A STUDY OF DUE PROCESS AND STUDENT DISCIPLINE IN THE PUBLICLY SUPPORTED COLLEGES AND UNIVERSITIES OF THE STATE OF MICHIGAN

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This is to certify that the

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ABSTRACT

A STUDY OF DUE PROCESS AND STUDENT DISCIPLINE
IN THE PUBLICLY SUPPORTED COLLEGES AND UNIVERSITIES
OF THE STATE OF MICHIGAN

by William A. Wichers

THE PROBLEM. The primary purpose of this study, in the absence of applicable state statutes, was to ascertain the legal framework within which the publicly supported colleges and universities of the State of Michigan are privileged to exercise discipline which may result in either the lengthy suspension or expulsion of their students. An adjunctive purpose of this study was to determine the extent to which these institutions are presently observing this framework in carrying out the disciplinary function.

METHODOLOGY. The institutions of higher learning with which this study was concerned included Central Michigan University, Eastern Michigan University, Ferris State College, Grand Valley State College, Lake Superior State College, Michigan State University, Michigan Technological University, Northern Michigan University, Oakland University, Saginaw Valley College, The University of Michigan, Wayne State University and Western Michigan University.

The methodology used for the determination of the legal framework surrounding student disciplinary procedures was that of legal research. Many of the legal encyclopediae,

annotated series, law reviews, digests and the federal, state and regional court reporters were utilized.

In order to carry out the adjunctive part of this study, the official undergraduate bulletins and student handbooks of the thirteen institutions were reviewed as an initial basis for determination of the "due process" accorded to students under the stated disciplinary procedures. A brief survey instrument was developed to permit the querying of the chief student personnel officer at each institution on eight points of procedural due process developed from the legal research. The responses were tabulated for comparison against a "Proposed Model Statute"[1] and a "Joint Statement on Rights and Freedoms of Students."[2]

FINDINGS. Careful review and analysis of twenty-six cases resulting from disciplinary actions against students at tax supported institutions of learning revealed that there is a considerable judicial concern for the safeguarding of students, both procedurally and substantively, during serious disciplinary proceedings. The federal courts have identified eight components of a "fair" hearing. Research also disclosed seven variables which indicate whether or not university rules act in an arbitrary manner.

Those schools having the larger enrollments appear to most closely meet these procedural requirements, while the

schools having the smaller enrollments varied considerably in doing so. The research did not disclose the reasons for this variation.

The procedural due process procedures presently in use in these institutions generally compared favorably with, and in some instances exceeded, the provisions of the two documents against which they were compared.

Five of the institutions, although permitting a student to be represented by counsel at a disciplinary hearing, required such counsel to be a member of the academic community.

In general, the chief student personnel officers of these institutions preferred to establish and use such procedures as they developed rather than to see the enactment of state statutes providing for uniformity in disciplinary proceedings.

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1 _____. "College Disciplinary Proceedings." The Vanderbilt Law Review, 18(March, 1965), pp. 828-30.

2 _____. "Joint Statement on Rights and Freedoms of Students. Section VI, Procedural Standards in Disciplinary Proceedings." American Association of University Professors Bulletin, 53(December, 1967), pp. 367-68.

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Special thanks must be extended to Dr. George M. Johnson, whose guidance through the intricacies of legal research proved invaluable to this undertaking.

The deepest gratitude and appreciation are extended by the writer to his wife, Lois, for the constant encouragement and understanding which she has shown throughout the period of this study and without which it could never have been completed. The writer's gratitude and appreciation are also extended to his son, William A., II, and to his daughter, Mary, who have sacrificed a great deal for the completion of this project.

The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society. But this progress must be by analogy to what is already settled.

Chief Justice Greene, in R. I. 356.[1]

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[1] Taken from Frontispiece, all volumes, of C.J.S.

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Purpose of the Study

It is the purpose of this study to ascertain the legal framework within which the publicly supported degree granting colleges and universities of the State of Michigan are privileged to exercise discipline which may result in the lengthy suspension or expulsion of their students. As an adjunct to this study, the writer shall attempt to determine the extent to which these same institutions are presently observing this framework in carrying out this function.

