



Attorneys and Counselors at Law

556 Peninsula Blvd., Hempstead, New York 11550

Phone: 516-489-6959 • Fax: 516-489-6958 • www.brewingtonlaw.com

Frederick K. Brewington
Ira Fogelgaren

April 26, 2016

Brian T. Stephenson
Associate Director of Community Standards
State University of New York at Albany
Division of Student Affairs
Campus Center 361
1400 Washington Avenue
Albany, New York 12222

Re: Appeal of Asha Burwell
Student Conduct Referral # 00259-003-2016

Dear Mr. Stephenson:

PRELIMINARY STATEMENT

As you know, we represent Ms. Asha Burwell and were identified as her attorney at your request by having our client execute a Community Standards form which you supplied. (See Exhibit A) As such, there has never been any issue of our representation of Ms. Burwell, nor our authorization to address the University, its personnel and this Board on her behalf. We now write on behalf of our client, Ms. Asha Burwell, and submit this letter as her formal objection and appeal of the decision provide on or about April 19, 2016. In light of our previous requests that our correspondence be shared with the entire Board, which were apparently not communicated to the Board (See below), we trust that this will be shared with the entire Board.

Ms. Burwell is an African American woman of color who experienced an horrific event on a CDTA bus and she is now being punished for reporting and expressing as she saw it and perceived it. She is being punished not once, but multiple times by death threats, by false claims, by criminal charges, by manufactured circumstances, by financial interests, by character assassinations and by abuse of power and authority by the State in an attempt to label and silence her. All of this is in clear opposition to and in violation of her rights provided to her under the First, Fifth and Fourteenth Amendments to the United States Constitution. Issues which, by all evaluations of what has transpired in this matter appear to be of little import to the University. Please be informed that we adopt those points and arguments presented in each of the submission on appeal by the other two Referred Parties to the extent that they apply to Ms. Burwell.

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 2

ARGUMENT

THE LEVEL OF PROCEDURAL ERRORS, VIOLATIONS AND WILLFUL ACTS OF DISREGARD ARE INEXCUSABLE AND AMOUNT TO HARM THAT CANNOT BE IGNORED

While the CRR are rules established by and for the State University of Albany, there are several facts that either the University has failed, or chosen not to acknowledge. First, by conducting the hearings on March 9, 2016 the University was and continued to be the arresting and charging party/entity against Ms. Burwell and the other two young ladies. Second, since the University is, in essence, the State, they are part of the same body that was then, and is now currently prosecuting Ms. Burwell. The claim that the "student conduct process is an administrative rather than a criminal process" is of little consequence when it is the same entity that has begun, nurtured and continues both the criminal process and the campus hearing. Ms. Burwell's Fifth Amendment Rights arising out of the United States Constitution clearly provides for due process of law where the government is seeking to deprive a person of life, liberty, or property. This Amendment also creates a further special set of rights that prohibits the government from forcing a defendant to testify against himself or herself.

The level of intellectual dishonesty engaged in by the decision makers from the University is exhibited by their willingness to ignore the fact that as a State institution, their obligation is to protect and uphold the rights of Ms. Burwell over any claimed need to proceed for administrative expediency. In fact, the Introduction of the decision provided states, "a student conduct hearing need not be postponed pending the disposition of related criminal charges." Inexcusable in this statement is that while the hearing "need not be postponed", there is no reason or rule stating that it cannot be postponed. Clearly, in light of Ms. Burwell's rights, there was no compelling reason for the University to rush its administrative hearing to judgment. The fact that there is a recognition that there may be a need to postpone such a hearing while criminal charges are pending speaks to the intent and purpose of why the hearing was conducted despite the impassioned request by Ms. Burwell and the other two women that have been falsely charged and vilified publicly in every other way that the University has been able to do. Both of the chief witnesses against Ms. Burwell in the student conduct hearing are also chief witnesses and proponents of the criminal charges. In fact, upon information and belief, it was Inspector Burlingame that sought and instigated the prosecution of Ms. Burwell with judges and the District Attorney of Albany County.

