CAPSTONE

IS A STUDENT'S DORMROOM HIS CASTLE?

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Submitted By:
Mark R. Hayden
Faculty Advisor:
Craig R. Ducat
CAPSTONE: IS A STUDENT’S DORMITORY ROOM HIS CASTLE?

It was 1:00 a.m. when Tom Taylor’s phone rang. As resident hall staff supervisor, he typically expected a few late night calls during each week. It was an anonymous caller who exclaimed, “Quick, go to TJ’s. He’s got a bomb!” Tom ran to TJ’s and knocked on the door several times without a reply. Tom saw Chris walking down the hall and asked him to be a witness. Tom announced that he was keying the door. They both entered.

TJ was not in the room. Tom hurried to alert the University Police in case there was a problem. Chris curiously opened a few desk drawers and found several firecrackers, some marijuana, and a machined pipe with a fuse. When the UP’s arrived, they saw the contents of the open drawers and quickly obtained the evidence. When TJ returned later, he was arrested on sight and charged with both local and university violations. In the University Judicial system, TJ was denied benefit of attorney, and the evidence found by Chris was used against TJ and his roommate in criminal proceedings.

Suppose that the pipe turned out to be a broom handle with a string, the firecrackers were for use in a lab experiment, and the marijuana was owned by TJ’s roommate. TJ was fined by the university for possession of dangerous material, and both he and his roommate were suspended for possession of marijuana and subject to local prosecution.
Did the Residence Hall advisor have a right to enter the room without a warrant by using a pass-key? Did involvement of a third party, Chris, give credence to evidence that would not have been available through a search warrant? (A broomstick, firecrackers, and marijuana are not a bomb). Was an anonymous tip enough reason to make TJ suspect? What evidence could be used to prosecute TJ's roommate? Would the situation be any different if TJ had been a resident in a local apartment complex? Since the answers to these questions require an historical perspective to establish the rationale behind treating students differently than other citizens under the Fourth Amendment, it might be useful to begin by canvassing the principal theories of the student-university relationship.

THEORIES OF THE STUDENT-UNIVERSITY RELATIONSHIP

The five most common theories are: "expertise," "privilege," "in loco parentis," "property," and "contract." I will discuss these in some detail from an historical viewpoint, then try to sum up current law as applied to various Fourth Amendment situations and explore the current student-university relationship. The focus will be on the law's effect on the student's right to privacy in his living quarters to answer the question: "Is the student's dormitory room his castle?"

The _expert theory_ regards those who run universities as "experts" in their field whose judgment is not open to review by
the courts. This can be analogized to the deference that the courts once showed for the medical profession. Consequently, both the faculty and the administration retained a large measure of discretion over admissions, curriculum, and student discipline. Most cases do not express this theory by itself, but it underlies the justification for the trust placed in the hands of higher education administrators in matters relating to academics. The courts reluctantlly intruded in cases involving the student-university relationship, attempting to limit their decisions to procedural matters. To this day, courts have respected the autonomy of the university in matters concerning academics as long as certain procedures are followed and capricious or discriminatory actions cannot be proven.

The privilege theory is the second theory contributing to university autonomy. To be accepted into a university, it was once thought, was an honor not a right. Since attendance at the university was considered a privilege, the institution had complete control of all decisions regarding admissions and dismissal. The student-faculty relationship was considered unique and the institution was viewed as having the expertise and sensitivity to establish rules and regulations that would insure an "atmosphere of learning." The student had no alternative but to accept university discipline if he wished to preserve the privilege of remaining in school.

This relationship of governance worked well because it was accepted by all parties involved. University enrollment gave students prestige over non-students. Few students felt it
necessary to place freedoms and rights over this privilege, individual rights were not a major concern for the youth of America until the late twentieth century and recourse to the courts was not available until then. Universities were competing for status by maintaining a reputation and control of student body conduct was essential to achieve that objective. Moreover, parental control of offspring was very tight and the school seemed the logical place to lodge disciplinary power when the student lived away from home.

**In loco parentis** (in place of the parent) is the third theory describing the student-university relationship. In establishing and maintaining a climate conducive to teaching and learning, educators exercise considerable discretion in controlling student conduct. Blackstone in his *Commentaries*, explained it this way:

> A parent may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parents, viz. that of restraint, and correction as may be necessary to answer the purposes for which he is employed.  

The judiciary then molded the student-university relationship along this line. This doctrine placed the university in the role of surrogate parent. The university was granted the authority to direct and control the student to the same extent as a parent. The student's status was viewed as that of a child with no rights of his own who was required simply to obey authorities. Parents were interested in maintaining control
of the student's activities in their absence and were happy to relinquish authority to the university.

Many examples of strict rules such as those contained in dress codes, hair length requirements, dormitory curfew hours, visiting hours, and male-female restrictions were common student regulations. It was accepted as a given that no one had a reason to be out later than 10:00 p.m., and it was assumed that when a female resided on campus, she should be offered every protection available to keep her as safe as if under the supervision of their father. Although in retrospect it sounds quaint, this arrangement worked because of the accepted norms of the time.