Importance of the Study

The problem with which this study is concerned is a familiar one. Institutions of higher education must have the power to establish and to enforce rules, both disciplinary and academic, in order to further their interests. At the same time, the student charged with a violation of these rules must be treated fairly without jeopardizing legitimate college interests and without being arbitrarily deprived of educational opportunities.

Studies of student disciplinary programs in institutions of higher education, such as that by Truitt,[1] are generally based on the assumption that such programs are

> .....designed and operated without violating the privileges and civil rights guaranteed to individuals under our system of government.[2]

Other researchers, such as Van Alstyne,[3] have pointed out that

> .....many students who may be expelled from college and barred from their chosen profession frequently receive less protection today than does the most petty offender on trial in a state court.[4]

The Yale Law Journal, in a recent article made possible in part through the assistance of the Academic Freedom Project of the United States National Student Association, indicated that

> Concern with expulsion is merited primarily because of the effect of the sanction and its threat to the students enrolled at institutions of higher learning in the United States. Had the body of student regulations been imposed on these students as citizens by force of public law rather than as students by university authority, courts would predictably have invoked basic constitutional rights to require fairer enforcement procedures, or to strike many of the rules down. The implied thesis of student suits is that their rights as citizens to justice before punishment and to

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[1] John Willard Truitt. A Study of Student Disciplinary Programs in Ten Selected Universities. Unpublished Ed. D. Thesis, Michigan State College of Agriculture and Applied Science, (East Lansing, Michigan: 1955).

[2] ibid., p. 5.

[3] William W. Van Alstyne. "Procedural Due Process and State University Students," U.C.L.A. Law Review, 10(1962-63), pp. 368-89.

[4] ibid., p. 368.

> personal freedom are infringed equally by school or state, whichever punishes without a fair hearing, or restricts their exercise of speech, or forbids them to marry in a civil ceremony. Such regulations in themselves injure student interest; their enforcement against any individual violator imposes a special deprivation upon him.....When expulsion is imposed as the punishment, the student suffers the loss of a status and the destruction of a set of relationships which have unique intrinsic worth. If the expulsion is made known to be 'for cause,' the imputation of grave deficiencies defames the student. Like the convicted criminal, the student may find that the stigma of his punishment follows him through life. By its phrasing of the notation of separation made on the student's transcript, the school can render it impossible for the student to continue his education elsewhere, denying him the university degree which has become the emblem of education expected of an ever-increasing class and the prerequisite for an ever-increasing number of occupations. Non-academic expulsion from graduate or professional schools is in many ways the equivalent of a license revocation proceeding; as a result of the school's punitive action, the door to a profession is permanently closed. Although the student retains what knowledge he has acquired, the expelled student, after having extended time and money in his studies, loses both what he has invested towards a degree and its future value; the result may be a substantial diminution of his future earning power.[5]

It seems important, then, to determine what protection, if any, is afforded to students of the degree granting public institutions of higher learning within the State of Michigan with respect to disciplinary action which may lead to lengthy suspension or expulsion.

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[5]Notes and Comments. "Private Government on the Campus - Judicial Review of University Expulsions," The Yale Law Journal, 72(1963), pp. 1363-65.

Discussion

> College students of all ages have had at least one thing in common - a certain number of them are bound to get into trouble. In fact, much of our knowledge of the students of medieval universities comes from the records of police courts, to which the extracurricular activities of the students often led them.[6]

Modern students, too, often find themselves the subjects of disciplinary action resulting from various forms of social expression previously unknown on our campuses. In combination with rapidly increasing college enrollments, this enlivened political awareness among college students is severely testing the ability of college administrators to maintain discipline without unnecessarily infringing upon student prerogatives.

The eventual example of social control is the law, as enacted by legislative bodies, formally interpreted by the courts, and executed by police power. A body of law grows out of a problem. The nature of the problem with which student disciplinary officers are confronted is that we are living in a changing social environment.