The Student Conduct Board was not provided with the letters from Mr. Brewington to the University as was requested. Accordingly, Ms. Burwell was further harmed by the University censoring her ability to present relevant information to those who were to hear her position. The clear request by her attorney was, "**we demand that this email be provided to then entire panel**

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 3

that will be evaluating this matter. (Exhibit B) This demand, which was made on March 1, 2016, and was timely, was ignored by the University staff who, acting like a protective unit in forcing the young ladies to accept these charges, contrived the hearing. Accordingly, any decision or determination made by the University is disputed and tainted by its false sense of urgency to place our client in jeopardy without due deference to her urgent and pressing Constitutional Rights. The denial of the simple demand to have her statement provided to the Board, as was her right, smacks of disrespect, arrogance and denial of due process. In fact, Chairperson Khatib (a University Employee) makes a completely false and obviously misinformed statement on page 13 of the hearing transcript, by asserting, “[n]o documentation or evidence was given to Community Standards by any of the Referred Parties.” (Transcript of hearing) In light of what is attached hereto as Exhibit B, which is the email from Frederick K. Brewington, Esq. to Nancy Lauricella, Executive Director of Community Standards (dated March 1, 2016 at 2:19 p.m.), the credibility and integrity of the process was not only compromised, it was sabotaged by the University. The clear setup of this process was, for the University to create circumstances where it was impossible for Ms. Burwell to appear and testify and then load the Board with skewed information and evidence knowing that it would be uncontested even if it were wrong.

None of the statements or testimony is recorded as being sworn to by any of the witnesses. Based on this evaluation, the decision to try Ms. Burwell and find her guilty in this process is based on unsworn hearsay statements, narratives and speculations. Further what was presented was blame on Ms. Burwell for the actions of others she does not know and over whom she had nor has any control. She is charged with social media posts by many people who were engaging in debate and comment, none of which was adopted or identified with by Ms. Burwell. These comments come in different forms of communications, many of which Ms. Burwell has no dealings or knowledge. Yet she has been charged with their statements and acts. What was presented to the Board was an intentionally one sided biased view that provided the Board no understanding about the position of Ms. Burwell and the information that she wished the Board to have. Most certainly, it was her right, by your own rules to have a statement provided, whether written or spoken, on her behalf. This right was outright denied to Ms. Burwell. A look at Exhibit B, clearly sets forth Ms. Burwell’s objections, defenses against the proceedings, and her concerns that she sought to have before the Board for their consideration. Instead, the Board was maliciously misled into believing that Ms. Burwell and the other two women facing these charges did not care enough to even ask some be presented. Such manufacturing of the false pretense which was placed before the Board is not only prejudicial, but was aimed at intentionally placing Ms. Burwell in a false light which was then perpetuated throughout the so called hearing.

Ms. Burwell and the other two young ladies wanted the Board to know that they had not been provided with the witness interviews but, that was not made known. Ms. Burwell made the specific

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 4

request by her attorney on February 14, 2016 (See Exhibit C) that she be provided with “all video evidence, power points, witness statements and other evidence which is in the possession of the University, the University Police or any office or agency of the University. We make this request knowing that there are certain items which are or have been in the possession of the University. To deny this request will not serve the interest of due process, fairness and pursuit of the truth.” Instead of honoring this request, the hearing was conducted and key evidence, including witness statements were denied to Ms. Burwell. She also made the specific request that the **“hearing not be conducted now, but await the outcome of the criminal charges of which you and the University are proponents.”** This statement was especially key for Ms. Burwell since the only thing told to the Board was that Criminal Charges were pending against her, not who was pressing them.(Exhibit B at page 6) Had the Board been fully informed of what it was that Ms. Burwell was raising, they would have had the chance to embark on a different course of action. Instead, they were spoon fed one story and one reality, which was not only tainted it was fraudulent. In fact on that same page the Board is told none of the Referred Parties will be attending today’s hearing due to pending criminal charges being brought forth against them by the Albany County District Attorney’s Office.” (Exhibit B at page 6) This was yet another problematic action which was at best a misdirection and at worst a blatant falsehood. The truth is, as should have been expressed, was that the University and indeed the main charging party appearing before them were the ones that “brought forth” charges. The District Attorney is not the charging party against Ms. Burwell and the other two young women. A fact that was undoubtably twisted and then ignored to the harm and detriment of Ms. Burwell.

NEW EVIDENCE IS CURRENTLY IN THE POSSESSION OF MS. BURWELL THAT SHE WAS DENIED ACCESS TO AT THE TIME OF THE HEARING, DESPITE HER REQUESTS FOR SAME

Despite requests for witness statements, same were not presented to Ms. Burwell until well after the hearing, which was contrary to the rules of the proceedings. In fact, Chairperson Khatib says at page 11 of the hearing Transcript, “[t]he Student Conduct Body may exclude evidence that has not been shared”. Inspector Burlingame, according to the decision and his statements, claims that he had taken “interviews with nearly 35 passengers from the bus”. As stated above, the requests for these witness statements was made in writing back on February 14, 2016 (See Exhibit C) and then again, not only by Ms. Burwell but by the other two young ladies. Instead of providing them, they were intentionally withheld and then referenced as part of the so called evidence presented.