In permitting the student to enroll, the student's parents in effect delegated to school authorities their power to supervise their child's activities. Because of the broad powers parents possessed in order to supervise the activities of their minor-aged children, universities were not required to afford students the full range of rights extended to adults under the U.S. Constitution.

Many of the earliest cases between students and educational institutions cite the in loco parentis doctrine. Early recognition of this concept was apparent in \textit{Gott v. Bresa}. In that case, the college had issued a manual which prohibited its students from entering saloons, gambling houses, restaurants, or places of amusement not controlled by the college. A restaurant owner sued the university challenging the regulation. The court held for the university saying:
College authorities stand in loco parentis concerning physical and moral welfare, and mental training of the pupils, and we are unable to see why they may not make any rules and regulation for the government or betterment of their pupils that a parent could for the same purpose.

For the purposes of this case, the school, its officials, and the students are a legal entity, as much so as any family, and like a father may direct his children, those in charge of boarding schools are well within their rights and powers when they direct their students what to eat and where they may get it, where they may go and what forms of amusement are forbidden.

Whether the rules or regulations are wise, or their aims worthy, is a matter solely to the discretion of the authorities, or parents as the case may be. **

Lybarner v. Huzovich* is another case of in loco parentis directly applied to a student and his residence. A civil action was brought against a resident of a university dormitory. The girl in question could not be found by the server, so the writ was served to the housemother. The appellate court ruled that the summons had been properly served, since the housemother stood in loco parentis to the student. *

The fourth theory apparent in the development of the university-student relationship stresses the importance of property rights. The student's status as a university resident has indirectly limited student's right to privacy. The degree to which these intrusions on privacy are distinguished from those outside the university was suggested in the hypothetical situation and will be discussed later in the paper. Universities, who argue their right to control state supported institutions as property, promote a student-university relationship similar to that of landlord-tenant. It is commonly
recognized that a landlord has a right to enter a tenant's property for inspection, repair, or to show the property to future renters. Most of these rights, recognized at common law, are explicit in the rental contract as illustrated by the Northern Illinois University Residence Hall contract:

Residence halls are the property of the State of Illinois. Responsibility for immediate supervision lies with Northern Illinois University. It is the policy of the University to insure students such privacy in their residence hall rooms as may be consistent with the basic responsibilities of the institution to fulfill its educational functions and to conduct its day to day operations. The responsibilities of the University require the reservation of a reasonable right to entry into student rooms to assure proper upkeep, to paint student rooms, to provide for the health and safety of all residents of a residence hall, and/or to investigate when reasonable cause exists to believe that a violation of residence hall or other University regulations is occurring within student rooms. The comprehensive University Policy may also be found in the Guide Post.

The university assumes responsibility for all its residents and a violation believed to be taking place is grounds for reasonable cause to search a room. Health reasons, for example, may justify a warrantless inspection of a dormroom to determine the source of offensive and obnoxious odors (such as marijuana smoke).

A fifth theory, which courts developed to uphold the discretionary authority of a college, is the contract theory. The theory was grounded in the fact that the entering student had agreed to abide by the institution's rules and regulations set forth in its catalog. Most college catalogs contain broad provisions entitling college authorities to dismiss a student for reasons unrelated to academic performance. Such ambiguous
terminology as "conduct unbecoming," "insubordination," and "appropriate reason," are typical.

An old decision cited as an authority in many cases was Goldstein v. New York University,9 where the court pointed out:

The relation existing between the university and the student is contractual *** obviously and of necessity, there is implied in such contract a term or condition that the student will not be (involved in) such misconduct as would be subversive of the discipline of the college or school, or as would show him to be morally unfit to be continued as a member thereof.

Another early case using the contract theory rationale was Anthony v. Syracuse University.10 In this case, a young woman was summarily dismissed from Syracuse without a statement of the grounds other than the fact that the authorities did not regard her as a "typical Syracuse girl." She was also denied an opportunity to rebut the charges. She sued the school for reinstatement on the ground that the university had entered into a contractual obligation entitling her to pursue her education until complete. The university claimed that the co-ed's attendance was at the "pleasure" of the university and used the girl's signed registration card as supporting evidence. The card read:

Attendance at the university is a privilege and not a right. In order to safeguard its scholarship and its moral atmosphere, the university reserves the right to request the withdrawal of any student whose presence is deemed detrimental. Specific charges may or may not accompany a request for withdrawal.11

The court held for the university and explained:
The relationship between the plaintiff and the defendant was wholly contractual and voluntary by both parties. The student is not required to enter the university, and may withdraw at any time. The university need not accept an applicant, and therefore can limit the effect of such acceptance by express agreement, thus retaining the position of contractual freedom in which it stood before the student's course was entered upon.  

The thrust of these five theories illustrates an historically prevailing attitude of the courts which favored the university over the student. Society's view of the student has changed since then.