In a complex society the political order is the source of power and authority in which the law becomes an important norm of control. Such laws are developed for the purpose of establishing and maintaining the rights, duties and liberties of the citizens.

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[6]Eugene L. Kramer. "Expulsion of College and Professional Students - Rights and Remedies," The Notre Dame Lawyer, 38(1962-63), p. 174.

> Rights imply a two-sided relationship, in which one person owes the other a duty and the other person benefits thereby. A person has rights only insofar as others have duties toward him. One's rights set limits on other people's liberties. Freedom and responsibility always go together. In complex societies, the law represents the most certain of all the social norms.[7]

Public higher education does not operate in a void. It is an instrumentality of our society to carry out a desirable function, the higher education of our young people.

> At the outset of any discussion of the law as it relates to public education, it should be understood that while there are many laws which relate specifically to education, there is an infinitely greater number which relate to the operation of government generally and affect education only because education and the educational system happen to be a part of government.[8]

For this reason it becomes important that the student disciplinary officer understand the types of law under which our society, including public higher education operates.

The law which may be considered as regulating public higher education and, hence, to have an impact on student disciplinary actions consists of:

1. the Federal and State Constitutions,
2. the Federal and State legal statutes,
3. administrative rules and regulations (including federal, state and local agencies of government), and
4. federal and state court decisions, sometimes called "judge-made" or "common" law.

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[7]Kimball Young and Raymond W. Mack. Sociology and Social Life (New York, 1962), p. 76.

[8]Robert R. Hamilton and Paul R. Mort. The Law and Public Education (Brooklyn, N.Y., 1959), p. 3.

Constitutional law consists of the federal constitution and the constitutions of the several states and the court decisions interpreting the provisions thereof. The federal constitution is recognized as the basic law of the country. There is no express reference to education in this document, since education is reserved to the states under the Tenth Amendment as a state responsibility. However, those sections of the federal constitution which are designed to protect the inherent rights of the individual citizen do have an important bearing on education. These sections are Article I, Section 10, of the constitution, and the First, Fifth and Fourteenth Amendments.[9]

The majority of state constitutions require that the legislatures make provision for the

> .....establishment and maintenance of efficient systems of public schools.[10]

Consequently, the several state constitutions make reference to public education in both specific and general terms.

> It is important to observe that the constitution is a direct product of the people themselves. No legislature, representing the people, has any authority to amend a state constitution. Indeed, the legislature itself is a creature of the constitution; thus it follows that it certainly would have no authority to amend the document which gives it existence. All constitutions

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[9]Article I, Section 10, and the First, Fifth and Fourteenth Amendments to the Federal Constitution are reproduced in Appendix A.

[10]Warren E. Gauerke. School Law (New York, 1965), p. 12.

> provide the basic framework within which the legislative bodies must operate.[11]

Such legislatures, however, may take the initiative in making proposals for change to the constitution.

Statutory law is composed of the thousands of federal and state laws which affect public education, and court decisions interpreting the provisions thereof. The plenary power which the fifty states have over public education and which is the

> .....authority to pass laws to carry out constitutional mandates, stems from the police powers of states.[12]

The various state legislatures, being subject only to the limitations imposed by the federal and state constitutions, have had a great deal of freedom in the enactment of these statutes.

Administrative rules and regulations may be considered as assisting in the implementation of both constitutional and statutory law. The administrative rules of many governmental agencies, both federal and state, directly influence education. In addition, the administrative regulations developed by the institutions of higher education assist in carrying out the policies of these schools. Many of these regulations have actually become a part of statutory law.

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[11]Hamilton and Mort. op.cit., p. 8.

[12]Gauerke. op. cit., p. 15.