Now that those witness statements have been provided, well after the hearing, Ms. Burwell can dispute many of the statements and claims offered by Inspector Burlingame. If he were truthful, he would have reported that he was told that at least one of the interviewed witnesses heard other students confirm that Ms. Burwell and the other ladies were called “Ni- - ers”. If he were intending to be truthful he would have informed the Body of the injuries suffered by Ms. Burwell and the

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 5

clearly offensive markings on the hand of one of the young white women, who others called the “drunk girls”. Upon information and belief, the Inspector failed to report that the level of force used against Ms. Burwell and the other young ladies with whom she was victimized was so great that at least one of them had numerous hair extensions ripped from her head. Again, Inspector Burlingame characterized the evidence to support that Ms. Burwell made statements that were “false in all material respects.” This view, as reported in the decision, was not only strewn with innuendo as there was nothing to refute Inspector Burlingame’s story, but his position was laced with *Trumpisms* that were conclusory without the necessary support to make them of any value to the charges lodged. The lack of complete disclosure before the hearing, was intentional as the alleged witness interviews were in the possession of University, yet were not disclosed. Inspector Burlingame’s general references to evidence that was denied to Ms. Burwell, and his characterization of what it contained could not have even been addressed by the accused young ladies, because their requests for those witness interviews was denied.

The new evidence, which was denied to Ms. Burwell, clearly would seriously challenge and disprove the hearsay, double hearsay and, in some cases, triple hearsay offered by both witnesses in this case. It is well established that when the hearsay evidence can be and is seriously controverted, “common sense and elemental fairness suggest that” it may not constitute the substantial evidence necessary to support the authority's determination (*Matter of 125 Bar Corp. v. State Liq. Auth. of State of N.Y.*, 24 N.Y.2d 174, 179, 299 N.Y.S.2d 194, 247 N.E.2d 157 [1969]; see *Matter of Ridge, Inc. v. New York State Liq. Auth.*, 257 A.D.2d at 626–627, 684 N.Y.S.2d 251; *Matter of Fellowmen Community Dev. Corp. v. New York State Liq. Auth.*, 219 A.D.2d at 871, 631 N.Y.S.2d 955; *Matter of Karam v. New York State Liq. Auth.*, 163 A.D.2d at 869, 558 N.Y.S.2d 397). This consideration is equally applicable to this matter. The testimony given about what was told to Inspector Burlingame during interviews, and that he then summarized was never actually disclose to the Board. This is even more problematic in that some of the summarization included information of what the interviewees claimed to have been told or heard from other persons. Such evidence could not have been challenged at the time of the hearing by Ms. Burwell as the statements taken and spoken about by Inspector Burlingame were withheld from Mr. Burwell despite her requests for same.

**THE UNIVERSITY AND PERSONNEL, ACTING AS THE STATE, INTENTIONALLY
VIOLATED THE RIGHTS OF MS. BURWELL AND
THE OTHER TWO YOUNG LADIES**

The denial of witness interviews created a clear level of fairness and under no circumstances should Inspector Burlingame’s testimony have been allowed about this interviews when Ms. Burwell had been precluded from access to them. Since the hearings, these interviews have been turned over and as such they are new evidence which was not made available to Ms. Burwell by the University

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 6

and Inspector Burlingame. As there is new evidence, which Ms. Burwell now knows contradicts sworn testimony given by the University's representative, there is no question that the hearing was unfair and structured to bring about one outcome. Without having the interviews to place in the email which should have been provided to the Board, but was not, the Board was twice denied relevant and necessary rebuttal to the tale woven by Inspector Burlingame and the University. The fact that this new evidence was not in Ms. Burwell's possession because the University refused to provide it is so antithetical to any sense of justice that the hearing and its decision must be overturned.