CHANGES IN STUDENT-UNIVERSITY THEORIES

History has changed the role of the student and his relationship to the University. Society no longer sees 18-year-olds as incapable of making their own decisions. The Twenty-fourth Amendment has given them the right to vote and many states allow them to drink, drive, marry, and make contracts. Parental influence has declined at the same time individualism has increased. In a society that boasts a divorce rate of one third of all marriages, court cases giving property rights to "live-ins", sophistication of the younger generation, and university action that seemingly approves of sex on campus through free or low-cost distribution of contraceptive devices, gynecological services, and heavily subsidized abortions, one can hardly argue that the same societal pressure on the university exists as it did in an earlier day.

The sixties saw the concept of equality between the
university and the student emerge in the courtroom. Once the courts recognized both the university and the student as parties equal before the law, the issue of student rights opened the door for a series of challenges to the autonomy and discretion of university authority.

The challenge to American higher education is important and real. Fueled by court decisions in the last two decades, students are being encouraged to sue their colleges and universities if any institutional decision impedes their march toward graduation day; and the courts are mandating a vast network of due process and equal protection requirements for all such decisions that are appealed to them.

Although there were probably many prior instances of university infringement of Fourth Amendment rights, it was only after some initial student rights were recognized under the Due Process Clause of the Fourteenth Amendment that student privacy became a popular issue.

There is still continued reliance upon the in loco parentis doctrine in primary and high school cases, most recently reaffirmed by the Supreme Court in T.L.O. v. New Jersey, which involved a body search of a student in a high school. As applied to college students, in loco parentis has declined if not died largely because of changes in society. Given the resurgence of education among returning adults and veterans, the advent of community colleges, an aging student body where few students fall below the age of majority, and the passage of the Twenty-fourth Amendment, the argument for the parental role of the university has broken down. The impact of these social changes is especially evident when both the parent and child are attending
the university as students. Should the university act as a "parent" to a parent? The use of *in loco parentis* as a doctrine applied to college students in higher education cases declined after it was rejected in *Dixon v. Alabama*. 17

*Dixon* involved five students who were expelled from Alabama State College for participation in a civil rights "sit-in" at a lunch counter. The students were disciplined without notice of charges and were not granted a hearing or an appeal. This case established the rights of students in a public institution of higher education to notice of charges and to a hearing prior to suspension or expulsion, both rights protected by the Due Process Clause of the Fourteenth Amendment. It was with this landmark case that the courts began to turn away from the *in loco parentis* doctrine.

The school catalog gave strong discretion to the university by stating:

Pupils may be expelled * * * for conduct prejudicial to the school and for conduct unbecoming a student or future teacher in schools of Alabama, for insubordination, insurrection, or inciting other pupils of like conduct. 18

However, the court held for the students by reinstating them on the grounds that students (at tax supported colleges) are entitled to protection afforded by the Fourteenth Amendment in misconduct cases. Student rights now had a foothold in the Constitution.

In addition to "*in loco parentis*" the other theories have
declined in use or were abandoned. For instance, it was after Dixon that the expert theory was totally abandoned in the area of student disciplinary cases, yet it exists today in almost full force when academic concerns are involved. So long as the universities follow proper procedure and do not discriminate or act capriciously or arbitrarily, they have the last word in academic cases.¹⁹

The privilege theory is another declining theory and depending on the importance of education in the future it may be abolished. Although no court has said outright that a student has a right to an education (in fact they have said such a right does not exist)²⁰ there have been cases where a parent who has the means to support a child through college must do so. If carried one step further, society may some day be held responsible for the continued education of its people as a right granted to its citizens. Given the commitment of our state and federal governments to student financial aid, there is a possibility that a right to an education may become a reality once the deficit is resolved and education is seen as a national priority.

The contract theory is not only on the decline, it may in fact be reversed in favor of the student. Drucker v. New York University²¹ was a case involving a student who paid $200.00 upon receipt of his acceptance letter for admission to the dental school of New York University. After registering, Drucker paid the tuition balance of $910.00. Six days prior to classes, he notified the school of his withdrawal and requested a refund of
the entire amount paid. The university refused and cited this statement in the university bulletin: "Tuition or fees are returnable after the date due." The court held for the student saying:

To charge the plaintiff with the acceptance of the contents of a Bulletin, 555 pages in length, is a fiction and contrary to today's practice and usage....Certainly, a term so vital to this plaintiff student and to other student applicants...should have been inserted in the Information Sheet supplied by the defendant and set forth in a prominent manner.22

Silver v. Queens College of the City University23 is another case favoring students under the contract doctrine. A graduate student paid full tuition in May as specified in the published catalog of City University. In June, the Board of Higher Education increased the fees at all its units and the student paid the additional amount under protest. The Small Claims Division of the municipal court, holding that a binding contract existed, reasoned and that a condition that tuition charges were dependent upon budgetary allotments from the city could not be implied from the provisions of the contract.