Judge-made or common law is

> .....'discovered' law in contrast to the enacted law of statutes and constitution.[13]

Blackwell[14] considers that "common law" is a term used to differentiate the law as voiced by the judge from the bench from that law which is enacted by legislative bodies; or the distinction between "case law" and "statutory law." The present structure of public higher education has been established by the constitutions and the statutes, but the life of the colleges and universities is ever-changing. New rules are needed because it would be impossible for the legislatures to enact laws that could meet every conceivable situation. Gauerke considers that

> .....the elaboration of new rules is an inescapable concomitant of the judicial process.[15]

However, it must be noted, as Hamilton and Mort point out, that

> .....when it is remembered that they have the power to interpret both the constitution and the statutes, and that in so many cases more than one interpretation is possible, the power of the courts in directing the course of the law becomes apparent. And power to interpret the law as it applies to educational matters means, to a very great extent, the power to direct the course of education.[16]

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[13]Hamilton and Mort. op. cit., p. 3.

[14]Thomas E. Blackwell. College Law (Washington, D.C., 1961), p. 4.

[15]Gauerke. op.cit., pp. 13-14.

[16]Hamilton and Mort. op.cit., p. 23.

What the writer really becomes concerned with, then, is that the courts must answer purely educational questions as distinguished from purely legal questions, and they can do this only in accordance with the ideas regarding education in their minds at the time that they render a decision.

As a result of this fact, changes have indeed taken place in the "common law" with respect to those cases involving student suspensions and expulsions from the institutions of higher education. A subsequent chapter of this study will define what "common law" presently requires of student disciplinary officials who hold institutional authority for such actions.

Scope of the Study

This study is organized to include thirteen degree granting publicly supported colleges and universities in the State of Michigan. Included are: (1) Central Michigan University, Mt. Pleasant; (2) Eastern Michigan University, Ypsilanti; (3) Ferris State College, Big Rapids; (4) Grand Valley State College, Allendale; (5) Lake Superior State College, Sault Ste. Marie; (6) Michigan State University, East Lansing; (7) Michigan Technological University, Houghton; (8) Northern Michigan University, Marquette; (9) Oakland University, Rochester; (10) Saginaw Valley College, University Center; (11) The University of Michigan, Ann Arbor; (12) Wayne State University, Detroit; and (13) Western Michigan University, Kalamazoo.

As "common law" concerned with student disciplinary action has developed over the years, it has become apparent that there are differing legal theories that may be applied to public schools as compared with those which may be applied to private schools. This matter will be more explicitly discussed in a subsequent chapter of this study. However, it is for this reason that parochial or private institutions of higher education within the State of Michigan have not been made a part of the present study.

It is not the intent of this study to inquire into administrative or departmental structures which vary considerably among the institutions, nor is it the intent of this study to question the current practices of these institutions with regard to the manner in which they handle the suspension or expulsion of their students. Rather, it is the purpose of this study to determine what are the current legal requirements which must be observed by publicly supported institutions of higher learning in carrying out this type of disciplinary action and, as an adjunct, to determine whether current practice in these institutions meets the legal requirements.

Research for the Study

The research for this study will consist of the following:

1. A review of the current literature concerned with the legal aspects of student disciplinary action.

2. A review of pertinent court decisions as outlined in the Corpus Juris Secundum, the American Digest System, the American Law Reports and the various court reporters.
3. A review of the applicable statutes as outlined in the legal periodicals and the law reviews.
4. A review of the administrative rules and regulations of the institutions of public higher education included in this study, as outlined in their bulletins and their codes of student conduct.
5. A survey of the institutions included in this study to determine current practice in student disciplinary cases involving student suspension or expulsion, with particular reference to the following items:
   a. Do the students obtain a clear and specific list which describes misconduct that is subject to discipline?
   b. Does a student being disciplined receive a written statement specifying the nature of the particular misconduct charged? If so, does the student receive this statement at a reasonable time prior to the determination of guilt?
   c. Does the institution provide for a hearing in those cases where a student takes exception to the charges brought against him?
   d. Does the institution permit either students or

administrators who appear as witnesses, or who bring charges, to sit on such a hearing board?

e. May the student charged with misconduct be accompanied by an advisor of his own choosing during the hearing?

f. Is the student charged with misconduct permitted to question informants or witnesses whose statements will be considered by the hearing board in the determination of guilt?

g. Is the hearing board permitted to consider evidence that is "improperly" acquired?[17]

Organization of the Study

This study is divided into five chapters. Chapter One includes a statement of the problem, the importance of the problem, the scope of the study, research procedures, a plan of organization and the definition of terms.