The University has also based its charges and therefore the hearing on seeking to punish these three women for protected speech. The acts of the Police in this case seem to be more aimed at protecting the University from criticism in the press than from providing a safe and open forum for the exchange of ideas and expression of thoughts. Supreme Court Justice William O. Douglas once stated that "[r]estriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us." The claim that because Ms. Burwell used public speech via the electronic airways, with which the University does not agree, she should be punished and silenced is one of the most dangerous positions in which a institution of higher learning can place itself. Yet that is just what Inspector Burlingame, Vice President Brennan and all the staff at Albany have done. They have taken steps to silence to the voice of those that experienced an event and provide their clear view of what took place and what they witnessed. This is not unlike the use of official State Action to crush a dissident voice so that the challenge and the initial speech does not have the University's ability to ever be heard over the defense of ones right to speak, even if the State does not agree with it. Now that the video evidence and interviews have been made fully available, there is no question that the only interest throughout this process was to chill and in fact freeze the voice of Ms. Burwell and prevent her from telling her experience. Once again, the University here is a State creature, not a private institution. As such, Ms. Burwell's being brought up on charges and sanctioned for speaking about her experience and/or her perception is not supported in law and our traditional concepts of an open and free society. Harry Truman stated, "Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear." While I would hope that this concept would not be lost on the leaders of the University, it most certainly should not have been absent from Vice President Brennan, who took great pains to make clear his academic and intellectual credentials including his Ph.D. in English.

The most rudimentary view of the freedom of expression consists of the rights to freedom of speech, press, assembly and to petition the government for a redress of grievances, and the implied rights of association and belief. Here, Ms. Burwell is being charged and punished for speaking,

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 7

expressing herself, petitioning the government for redress of grievances and the response has been criminal charges and sanction by the University from whom she sought help. The due process clause of the Fourteenth Amendment serves in protecting the rights in the First Amendment from interference by state governments. The right to freedom of speech allows individuals to express themselves without interference or constraint by the government. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech.

The attempt to justify this level of interference as 'it is going to cost the University a lot of money' is not justification at all, but motive to use the power and authority of the State to quiet Ms. Burwell's voice. Indeed the testimony of Vice President Brennan was that the justification for the charges and the punishment was "the significant and on-going disruption to the activities of the University's administrative offices caused by Ms. Burwell's conduct, including out-of-pocket expenses, overtime costs and lost opportunity costs, i.e., what work was not accomplished because of the time spent responding to the aftermath of her conduct." The "matters of public concern" which are apparent here, have been turned on their ear, criminalized and made the subject of sanction. In March 2011, in *Snyder v. Phelps*, the United States Supreme Court addressed the question of speech on public issues and reasoned that it is entitled to special protection under the First Amendment because it serves the "the principle that debate on public issues should be uninhibited, robust, and wide-open." The Court held that Phelps and his followers were "speaking" on matters of public concern on public property and thus, were entitled to protection under the First Amendment. Without doing a full blown legal analysis and filling this appeal with legal precedent (**noting that none are contained in the decision**) it is important to point out that the Court in the *Snyder* case reasoned that "[s]peech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community' or when it 'is a subject of general interest and of value and concern to the public.'" With that decision in mind, the issues which have been identified by the University, Inspector Burlingame and especially Vice President Brennan relate to the claim that Ms. Burwell and the other young ladies "portrayed the University at Albany as a place of hatred, violence and bigotry toward women of color, a portrayal that was picked up by the news media and disseminated to tens of millions of people throughout the country resulting in a significant disruption to the University's administrative functions and causing harm affecting a wide range of University initiatives, including student recruitment and fundraising." [sic] From this view alone, it is incontrovertible that Ms. Burwell's speech was relating to a matter of public and deep social concern. The issues of violence and bigotry toward women of color, as identified by a University Vice President, are ones that, according to him, were of such public concern that millions of people were interested.

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 8

Accordingly, the University's willful refusal to consider its role in attempting to silence Ms. Burwell, or its intentional willingness to try and silence her cannot be ignored. For every member of the Board, there should have been, as part of its self-instruction, Ms. Burwell's right to be free of retaliation, prosecution and sanction for making a complaint to the University and then expressing herself about her reality as a Black woman. Instead, the decision is strikingly absent of an acknowledgment of any informed level of what rights Ms. Burwell has even in the midst of the partial evaluation done by Inspector Burlingame and Vice President Brennan. As such, the Board, especially the student members, were not allowed to even consider that "If large numbers of people believe in freedom of speech, there will be freedom of speech, even if the law forbids it. But if public opinion is sluggish, inconvenient minorities will be persecuted, even if laws exist to protect them." (*George Orwell*) Ms. Burwell is clear that laws exist to protect her rights. The laws in this case are ones which have been ignored by the University and its employees.