As Drucker and Silver illustrate, there is support for the student in some areas of contract law. More important than this shift in court support are changing societal pressures. It is doubtful today for several reasons that a voluntary contractual agreement exists between a student and a university. It is commonly agreed that education is almost a necessity in today's technological age,24 yet universities have never allowed entering students to sit down at the bargaining table and negotiate a
contract. The university offers a "take-it-or-leave-it" proposition to the student. This may still give the student some leeway in terms of initial choice of institutions by shopping around for the "best bargain," but few students are in a position to look for a bargain since going to other universities may mean moving to other states and paying substantially more tuition.

In essence, the accumulated investment a student makes in an institution after signing his first year contract in anticipation of completing his education at that college acts as a set of "golden handcuffs." Although the student is "free to leave" at any time, he has little bargaining leverage for contract changes if, after a couple of years, the student is again faced with a "take-it-or-leave-it" proposition. In addition to the cost of moving, he also faces the problem of lost time in terms of credit transfers and delayed earnings. The concepts of contract and voluntary entry are increasingly questionable and few will agree that there is real "choice" given to the student.

Although the courts do not abide by the old interpretations of contract applied in *Anthony*, the language remains. The Northern Illinois University Catalog states:

*It is expected that all students coming to the university are enrolled for serious educational pursuits. When students accept admission to Northern Illinois University, the university assumes that they thereby agree to conduct themselves in accordance with its standards.*

*While enrolled, students are subject to university authority. The university has the prerogative, in the interest of all of its students, to suspend or require the withdrawal of a student for acting in such a manner as to make it apparent that the student is not a desirable member of the university.*
The last theory which has changed with the times is the property theory. Because it is a useful tool in carrying out searches for various reasons, the property theory has become a handmaiden of the fiduciary concept, which holds the university responsible for accidents resulting from negligence on public property. Maintaining safe conditions in public institutions is paramount to avoid astronomical liability awards resulting from accidents on public property. Although the courts do not recognize the theory outright in student-university cases, lenient applications of the property theory would imply its acceptance of the fiduciary concept. Although an in-depth case study of the rationale used by the courts on this subject is beyond the scope of this paper, it is an evolving phenomenon.

The university has been caught in an interesting predicament in the last decade with the recent acceptance of the fiduciary role of the university. This has caused some concern over student-university conflicts on student rights. Many universities require first-year residency. They are also held responsible for the health, safety, and welfare of their students. The residency requirement, coupled with stricter responsibility, has stimulated the fiduciary role of the university. The question of student health and safety has increased the likelihood of infringement of the right to privacy. The high price of insurance due to large damage awards from the courts has led universities to be more cautious when dealing with possible health and safety threats. It remains unanswered where the delicate line is to
be drawn between institutional responsibility and the right of the individual, as illustrated by the hypothetical case presented at the beginning of this paper. The issue dealt with here is the student's right to privacy in the dormitory room.

ISSUES INVOLVING STUDENTS' FOURTH AMENDMENT RIGHTS

The Fourth Amendment of the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

These words are not situation specific. The Amendment does not define what constitutes an illegal seizure, nor does it specify what constitutes an unreasonable search. Interpretation is a matter for the courts. The obvious purpose of the Fourth Amendment is to protect the citizen against arbitrary governmental intrusion into a person's privacy. Although it does not prohibit all warrantless searches (there are emergency exceptions), it limits them and requires three elements to be present in order for a search to be legal: (1) authorities must obtain a warrant from a judge specifying the person and place to be searched and the material to be seized, or (2) he must get the consent of the individual whose person or place will be searched, or (3) he must be able to prove to a court that he had "probable cause" to believe that a crime was committed and the person to be searched committed it.31
In 1949, the Supreme Court expanded the application of the Fourth Amendment to the states in addition to the federal government. It is unclear how this Amendment applies to school officials but school-based searches are conducted according to less vigorous and exacting standards to be sure. For a university search to be legal, it must be directed toward maintaining a climate conducive to education. Obviously, then, school officials would be justified in conducting searches to insure the safety of buildings from fire hazards, unsanitary conditions, and hazardous materials, or for upkeep, emergency, or security reasons.

A constitutional question arises when a search of a student's property or possessions goes beyond the simple inspection of a room. Although most searches are legal, the access gained by school administrators into a student's dormitory room sometimes involves the discovery of evidence that leads to criminal charges. It is here that a student may encounter a double-edged sword, for evidence found can be used against the student in both the university judicial system as well as the criminal justice systems of the local, state, or federal government.

The courts have distinguished between rigid standards governing search by law enforcement officials and the standards governing search by school officials in an attempt to accommodate the two separate systems. This difference in standards is ostensibly justified by the severity of the penalty imposed by each body. Expulsion or suspension from a university is
supposedly less severe than heavy fine or imprisonment. This assumption is open to challenge if other factors are considered: a lost educational opportunity, salary differential, and reduced job opportunities.