Chapter Two reviews the current legal literature in terms of concepts of university-student relationships, university disciplinary jurisdiction and the student's rights to due process.

Chapter Three reviews those cases involving both procedural and substantive due process with respect to student disciplinary action. It is in the decisions of

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[17] See also William W. Van Alstyne, op.cit., p. 369, who queried seventy-two state universities throughout the United States with respect to similar items.

these cases that the "common law" of student discipline has been developed. This chapter also identifies the current legal requirements for safeguarding the rights of the individual student who becomes subject to disciplinary action likely to result in his suspension or expulsion from a public institution of higher education in the State of Michigan.

Chapter Four reviews the bulletins and the codes of student conduct, published by the institutions of higher education included in this study, and outlines the administrative rules and regulations of those institutions with respect to the items listed in paragraph five of the research for this study. This chapter also charts and tabulates the results of a questionnaire responded to by the chief disciplinary officer of each of these institutions. The purpose of the questionnaire is to give some uniformity to the reporting of current practice in these institutions with respect to the material developed in Chapter Three.

Chapter Five will present the summary, conclusions, recommendations and implications for further research resulting from this study.

Definition of Terms

Throughout this study the terms discipline, suspension and expulsion will be understood in accordance with the following definitions:

1. Discipline. Discipline is the exercise of that authority which the law grants to a college to enforce its rules and regulations.[18]
2. Suspension. Suspension is the temporary breach of the student-school relationship, as contrasted with expulsion which is a permanent ending of such relationship.
3. Expulsion. Expulsion is the complete breach of the student-school relationship.[19]

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[18]Clarence J. Bakken. The Legal Basis for College Student Personnel Work (Washington, D. C., 1961), p. 3.

[19]Notes and Comments. op.cit., p. 1363.

CHAPTER II

A REVIEW OF THE LITERATURE

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A REVIEW OF THE LITERATURE

Introduction

It is the purpose of this chapter to review the current literature in the field of law in order to detail the concepts of university-student relationships, the jurisdiction of college and university rule-making authority, to indicate the problems involved in the enactment of university regulations governing the behavior of the members of the university community and to detail the right of the students to the due process of law.

Concepts of University-Student Relationships

It must be recognized, at the outset, that the source of the difficulty in developing rules and in developing procedures for the enforcement of the rules stems from the coexistence of two basically different concepts of the relationship between a university and its students. It is Heyman's[1] opinion that

> The more traditional view, capsulated imprecisely in the words in loco parentis, stresses the quasi-familial nature of the

[1] Ira Michael Heyman. "Some Thoughts on University Disciplinary Proceedings." California Law Review, 54(1966), pp. 73-87.

relationship. The persons charged with ultimate disciplinary responsibility exercise their authority benignly. They do not conceive of themselves or wish to be viewed as policemen. They want to support students and help them through therapy and understanding. Students are counselled and their cooperation is expected. Deterrence, of course, is important and thus stiff penalties for major transgressions, such as cheating, are imposed. But the thrust is toward helping the offender become rule-abiding, much as parents seek to channel the behavior of children.

The less traditional conception focuses on the institutional or corporate character of the university with the student seen as one of the institution's constituents. Students are independent adults free to behave as they wish subject to rules proscribing only that conduct importantly detrimental to the functioning of the university. Higher education is a government service (in the case of state colleges and universities) or a contracted service (in the case of private institutions) to which its consumers have 'rights.'