Ms. Burwell contends that the statements which Inspector Burlingame referenced throughout his statements to the Board, and are, in part the basis of these charges and the criminal charges which are currently pending, were obtained pursuant to police questioning while she was the subject of police investigation for charges against her and in police custody and without proper advisement of her constitutional rights. *Miranda v. Arizona*, 384 U.S. 435 (1966). The statements were obtained in violation of her rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §6 of the New York State Constitution and were involuntarily made within the meaning of C.P.L. §60.45. Most notably, Inspector Burlingame knew on January 31, 2016 that he intended to press charges against Ms. Burwell, yet he set up a meeting in his police function with her on February 2, 2016 knowing he was going to try and lure her into making a statement. He then failed to advise Ms. Burwell that she was the subject of a criminal investigation and failed to provide any of the warnings which might otherwise be given to any other suspect. He engaged in unlawful activity which is a fact which Ms. Burwell learned well after this hearing and during a proceeding before the Albany City Court on April 11, 2016. Accordingly, this is new evidence which was unknown to Ms. Burwell at the time of the hearing. Accordingly, the hearing and the decision should be annulled.

**THE SANCTION/PUNISHMENT OF DISMISSAL IS BOTH ABUSIVE,
OVERLY HARSH AND PUNITIVE**

The punishment of dismissal in light of the level of abuse of the process is punitive. Had the request of Ms. Burwell to have the March 1, 2016 email given to the Board (Exhibit B), they would have known that on punishment that she provided the following statement. "Please be advised Ms. Burwell is no longer a student at Albany. She has withdrawn from your University for mental health reasons. In light of that fact, your conducting a "Student Conduct Case" would be inappropriate. Your pressing forward will only add to the damage and injury which has caused our client to

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 9

withdraw. Kindly be aware that we are advising you that your insisting on going forward with your 'Case' at this point, will cause greater injury to our client. You and the University are, no doubt, aware of our client's situation and are proceeding having been informed her need and reason for withdrawal." As stated above, this request, like her other requests, was ignored. What the University and the Board has done is place a false mark on the record of an otherwise good student. The punishment of disciplinary dismissal after they were informed, or should have been informed, that Ms. Burwell had already withdrawn weighs heavy in the evaluation of what the Board knew or did not know at the time that this decision was rendered. Of course we must note that the decision itself is undated and unsigned, so we don't know when the decision was actually made, but by the time it was directed to Ms. Burwell on April 19, 2016, Ms. Burwell had long been separated making the dismissal moot and even more questionable as a punitive measure.

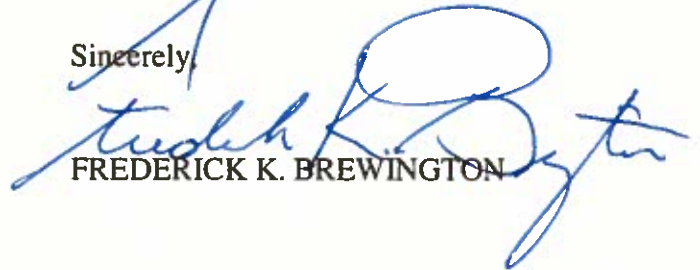
In all, the decision is flawed on a number of levels including procedural, factual, evidential, legal, moral and Constitutional. The entire process was absent any sense of fairness. The Chairperson of the tribunal serving as the proponent of the presentation of the so called evidence as well as the utter speculation and total lack of any semblance of the rules of evidence make the process a mockery of the terms Due Process. The claim that the FBI reviewed the investigation conducted in this case and it was not criticized was nothing more than a self serving and prejudicial comment made to impact and taint this matter against Ms. Burwell and the other two young ladies. The insinuation being, that some unknown, unidentified FBI source was looking into this matter and that they approved the actions of the Albany University Police is an outrageous and inflammatory statement. Yet, nothing about the so called "review by the FBI" was turned over or even disclosed. This statement being made is only highlighted by the Chairperson stressing directly after the FBI statements of Inspector Burlingame, that "[n]ormally we would ask that the referred parties make a closing statement, but since [they] are not here, let the record reflect that they cannot make a closing statement and we will move on" is highly prejudicial without safe guards having been put in place as was requested by Ms. Burwell (See Exhibits B & C). The Board should have been told, at a minimum, that Ms. Burwell cannot be punished or viewed as having done anything wrong by exercising her rights under the Fifth Amendment of the United States Constitution, and should have been told that the fact that the Referred Parties did not testify is not a factor from which any inference unfavorable to the any of them may be drawn. Based on a reading of the transcript, this basic and fundamental right was not even considered.

Brian T. Stephenson
Associate Director of Community Standards
April 26, 2016
Page 10

CONCLUSION

Based on the entire record and the serious errors, failures and prejudicial actions, the charges should be dismissed or at the least, overturned for a hearing to be conducted with full evidence at a time following the conclusion of the underlying criminal charges of which the University and the Referring Party are directly involved as instigators.