The premise for allowing school officials greater discretion in searches lies in school officials acting as private individuals under in loco parentis, rather than agents of the state. The interpretation of the dual role of the university authority, however, leads to court decision inconsistency. The primary barrier to abuse by school authority is the probable cause requirement. In determining probable cause, the school official is expected to use reasonable judgment. He is then obligated to act as a duty. Several cases, including some high school cases, will illustrate the current law used in higher education cases.

Permission to search, when freely and knowingly given, amounts to consent, and evidence so seized in this legal search cannot be challenged. Where consent has not been given, the courts must determine if the search is valid. In Re Donaldson, a California court case, held that the greater interests of society in protecting itself from drug users and possessors outweighs that of the individual’s rights. The facts surrounding the case involved a principal who conducted a search of a student’s locker after receiving information that other students could purchase Methedrine pills from the student. The search was upheld on the grounds that the administrator was acting as a
private individual, preserving order, and functioning in loco parentis.

M. by Parents R. and S. v. Board of Education involved the search of a student’s person based on information received by the principal that the student had marijuana. The principal summoned the student to the office and directed the student to empty his pockets. At first the student refused but later complied. The court held that the principal’s conduct was “necessary and proper in maintaining order and discipline.”

The courts generally do not require that locker searches involve prior consent. In searching a student’s person, administrators have refrained from actually coming in contact with the individual but instead have ordered the person to comply. The strategy of first gaining student consent avoids problems associated with illegal searches. When consent is not obtained, the courts determine whether or not a particular search is reasonable in light of two factors: the nature of the place and the purpose of the search by school officials.

School property is deemed state property and although lockers are supplied for the student’s convenience, the state still maintains control of them. A reasonable restriction on the use of lockers is that they must not contain anything in violation of the law. A student’s rights must yield when there is danger the institution will be undermined as an educational enterprise. Where there is reasonable belief that one has narcotics in his possession, the search is legal because probable
cause has been triggered. The school official is then obligated
to act because of his responsibility for “maintaining discipline,
order, and security.” In People v. Overton, the courts stated:

Not only have the school authorities a right to inspect but
this right becomes a duty when suspicion arises that
something of an illegal nature may be secreted there.

In State v. Stein, the court differentiated between school
property and varieties of personal property. A school locker is
not like a house, a car, or a private locker which connotes
private possession. A person may have exclusive control of his
locker as opposed to fellow students, but that possession does
not exclude school officials. It would seem that the house and
the car would be “off limits” to school administrators, and that
the dormitory might be included with them. A year later the
court ruled on an student automobile case in Keene.

In Keene v. Rodgers, a student’s automobile was searched
on campus. He was suspected of flag desecration since the car
was draped with flags. On orders from their superiors, two
campus police officers searched the vehicle. The owner assisted
by unlocking the car without protest. Inside were found frayed
flags, a can of beer, and a bag of marijuana, all in violation of
the school’s behavior code. The search was deemed proper and the
decision expanded the scope of administrative searches to include
“student-owned property on campus.”

Is a student’s dormitory room “property” under the umbrella
of student-owned property on campus? Two dormitory room cases,
Moore v. Student Affairs Committee and Piazzola v. Watkins,
provide some clue to where the courts stand on higher education cases involving the Fourth Amendment. Both of these cases were prompted by allegedly "reliable" information that narcotics were present in certain rooms at Troy State University in Alabama. After federal and state law enforcement officers were notified of this information, they obtained the cooperation of college administrative officials to search the rooms without a warrant. Marijuana was found in some of the rooms searched. Both cases were heard in a federal court by the same trial judge.

In Moore, the search was found reasonable, but the search in Piazzola was found in violation of student's Fourth Amendment rights. Moore was not appealed and Piazzola was affirmed by the U.S. Court of Appeals for the Fifth Circuit. The difference between these two cases lies in the narrow issue of admissibility of evidence for two separate judicial systems. In Moore, the student claimed a Fourth Amendment right to exclude evidence from a college disciplinary hearing that resulted in his indefinite suspension from the university. In Piazzola, the exclusion of evidence was sought in a criminal proceeding. The heart of the exclusion issue lies in the answer to the two questions: "Was the administrative official within his power to search the room?" and "Can an administrative official consent to a search by police?"

At the time, Troy State University had the following regulation in effect:

The college reserves the right to enter rooms for inspection
purposes. If the administration deems it necessary, the room may be searched and the occupant required to open his personal baggage and any other personal material which is sealed.

Can administrators of public institutions dodge the Fourth Amendment by simply asserting that a student has no reasonable expectation of privacy in institution-sponsored housing? In *Chapman v. U.S.* the court held that a landlord has no authority to consent to a police search of a tenant's premises; however, two ways administrators of public institutions can enter students' premises uninvited and without the authority of a warrant are by student consent or by contractual housing agreements. The court explained in *Piazzola*:

The university retains broad supervisory powers which permit it to adopt **[contractual regulations], provided that regulation is reasonably construed and is limited in its application to further the university's function as an educational institution. The regulation cannot be construed or applied so as to give consent to a search for evidence for the primary purpose of a criminal prosecution. Otherwise, the regulation itself would construe an unconstitutional attempt to require a student to waive his protection from unreasonable searches and seizures as a condition to his occupancy of a college dormitory room.

