitted to Ms. Pontius-Hogan on the Friday before the Tuesday trial, four days in advance.

Ms. Pontius-Hogan proceeded to zero in on several statements in the sanction binder and claimed that they were not true. Essentially, she discredited the student's argument in front of the panel during the trial on the grounds that she had not seen the binder beforehand despite having had four days to review it.

From what we know so far about this case, the Justice Project has four issues we would like to raise with the two of you who are in charge of judicial policies at Stanford. If other issues arise as we further audit the case, we will share them with you.

1. **Are We Honestly Representing "Standard" Sanctions to Our Panels?**

The student said he understood Jamie to tell him that she was going to present one case to the panel that reflected the "standard" sanction for operating a vehicle while under the influence, and for a hit-and-run. In fact, when pressed, it turned out that what she described as the standard sanction was not, in fact, standard at all.

I would encourage the two of you to take a look at this issue. If Jamie was able to assemble a sanctions chart as quickly as I understand she did, then it would suggest that OCS has the ability to simply provide panels with all precedent and let them decide what is or is not standard. They do not need to be told by OCS what is standard.

By suggesting a standard sanction, whether or not accurately, OCS drives the outcome.

Whatever Jamie may have said to the student, she can avoid putting herself in a bad position by simply letting the panel look at precedent and decide how to apply it, if at all.

For 5 years, from 2004 to 2009, no student was suspended for DUI . Then one panel suspended a student. After that, most panels that do not suspend include a statement as to why they are not following the "standard" sanction. Why, after 5 years of no suspensions, did panels start believing a suspension was standard?

It appears very clear that OCS told panels starting in 2009 (and continuing to now) that suspensions were "standard," when that clearly was not the case. If OCS has intentionally misled the community, we urge you to act accordingly.

Can you agree that this chart will automatically be provided to all students in subsequent DUI cases?

Can we provide a running chart of sanctions in all cases, including Honor Code? Most regulatory or licensing authorities already do this. It both encourages early resolution and more uniform penalties. It minimizes the opportunity for the case manager to drive the outcome. It increases transparency in an office sorely in need of it.

Last, when can we expect the statistics on penalties (in all cases) for "early resolution" students? On April 7th, you told another student group those would be reviewed and shared. Are they now available?

2. 1997 Student Judicial Charter – Why is the Judicial Advisor Going into Deliberations?

The student asked for no suspension, and instead proposed other reasonable, less career-damaging sanctions. The student reported to me that deliberations in his case took two hours. OCS reports that was a "long" deliberation. That suggests it was a close call and that there were not enough votes for the final sanction (he was suspended for a quarter) until the 2-hour mark. That strikes me as some pretty intense debate.

I was stunned when the student told me that Jamie had sat in on the deliberations.

The Student Judicial Charter does not provide for this. While it suggests that the Judicial Panel "may request information from the Judicial Advisor regarding rules and procedures," the 1997 Student

Judicial Charter does not say that the Advisor will be in the room with the panel during deliberations. There is good reason for that.

Even in courts, judges who, unlike most University judicial employees, have been vetted to meet the highest requirements of expertise in law and possess unchallengeable ethics, do not go into the jury room alone with the jury. No jurisdiction allows that to my knowledge.

What happens in fair judicial processes is that if the jury has a question, they send the question in writing to the judge. The judge then calls in the lawyers and reads the question. The judge then gets input from the two sides (just like on every other issue) before providing written advice back to the jury. The judge is never alone with the jury. Everyone sees the answer that went to the jury. By doing this, several things are accomplished:

1. The potential for actual misconduct, or the appearance of misconduct, by the Judicial Officer is eliminated;
2. The ability of the Judicial Advisor to improperly influence the panel is eliminated;
3. There is a record of what the issues were and how they were responded to for purposes of appeal;
4. The Judicial Officer gets the benefit of input from both sides before formulating a response.

There is no provision in the 1997 Student Judicial Charter for the Judicial Advisor to be in deliberations. That is a privilege given solely to the panel. While the Charter provides the panel may "request" information from the Advisor from deliberations, the Student Judicial Charter does not provide the Advisor gets to sit in the room on standby. Significantly, there is no logical reason that the Advisor cannot be on the outside, rather than sitting in the room.

Does this happen in all OCS cases, or just this one? This violation of the Charter's deliberation responsibilities should stop.