Sincerely,



FREDERICK K. BREWINGTON

FKB.rw
Encl.

EXHIBIT A



Today's Date: 2-15-16

I, Asha Burwell, give permission for staff from Community Standards to discuss
(Student Name)

and share information about my student conduct case with:

My attorney:

Frederick K. Brewington (attorney name)

and/or my parent/ guardian and/or advisor:

Subrena Burwell (Parent/Guardian/Advisor Name)

Asha Burwell
Student Signature

2-15-16
Date

EXHIBIT B

Fred Brewington

From: Fred Brewington
Sent: Tuesday, March 01, 2016 2:19 PM
To: 'Lauricella, Nancy'; Burwell, Asha; Stephenson, Brian T
Cc: ashabwell@gmail.com; Precilla Lockett (precilla.lockett@brewingtonlaw.com); Ira Fogelgaren
Subject: RE: UAlbany, Student Conduct Case Update and Hearing Notice

Ms. Lauricella,

We are in receipt of your email. Please be advised Ms. Burwell is no longer a student at Albany. She has withdrawn from your University for mental health reasons. In light of that fact, you conducting a "*Student Conduct Case*" would be inappropriate. Your pressing forward will only add to the damage and injury which has caused our client to withdraw. Kindly be aware that we are advising you that your insisting on going forward with your "Case" at this point, will cause greater injury to our client. You and the University are, no doubt, aware of our client's situation and are proceeding having been informed her need and reason for withdrawal. Further, your letter dated February 26, which was delivered to our office today makes a number of assumptions and clearly assumes that Ms. Burwell did something wrong and that she is responsible/guilty already. This makes the conducting of any hearing suspect. Unquestionably, you and the University have not only taken steps far beyond what I understand has been done in the past, but you have advocated a determination and finding knowing that you are, in effect, the charging parties in the criminal case. Nothing could be more unfair and contrary to both due process, respect for order and fairness. **We specifically request that your hearing not be conducted now, but await the outcome of the criminal charges of which you and the University are the proponents.** Please inform us if this request, as previously made to you, will be honored. We ask that those who are chosen to be the hearing panel make that decision and do so explaining their reasoning for any decision made.

The references to your hours and costs seems to be an attempt to justify your attempt to vilify our client. I am sure that the choices you have made to harm, intimidate, and frighten Ms. Burwell and the other two African-American women for reporting an incident will be aired at some point. Please be informed that Ms. Burwell has and continues to oppose your charges and your process especially, as previously stated, since your employees (who are the same charging parties in your proceeding), are some of the same complainants in the Criminal charges. You and the University know that our client's rights and potential exposure, given the criminal charges, cannot give way to an administrative proceeding that is only being pressed to support your conclusions which you have already reached. There is no way that you can expect the defendant in a criminal case where you are the complainant to wave her 5th Amendment Rights. I have informed you that you are the State and since it is the State that is prosecuting our client, it would seem clear that if you really wanted to be fair you would not attempt to compel the accused to a hearing knowing that her Constitutional Rights would necessarily be exercised. Further, your attempt to present evidence that is not the whole story and is not complete, as has already happened to the public, is both unethical and contrary to an institution of higher learning. You have made victims into culprits, without even attempting to have a discussion with them after you had questions. Instead, you have leveled criminal charges making each of these young women unable to testify in your hearing and making them unavailable to each other because of the pending venom filed criminal charges. In your binder, which was delivered today, you failed to provide any witness statements and only gave notice of individuals that appear to be, at best, opinion witnesses and hearsay witnesses. Please advise if you intentionally determined to withhold witness statements and kindly identify who the witnesses are. Without you having provided that information, I fail to see how you and the University intended, if that was a consideration, Ms. Burwell to defend herself or be prepared to question witnesses that have never been disclosed. Likewise, your previous refusal to provide all video evidence that exists for our own evaluation and use was a barrier to Ms. Burwell being able to address the edited and enhanced portions of the video that you and the University have chosen to use publicly. It makes no sense, if you intended to be fair, that you would bring charges and then refuse to provide a former student with the very same

information that has, allegedly, formed the basis for you bringing charges. Please tell us if you have provided all the video evidence from the bus. If you have now provided all the video evidence, please explain why you have withheld it for a month. Once again, these obvious flaws in your process appear focused on putting the accused at a disadvantage so that any prospect of meeting and addressing the charges is all but futile.