Consequently, housing agreements must be narrowly construed to permit only those entries that further an educational purpose rather than a criminal function. These searches have been dubbed "administrative searches" for health and safety reasons.

Northern Illinois University does not require a warrant for such searches or "inspections;" however the residence hall staff usually makes an announcement twenty-four hours in advance of such an event. In times of emergency the staff possesses a
master key which can be used only under specific procedures. The "keying" of a room follows this sequence: (1.) The staff must knock and identify themselves at least twice, asking permission to enter the room; (2.) the staff must obtain a witness prior to keying; (3.) the staff must again knock and announce that they are keying the door; and (4.) once in the room, they must show identification to any occupants.52

In Camara v. Municipal Court,53 the U.S. Supreme Court held that a search to enforce health regulations, fire, or safety codes requires a warrant, but that this warrant could be obtained under less stringent standards "if reasonable legislative or administrative standards for conducting an area inspection are satisfied," and such standards need "not necessarily depend upon specific knowledge of the condition of the particular dwelling." The court was also careful to point out, "nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations." Police officers also have authority to "enter a dwelling without a warrant to render emergency aid to a person whom they reasonably believe to be in distress and in need of assistance."54

Exceptions to the Fourth Amendment were also recognized in State of Washington v. Chrisman.55 A campus security guard at Washington State University had arrested a student, Overdahl, for illegally possessing alcohol. The officer accompanied Overdahl to his room to obtain the student's identification. Chrisman, Overdahl's roommate, was observed in the room through the open
door with marijuana seeds and a pipe on his desk. The officer entered the room and seized the evidence. Chrisman was convicted of possession of marijuana and LSD which security officers found later.

The U.S. Supreme Court applied the "plain view" doctrine allowing the officer to seize incriminating evidence when in plain view in places where the officer has a right to be. The arresting officer never left Overdahl's side, and therefore had a right to be where he could see and seize the drugs. Although this case does not expand the "plain view" doctrine, it does have direct implications for the dormroom setting in the academic community, when one considers the requirement that students live in the dorm, that they usually cannot choose their own roommates, and yet are subject to Fourth Amendment exceptions resulting from a roommate's actions.

*People v. Boettner,*\(^{57}\) recognized the inapplicability of Fourth Amendment requirements to administrators at private colleges, since their actions are usually not "state actions." The exception is void if it can be shown that local, state, or federal law enforcement officials were involved with the initiation of a search.\(^{58}\) When security officers at private institutions are given public arrest or search powers, they and their institution are subject to the Fourth Amendment restrictions in exercising those state-delegated powers.\(^{59}\)

The university is held responsible for the safety and welfare of all its students. When administrators have "reasonable
cause" to believe such safety may be jeopardized, or a student may be harboring something illegal or harmful, they have the authority to make a search. Although there are limits to prevent "fishing expeditions" or capricious searches, a school administrator, acting within the scope of his authority and with good cause, is not held to the same strictness as a police officer. One such difference is the lack of corroboration needed with the source of information for the purpose of insuring its reliability; another is the admissibility of evidence.

In Burdeau v. McDowell, the Supreme Court ruled sixty years ago that the Fourth Amendment was designed to restrain government authority, and no one else. Searches by governmental officials must comply with considerably stricter standards than those by private individuals not acting in a governmental capacity. The rule is that evidence obtained by a private individual in an illegal search and seizure is admissible in a criminal proceeding, whereas evidence taken in an illegal search by a law enforcement official would be inadmissible.

The question, then, is: Does a university official have the status of a governmental official if the institution is funded by the state? The courts have focused on the initiator of the search in determining the degree to which one is bound by the Fourth Amendment. School administrators do not need a warrant when acting in loco parentis. When they initiate a search but later call on a policeman for assistance, the policeman does not need a warrant. On the other hand, when a policeman initiates a
search, he is required to obtain a warrant regardless of a school's official involvement.

Where police are regularly assigned to a school, they are less subject to the requirements of the Fourth Amendment. In Waters v. U.S., the court held that the authority of a school security officer was not as extensive without a warrant as that of a school administrator, but that he definitely has more extensive discretion than a policeman. The courts, however, are not in full agreement as to whether a school administrator is a government official for purposes of a search, but they have been consistent in upholding administrators in their search of lockers and student vehicles on campus. It is recognized that neither should contain something harmful or illegal. Searches have been upheld where probable cause existed and the benefit of doubt given to the administrator. This same benefit of doubt is given to the admissibility of evidence.

It is clear that evidence is more easily admitted in university proceedings, yet the courts are divided on the question as to whether a student can have counsel. It is understood that parents may be present to advise their child; it is less clear that he is entitled to be represented by legal counsel. Some courts have ruled that an attorney may be present but he may not engage in any adversary relationship; that is, he may be available to advise his client but he may not rebut testimony.