I understand from reviewing other materials that Dean Griffith does not want our procedures to be like court procedures. That is self-evident from the testimonials we gathered and shared earlier this month. However, every court procedure in America's centuries old judicial system is designed to enhance the fairness of the process. There is nothing inherently bad about court procedures, as Dean Griffith appears to presume. A knee-jerk hostility toward due process appears to permeate OCS and has harmed students and Stanford for years.

From my personal discussions with many other students who have been through the process, they believe the Judicial Advisor and Judicial Officer at Stanford have essentially become prosecutors. Whether that is correct or not, I assume it is difficult for a student to swallow the fact that what they see as the prosecutor gets to sit in the room with the panel when they deliberate. A goal of any judicial process is to leave the loser with a sense his or her case was fairly considered. We lose that if the OCS employees, but not the students, get to sit in on deliberations.

Further, our group recently learned that if a student files an appeal in an OCS case, Jamie writes the opposition to the appeal. Given that she (and not the student) sits through deliberations, this gives her an unfair advantage [writing an adversarial brief itself violates the Charter's mandate that Jamie is a neutral].

Since there is not even a rationale for this Charter violation (sitting in on the deliberations), students will undoubtedly presume it occurs so OCS can drive the outcome to guilt.

Jamie should not have been in that room when that panel deliberated, particularly where, as here, the student suggests she had already misled him with respect to the "standard" sanction of the case. He will always wonder if she misled the panel during those two hours of intense deliberations. So will we.

Under the Charter, the Judicial Advisor may answer questions on "rules and procedures," if any, but does not get to watch (or participate in) private deliberations.

This is a simple thing to change. All you have to do is tell your Judicial Advisors to sit outside and have the panel send the Advisor a request regarding "rules and procedures," if they have any. Then the Reporting and Responding parties can be notified and participate in the response. OCS makes them wait 60 feet away, so they could quickly respond.

If the panels are properly trained, they should know the rules and procedures. All they are doing is deliberating and voting. It's not a complex rule-oriented process.

Jamie should not have been in deliberations discussing sanctions or precedent or "standard" handling of these cases with the panels, given that the 1997 Student Judicial Charter would be violated if she did so. The student suspects that is what she was doing.

Aside from fixing this going forward, you should give the student in the recently- conducted case a new hearing if the student wants one.

3. Delivering Defense Materials to Judicial Panels – Why is OCS Preventing This?

This issue, on the surface, may appear relatively minor. On the other hand, it reflects an attitude at OCS that suggests its employees do not see their job duties as including helping students put their best foot forward. That needs to change.

The student told me that he assembled a brief and numerous exhibits (approximately 50 for his sanction statement). He prepared a hard copy of a brief for each panel member (6 total). Each brief was accompanied by a binder that had exhibit dividers with tabs that neatly distinguished all 50 or so of his exhibits.

The student went to OCS and asked that OCS arrange to deliver the briefs and binders to each of the six panelists. OCS said they would not do so.

OCS said that it was their practice to email briefs and exhibits to panel members and then tell them there was also a hard copy of the documents at the Office which could be picked up. The student objected. He expressed his concern that the panelists would not be able to review his defense in the manner in which he wanted it reviewed.

The student was concerned that with approximately 50 exhibits, the panelists would not be able to review them as they read his brief. He had prepared his brief and materials (and spent several hundred dollars in binders and exhibits) so that every exhibit was referenced in the brief, with the intent the panelists could turn immediately to the exhibit and review it while they were reading the brief. This could not be done if everything was emailed, as there would be no way to find the exhibits.

Koren Bakkegard said that was just how they did it and they were going to email even over the student's objections.

The student was willing to pay for OCS to arrange for a delivery service to take the hard copies and materials to the panel members. That was rejected.

When the student pressed, she said he could mail them to the panelists. He did.

Then, subsequent to mailing his first batch of binders, Jamie Pontius-Hogan contacted him. She led him to believe that he had violated rules (without identifying any) that precluded him from making contact with the panelists.

The student had not made contact with the panelists. He simply followed up on the OCS Director's statement that he could mail; for individuals for whom he did not have addresses, he had his delivery person email to get addresses or make arrangements to deliver or leave the briefs and binders.

The student told Jamie he would complete his mailings unless she could identify some rule that precluded it, and that had not just been adopted after Koren Bakkegard told him he could mail the documents.

Subsequently, the student received contact from Koren Bakkegard saying that while she had said he could mail the documents to the panelists, she did not intend that to be advice or an endorsement to do so. As an aside, that's a troubling response for the Office's director.