In light of the most recent statements made by the University, we caution you about making comments which are clearly aimed at defaming our client. We demand that you **cease and desist** using our client's name, image or personal information in any of your correspondence, publications, news releases or interviews. Our review of what has been done makes it clear that your actions have violated a number of Federal and NY State Laws all of which will be addressed as the truth in this matter unfolds. This email is provided to you, as a point of contact, demanding that all emails, electronic correspondence by and between University employees and officials be preserved and that a litigation hold be sent out immediately for that purpose. Additionally, you are advised that your actions and those of the other employees, as well as the University, have been both disparate and intentional and same will be addressed at the appropriate time. **We demand that this email be provided to then entire panel that will be evaluating this matter.** Accordingly, any decision or determination made by the University is disputed and tainted by your false sense of urgency to place our client in jeopardy without due deference to her urgent and pressing Constitutional Rights.

Finally, we find this entire process, along with the criminal charges to be pure retaliation against our client and the other two young women for engaging in protected activity. You and the University have not honored your own rules about non-retaliation. By not adhering to your own expressed and published rules, you have engaged in a level of misinformation and deception that makes anything connected with your proceedings subject to serious question. It is this very form of abuse of process that intends to silence the voice of persons that believe they have been victimized. This hearing you propose is clearly an act of retaliation and a clear attempt to chill the speech and voice of our client, as well as others.

Thank you for your consideration in this matter.

FREDERICK K. BREWINGTON, ESQ.
LAW OFFICES OF
FREDERICK K. BREWINGTON
556 Peninsula Boulevard
Hempstead, New York 11550
(516) 489-6959
e-mail: fred@brewingtonlaw.com
www.brewingtonlaw.com

CONFIDENTIALTY NOTE: The information contained in this e-mail transmission is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. Unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender at (516) 489-6959, or by reply e-mail, and destroy all copies of the original message. Thank you.

From: Lauricella, Nancy [mailto:nlauricella@albany.edu]
Sent: Tuesday, March 01, 2016 10:44 AM
To: Fred Brewington <fred@brewingtonlaw.com>; Burwell, Asha <aburwell@albany.edu>
Cc: ashabwell@gmail.com
Subject: UAlbany, Student Conduct Case Update and Hearing Notice
Importance: High

Dear Mr. Brewington and Ms. Burwell:

Attached to this email is correspondence regarding the status of Ms. Burwell's Student Conduct Case. This case will be resolved via a Student Conduct Hearing.

Ms. Burwell, I'm sending this to your UAlbany email address and the non-UAlbany email address listed in your UAlbany student account information as I am aware that you have withdrawn from the University. However, as stated in *Community Rights & Responsibilities*, Section 3. Prohibited Conduct, "A student who withdraws from the University shall not be exempt from disciplinary proceedings for behavioral infractions which took place prior to withdrawal. Campus disciplinary procedures shall be followed with the accused student receiving due notice of hearing. Any resulting sanction of suspension or dismissal will be notated on the undergraduate or graduate academic transcript, as well as the student's conduct record."

A binder was also overnighted to Mr. Brewington's office and should have arrived earlier this morning. The attached letter and additional case documentation and evidence is also included in that binder.

The Student Conduct Hearing date has been scheduled for next Wednesday, March 9, 2016 at 9:30 a.m. at the University at Albany, Liberty Terrace Apartments, 1st Floor, Large Conference Room. Please report to Liberty Terrace between 9:00 a.m. and 9:15 a.m. to check-in.

Below are a few important notes regarding the Student Conduct Hearing:

- Make sure to re-familiarize yourself with **Section 4** of the University's *Community Rights and Responsibilities* which outlines the Student Conduct Procedures.
[http://www.albany.edu/studentconduct/assets/University at Albany CommunityRights8-7-15.pdf](http://www.albany.edu/studentconduct/assets/University%20at%20Albany%20CommunityRights8-7-15.pdf)
- As per the University's *Community Rights and Responsibilities*, "Should the referred Party or Referring Party fail to appear for a scheduled hearing, a finding will be made based upon the information available and sanctions(s) imposed, if appropriate." (*Community Rights & Responsibilities*, Section 4.3.B.VIII)
- You are permitted to have ONE advisor present in the Conduct Hearing. The advisor can be anyone (parent, friend, attorney, faculty/staff member, etc.). The advisor cannot speak during the hearing. However, they may write you notes, quietly whisper into your ear, and speak with you outside of the hearing room. If you would like, you may use the University's Student Conduct Advocate. To request a student conduct advocate click [HERE](#) or log on to [Myinvolvement.org](http://myinvolvement.org) and search for the organization "Student Conduct Advocate". Click on the Forms Tab and fill out the "Student Conduct Advocate Intake Form." (<https://myinvolvement.org/organization/scadvocate/availableforms>)
- For logistical reasons we would need to know 24 hours in advance if any witnesses will be in attendance. The Conduct Board is typically not interested in character witnesses. If you plan to bring witnesses, we will presume that these witnesses were either present or directly involved with this incident. Please email me 24 hours prior to the hearing with their names and their relation to the case so that we can inform the Conduct Board in advance. Witnesses will be called into the hearing to make a statement about what they witnessed and to answer questions from all parties and the Conduct Board.
- The Referring Party (Inspector Burlingame) have informed Community Standards that he will have the following individuals present as witnesses:
 - Timothy Brady, University Police Department Investigator
 - Benjamin Nagy, University Police Department Investigator