The Northern Illinois University Student Judicial Code
Section 6-2.1 states that participants in hearings may include a "[student] advocate or attorney for the alleged offender."

However, a subsequent section restricts the participation of the attorney. The Code's Section 2-7 on [Student] Rights states:

The alleged offender may be accompanied by an [Student] advocate or an attorney during all phases of the University judicial proceedings. However, the Student Assistance Attorney is specifically prohibited from representing a student during any phase of the judicial proceedings. Attorney(s) will not be allowed to address the University Judicial Boards or officers, but will be allowed to serve in an advisory capacity.

The formal rules of evidence that govern a municipal or state court trial do not apply in a university hearing. The Fifth Amendment protection against self-incrimination does not apply to school disciplinary proceedings; it applies only to criminal proceedings. The testimony given by a student in a school disciplinary hearing can later be used in a criminal proceeding, although a student may then object to the use of statements made at the school hearing. Courts have also held that a student disciplined by school authorities for breaking a university rule combined with other governmental action against the individual for the same offense does not constitute double jeopardy, a concept which applies only to criminal proceedings.

Most of the more serious offenses are those that typically result in both a university hearing and a civil or criminal court hearing. University hearings typically occur prior to state or local hearings and evidence, such as hearing tapes and artifacts, are subject to subpoena. These elements put significant weight against the student in cases where evidence is
found without Fourth Amendment protections as is likely in university proceedings. The university hearing occurs prior to the criminal hearing and statements made in defense may incriminate the student in a later trial. What is curious is that the evidence used in government prosecution would not normally be admitted in that trial under the strict application of Fourth Amendment protection. This paradox indirectly infringes on a student's Fifth Amendment rights.

I have attended student judicial hearings where the student and his attorney could not say anything in the student's defense for fear that something said in the hearing would later be used against him in a criminal proceeding. This amounts to a "Catch 22" since the hearing board usually decides against the student because of the lack of a defense. The harshest penalty resulting from a guilty verdict in a university hearing is suspension or expulsion from the university. The severest penalty resulting from a guilty verdict in criminal proceeding may be a heavy fine and/or imprisonment. The student is thus faced with a choice: Don't say anything in a student judicial hearing and risk expulsion in order to prevent statements used later in criminal proceedings, or speak up in defense at the judicial hearing and risk a statement on tape that may later be used in a criminal proceeding.

In a recent incident, a student in the university system chose to have an attorney present at his hearing. The lawyer advised him not to say anything to avoid incriminating himself on
tape (tapes of all university hearings are kept on file) because the tapes could later be subpoenaed and used as evidence against him in his upcoming criminal trial. After being found guilty, the student was sanctioned with year suspension from school. The state dropped its charges. In this case, the penalties imposed by the university were harsher than the state's penalties. This outcome could not be predicted at the time since the threat seemed greater with the state. Had the student given a defense at the university hearing, there was a good chance of a more lenient penalty than suspension. In either case, it would seem that the student is manipulated into an unfair position when weighing these options.

The Judicial Advisory Board that I last attended on April 15, 1986, entertained the idea of banning attorney presence during student judicial hearings. It is rare for the student's parents or an attorney to attend university hearings, and when they do, it is usually agreed that the student can seek advice from both. Although this would not be in direct violation of any law, it is a striking contrast to the past student rights trend, but supportive of the leniency of student rights in terms of the evolving fiduciary role of the university.

The discussion above highlights several differences in the way the law treats students from other citizens in terms of the Fourth Amendment, and explores some complications stemming from unequal protection of the right to privacy. Where does this trend seem to be going? Over the years, the law in regards to students seems to reflect more and more an attitude of treating
the student as an adult and as a citizen equal with non-students. There are few exceptions to the Fourth Amendment when applied to students but they mostly center on the place and not the status of the individual.

From this discussion, it is apparent that several "gray" areas remain, such as (1) administrative searches, where an individual acts privately and without specific authority granted or in cooperation with the state or federal government (2) the concept of a dual system where a student is subject to both university and governmental authority (3) where evidence used in a university system, obtained through otherwise illegal means, can be used against the student (4) representation of the student in a judicial proceeding.

DUAL SYSTEMS OF JUSTICE

In treating misconduct, the school's disciplinary system is unencumbered by the procedures that characterize the judicial process associated with civil or criminal matters. This system affords the advantage of a convenient and flexible agency that can benefit the student in many ways. A quasi-legal system is provided at no cost to the complainant and with relatively minimal consequences to the defendant. The highest sanction imposed by the university system is expulsion from the school and that is in only the very worst cases where criminal charges are usually present anyway. Fines, probation, restrictions, warnings and deferments are the only other means a school has to penalize
wrongdoers. Nevertheless, these sanctions are levied quite frequently and effectively. Thus, a student residing in the dormitory is provided with some distinct advantages over non-residents.