Ms. Bakkegard then stated that in the future students will be precluded from mailing binders and exhibits to panelists, but that OCS would continue to email documents and not arrange for delivery (even if the student paid) or mailing (even if the student paid) of hard copies.

OCS states it will make hard copies available to be picked up at OCS, but OCS will still email the documents. Few panelists will take the time to pick them up if they already have the documents, defeating the student's desire to make a more effective presentation. Why resist that?

I would urge the two of you to take a hard look at this issue. Why wouldn't OCS want to accommodate a student who goes to the time and trouble of preparing hard copies to make it easier for the panel to review his or her materials? It just makes sense that we should do everything we can to support our students who are trying to defend themselves in a situation already made difficult because of the built-in advantages to the Reporting Party and OCS.

In fact, given the ease with which a panelist can review exhibits in binders that are tabbed, why are your Advisors not suggesting this as the recommended approach? Aren't they supposed to help students put on good cases? Or is that not one of their roles?

How much would it cost to mail documents to panelists if a student really wants to present his or her case in that fashion? These are really good questions I would urge you to take a look at.

4. Why Are We Kicking Students Out of School for Operating Under the Influence?

As he prepared for his hearing, the student looked at the Fundamental Standard. It did not identify driving under the influence as a violation of the Standard. To him, the Standard appeared to go to a broader issue of integrity and character. He believes that the Fundamental Standard can only be violated by one serious act, multiple smaller acts, or some generally very offensive negative character trait. He does not believe one misdemeanor offense, which the student can establish is out of character, rises to the level President Jordan contemplated for kicking someone out of school.

Our group thinks the student makes a good point. We would suggest that you commence a review of what may constitute a violation of the Fundamental Standard. The community should be advised how it just became "assumed" that a DUI automatically rises to the level of a Fundamental Standard violation.

My impression from the student is that the panel was led to believe that this was a violation of the Fundamental Standard, and their role was simply to determine sanctions. While the student acknowledged driving under the influence, he did not acknowledge a violation of the Fundamental Standard.

In this case, the Residence Dean, Michelle Voigt, made the referral. Going forward, there should be some instructions to the panel that it is up to them to determine whether or not an individual act (or series of acts) rises to the level of a violation of the Fundamental Standard in the first instance, and it is not to be presumed simply by a referral.

There are few other places in America that expel people for driving under the influence. It is extremely rare. Adults do not lose their jobs when they have been charged with driving under the influence (unless, perhaps, if their job requires driving and the job cannot be held for them). Jamie and the two of you would not be suspended for a quarter if you had a DUI. Given this, why do we kick students out of school?

Students already serve a more onerous burden when they receive a driving under the influence charge than adults. Adults receive a 30-day total driver license suspension. Because the student was under 21, he will receive a total of 24 months of total driver license suspension.

The student was able to put together a fair lengthy description of all the penalties that are imposed upon those who are found guilty of driving under the influence. Those penalties are imposed by the State, reflecting a collective punishment. Why does Stanford need to pile on and make it even worse?

Has any employee of Stanford had a DUI? What happened to him or her? Can you provide me with a chart of the penalties given to every employee with a DUI over the last 10 years?

Students are younger than most of your employees. They are still learning. Why are they treated differently than Stanford employees? We understand the Fundamental Standard does not apply to employees, but personnel policies do. If a student's DUI is such a violation of respect for order and morality as to demand a 3-month separation from the University, why does the University in personnel policies hold paid employees to a lower standard?

These are questions which deserve a response from the highest levels of the University.

The goal of punishment should be to send a message of what is and is not approved by the institution, and what would help make the student a better person. We can accomplish that by simply joining in sanctions that are already imposed by the State or the DMV, and not adding to them. This would send the proper message and make sure the student is sanctioned; it would not over-sanction the student and have a dramatic impact on his life. Our group supports this approach. We support this approach for both employees and students.

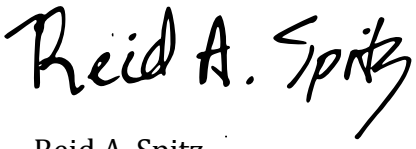
This record, if accurate, at a minimum creates an appearance of both a potential impropriety at OCS and a University double standard on DUIs.

Conclusion

These are just four issues that came up in one small sanction case, where liability was not even contested.

All four highlight significant issues where students are put at a disadvantage because of the way things are handled at OCS. All of these issues should stimulate some thought on your part, and hopefully some action. I encourage you to give them consideration.

Thank you.



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