These two conceptions, grossly overgeneralized, tug in opposite directions in structuring disciplinary processes. The familial notion leads to nonspecific rules and informal procedures. Strict legalities are eschewed because they create a wrong tone. Facts are to be determined by the administrator's inquiries, not by courtroom combat. The governmental conception, on the other hand, pulls in the direction of formal proceedings of an adversary character to determine the guilt of an independent actor and the appropriate sanction to impose. The impetus towards formal proceedings derives strength from the recognition that the student being disciplined is subject to penalties

> which range up to expulsion and the consequent loss of the chance to get a college degree.[2]

The student of university disciplinary proceedings must recognize the differing values suggested by these two conceptions. Both exist within the campus community in varying degrees. Although many students may decry the familial concept as an abstract thing, it is quite certain that they will desire supportive and sympathetic treatment should they become involved in a particular case. However, it is difficult to dispassionately determine facts, make rules, and develop procedures for the imposition of sanctions under the informal proceedings stemming from the familial concept.

University Disciplinary Jurisdiction

There exist several legal theories which may be used to explain the sources of the authority which a college or

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[2] ibid., pp. 74-75. There is presently emerging a third concept of the university-student relationship. This is suggested by Warren A. Seavey, "Dismissal of Students: 'Due Process,'" Harvard Law Review, 70(1957), p. 1407, when he points out that university personnel stand in a fiduciary relationship with students and are governed by the principles of agency. A fiduciary is one whose function it is to act for the benefit of another as to matters relevant to the relation between them. Since schools exist primarily for the education of their students, it is obvious that professors and administrators act in a fiduciary capacity with reference to the students. It is Prof. Seavey's thought that one of the duties of the fiduciary is to make full disclosure of all relevant facts in any transaction between them, and that the dismissal of a student comes within this rule.

university has to discipline members of its student body. These are the contract theory, the in loco parentis theory and the constitutional theory.

> Using the express contract analysis for student cases - characterizing broad reservation of power to discipline and waiver clauses as terms of a school-student contract - courts have traditionally refused to interfere with discharges. And this reluctance does not seem to spring from the fact that reinstatement rather than damages for breach is sought as remedy. Rather, once the court has seized upon the contract analogy, it acts as if it were driven to finding for the college. Yet these student 'contracts' are created under circumstances where the bargaining positions of the parties are extremely disparate. Modern courts, resting on similar disparities, have taken a far more restrictive attitude toward the binding force of such 'contracts' in other areas.
>
> The university's reservation of power to discipline and the student's waiver give the university power to terminate the school-student relationship despite partial performance by the student. This power may be characterized as power to perform or not at its own will, as power to determine finally whether breach occurred, or as an ouster of the jurisdiction of the courts to review claims arising out of expulsions. The clauses are standardized terms of a complex printed document. They are proposed in a manner which brooks no negotiation and by a party which, by virtue of its experience and its strong seller's position, is clearly able to impose conditions. The student is in an unusually weak bargaining position. Most often he is of an age such that only limited competency to contract is imputed to him; his promises are ordinarily unenforceable against him. Indeed, it has been suggested that a minor's contract for education is enforceable against him only when, as a whole, the agreement is clearly beneficial to the student.[3]

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[3]Notes and Comments. "Private Government on the Campus - Judicial Review of University Expulsions." The Yale Law Journal, 72(1963), pp. 1377-1378.

> The early case of North v. Trustees of the University of Illinois declared that the 'will of the student is necessarily subservient to that of those who are of the time being his masters.' This slightly Victorian approach was not much improved on by the Kentucky court when in Gott v. Berea College it uttered the regrettable conclusion that 'college authorities stand in loco parentis concerning the physical and moral welfare, and mental training of the pupils.' The regrettable feature of the phrase in loco parentis is not the fact that the courts have picked it up and used it as a broad brush to gloss over a variety of situations, for they have not done so. Instead, this unfortunate characterization of the school-student relationship has been adopted by university administrators who seemingly lack any other clear definition of their role, as well as by students who find themselves in need of a popular 'whipping post.'[4]
>
> Bemused by the hoary in loco parentis shibboleth, decision after decision has not only expressed a toleration for arbitrary action but has approved it. Fortunately, increasing awareness of the age of today's student population and the impact of even the mildest of academic disciplinary measures on the individuals directly affected appears to be leading the courts away from the idea that the university is a vicarious, all-wise parent and toward an appreciation of the realities of the university-student relationship.[5]
>
> Fuller development of one further source of limitations within the confines of present doctrine does seem possible - the application of constitutional doctrine or constitutionally derived doctrine to the school expulsion situation. Application of the Constitution to state schools has already been noted. As an arm of state government, the state university is subject to all the restrictions, substantive and procedural, which circumscribe governmental action generally. Expulsion for failure to attend compulsory chapel or for engaging