A student not living in a dormitory may have limited recourse to remedy. Usually an appeal to the manager of the apartment complex, or initiation of a lawsuit in the local courts are the only means available. These alternatives are not as efficient or convenient as university systems that accommodate the schedules of both parties in docketing a hearing. In addition, landlord "searches" would still continue in privately operated apartments under the guise of an inspection since the owners of these complexes have a legal right to conduct those types of searches. The question, then, hinges on the separate existence of a university system of redress in addition to that of the government.

In some ways the student has the best of both worlds: isolation from the severity of direct government action and access to an accommodating and independent judicial system. This is not without a price as reflected in warrantless searches, lenient admissibility of evidence, limited use of counsel, and possible self-incrimination. Are the advantages of an efficient and flexible university judicial system worth the few infringements on the rights of residence hall dwellers?

Perhaps the best answer to this question is to allow the student to make the choice of which system he would rather live
under. The question of choice, however, is eliminated for many students through mandating residency in the dormitory. Should this living requirement be exchanged for freedom of choice in the name of student rights? Society resists major changes when smaller ones will do. Many exceptions are readily made for students who are older or married and in such cases respect among the residence hall community goes far on an informal level. Compliance by students is the norm and not the exception. It is only when blatant abuse of the living quarters calls attention to the university officials, that they are thrust into a duty-bound position to act. In light of these arrangements, there is little need for immediate change in the restrictions on residency choice.

CONCLUSION

The importance of student rights will likely increase in proportion to the cost of education. Higher taxes imposed because of escalating operating expenses, insurance rates, and student aid will attract society's attention through it's pocketbook. The result will be increased pressure on the school to cut costs where possible, including weeding out those students whose conduct jeopardizes the academic interests of the school and endangers the education and well being of others. On the other hand, parents paying for their child's education will have a greater stake in keeping their son or daughter in college. These parents, as well as independent students, will advocate
student rights as a safeguard to an investment. Such factors, societal and individual, heighten and sharpen the issue of the student rights controversy. The only area where both may agree to sacrifice some Fourth Amendment protections is in the interests of safety. Here is where the fiduciary concept takes root. Society benefits from lower operating costs of the university in terms of insurance premiums, and the parent and student pay less tuition while enjoying a safer environment. The recent scare of student experimentation with explosives and bomb threats in dormitories raises a strong argument for exceptions to a student's right to privacy under the Fourth Amendment. This situation parallels the current terrorism crisis in air travel.

In short, there is every indication that student rights is an issue that will receive more attention in the near future. Economics and safety appear to be the dominating factors. The reasons for the Fourth Amendment exceptions in the university dormitory have changed over the years, evolving into new justifications for lessening student privacy. Student rights have come a long way since Anthony, Gott, and Goldstein, and are at a crucial point in their development. Changes in society will have to precede any changes in the law. Until then, although student may think his dormroom is his castle, the moat of Fourth Amendment protections is very shallow.
NOTES


3 Id.


5 *Pyeatte v. Board of Regents*, 102 F. Supp. 407 (WD Okla. 1951); affirmed, 342 U.S. 936 (1952). The board of regents of the state university adopted a resolution requiring all students, with certain exceptions, to live in university-operated residence halls, to the extent that such facilities were available. Challenged by a private rooming house, the U.S. Supreme Court upheld the regulation.


11 Id.

12 Id.


18 Id.
NOTES


22. Id.


   Clarke v. Redeker, 259 F. Supp. 117 (SD Iowa 1966); affirmed, 406 F. 2d 883 (8th Cir. 1969); cert.


   A student was injured when he attempted to push open a glass door in his dormitory. The court ruled that the California Public Liability Act, providing immunity from liability for injury caused by the plan or design of public buildings should be given a narrow interpretation.

   In a tort action stemming from the death of a resident in a university residence, the Nebraska Supreme Court ruled that when the state or one of its corporate creations (the university), embarks upon an enterprise usually carried on by individuals or private companies, it waives its sovereign immunity.

Brigham Young University v. Lillywhite, 118 F. 2d 836; cert. denied, 314 U.S. 638 (1941); 137 ALR 598.
   The federal court said that, under the common law of Utah, no immunities from tort liability are granted to private colleges and universities, especially if the tort is against a paying student.
NOTES


32. Millington, supra note 13 at p.133.


35. Id. at p.244.


37. Law and Ed., supra note 32 at p.244.


41. Id.

42. Id.


44. Id.

NOTES

49. Id.
51. Piazzola, supra note 47.
52. Interview, March 2, 1986, with Theresa Brant-Witz, Residence Hall Advisor at Stevenson South, Northern Illinois University.
63. Law and Ed., supra note 32 at p.249.
64. Id., at p.240.
66. Id. at p.5.
68. Law and Ed. supra note 32 at p.241.
69. Id., at p.242.
BIBLIOGRAPHY

******************************************************************************


Northern Illinois University Residence Hall Contract. 1985-86.

Northern Illinois University Undergraduate Catalog. 1984-85.


Wright, Flavel A. Proceedings of the First Annual Conference of
BIBLIOGRAPHY

the National Association of College and University Attorneys. (No publisher reference) 1961.


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