- Joseph Brennan, University at Albany Vice President for Communications and Marketing
- Evidence to be presented by the complainant(s) and respondent(s) during any hearing on the charges must be submitted to Community Standards at least two (2) business days in advance of the scheduled hearing. This evidence will be shared with the opposing party. The Student Conduct Body may exclude evidence that has not been shared or adjourn the hearing to afford all parties the opportunity to review evidence to be presented during the hearing. Community Standards or the Student Conduct Body will make the final decision related to the admissibility of all evidence (*Community Rights & Responsibilities*, Section 4.3.B.VI).

Please contact me or Brian Stephenson if you have further questions at 518-442-5501.

Regards,
Nancy Lauricella



Nancy M. Lauricella, MS
Executive Director
University at Albany | Community Standards

Campus Center 361 | 1400 Washington Avenue | Albany, NY 12222
518-442-5501 | nlauricella@albany.edu

EXHIBIT C

Fred Brewington

From: Fred Brewington
Sent: Sunday, February 14, 2016 11:20 PM
To: Rosemarie Walker; bstephenson@albany.edu; nlauricella@albany.edu; Precilla Lockett
Cc: Glean, Marlon
Subject: Notice of Appearance and Request to Adjourn

Importance: High

Dear Mr. Stephenson and Ms. Lauricella,

Please be informed that our office has been retained to assist and represent Ms. Asha Burwell in matters currently pending and ongoing with and before the University. We are informed that you have rescheduled what your February 11th email calls a meeting, for February 16th at 3:30 p.m. From our evaluation of this meeting, it is apparent that this scheduled event is not a meeting at all, but a referral at which charges are to be preferred against our client. Given that you will only allow Ms. Burwell three calendar days to review the referral and "decide whether or not to accept responsibility for the charge" there is insufficient time to appropriately address any charges if the referral "meeting" takes place on Tuesday, February 16th. Further, since we have just been retained, my court calendar will not allow me to be present for the referral. My office is in Long Island and a time will have to be set which will allow me time to schedule travel to Albany. Additionally, your email does not fully address how, as the victim, Ms. Burwell has now been turned into an accused. Nor does your email provide for the needs of an accused to be fully equipped with all the "evidence" necessary to evaluate the circumstances of the alleged referral. Accordingly, kindly make arrangements to provide our office with all video evidence, power points, witness statements and other evidence which is in the possession of the University, the University Police or any office or agency of the University. We make this request knowing that there are certain items which are or have been in the possession of the University. To deny this request will not serve the interest of due process, fairness and pursuit of the truth. We are fully aware that the Student's Bill of Rights guarantees a number of things which have been ignored and/or are being intentionally denied. The processing of any referral appears to have the intent of "suggesting that [Ms. Burwell] is at fault" as the reporting and complaining party. Our client is to be "protected from retaliation by the institution, any student, the accused/respondent, and their friends. . .", yet she is now being forced to appear at a referral of charges against her.

Needless to say there are serious questions and issues which create a number of matters which demand conversation and evaluation before matters escalate. We welcome the opportunity to discuss all aspects of this very complicated and fact intensive matter. Please contact me to discuss this matter and so that we can address the scheduling of any proceeding that is intended to occur. My office number is 516-489-6959 and my cell phone number is 516-241-7900. As a graduate of the University at Albany, 79' and a former President of the Alumni Association, I look forward to our conversation on behalf of Ms. Burwell, her well being and the impact of this matter on her and her future. I am hopeful you too have her well being in mind, as I am sure that you are interested on the impact this and related matters will have on the University. Thank you.

Sincerely,

FREDERICK K. BREWINGTON,

ESQ.

cc: Precilla Lockett, Rosemarie Walker