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[4]Richard E. O'Leary. "The College Student and Due Process in Disciplinary Proceedings." The Illinois Law Forum, Fall(1962), p. 438.

[5]Arthur H. Sherry. "Governance of the University: Rules, Rights, and Responsibilities." California Law Review, 54(1966), pp. 28-29.

> in non-violent assertion of political rights would be improper, as would expulsion without procedural due process.[6]

There seems to be no question concerning the right of the university to make rules and to impose sanctions for violation of those rules when such rules are concerned with the performance of academic requirements and with standards of scholarship. There is no jurisdictional problem involved when students are suspended or expelled as a result of deficiencies in these areas or because there was either fraud or dishonesty present in meeting such requirements. The only possible problem under these circumstances may be that of determination of fact and the imposition of suitable sanctions. It is Sherry's opinion that

> .....conduct disruptive of good order in the classroom, the library, or in other campus facilities, which results in the damaging or defacing of property, or which endangers the health or safety of others on campus may properly lead to disciplinary action.[7]

But what about those unfortunate actions of students which result in both violation of campus rules and criminal law? Is the student to be subjected to sanctions both by the state and the university? Sherry continues

> When on-campus behavior of this sort is of such a degree, however, that it constitutes a

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[6]Notes and Comments. The Yale Law Journal. op.cit., p. 1381.

[7]Sherry. op.cit., p. 29.

> violation of the criminal law, a jurisdictional choice may present itself in which the guideline for decision may be most unclear. As a matter of law, since the conduct is an offense against university regulation as well as an offense against the state, both have jurisdiction to impose appropriate penalties. As a matter of prudence and discretion, however, wisdom may well dictate that in some such cases, action by one jurisdiction is enough. Certainly, a student charged with a relatively minor offense whose prior record was exemplary might well be saved from public disgrace yet effectively disciplined if the matter went no further than the dean's office. On the other hand, the nature of the case and the probable disposition of it by the civil authorities may suggest that the university action would be without practical effect or serve no useful purpose.[8]

Students' Rights to Due Process

The student of college and university disciplinary processes must understand the concept of "due process of law" to consist of two phases, procedural and substantive. Procedural due process is concerned with the specific procedures which may be used in determining fact and the guilt of the student charged with misconduct. Substantive due process, however, is concerned with the reasonableness of the rules which are established to govern student behavior, and the reasonableness of whatever sanctions may be imposed. In other words, does the punishment fit the crime?

There have been a multitude of cases, since Hill v. McCauley in 1887, concerning the practices of institutions

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[8] loc. cit., p. 29.

of higher learning with regard to student disciplinary measures. The courts have, however, appeared reluctant to interfere in cases of college disciplinary action because of the historical independence of the universities from intervention by outsiders in their internal affairs. It appears to one constitutional authority, however, that this situation is gradually changing. Van Alstyne[9] says

> One might properly be puzzled as to what became of the several arguments other than in loco parentis which colleges had successfully invoked elsewhere to insulate their decisions from judicial review. They were not ignored, rather, they were properly overborne by the court. To the argument that the students had waived any right to due process by conceding the right of the college summarily to dismiss them as a condition of admission, the court rejoined '(I)t nonetheless remains true that the State cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process.' In disposing of the argument that the students had no constitutional right to be admitted, the court pointed out that such an assertion had been emphatically rejected in analogous situations by the federal courts: 'One may not have a constitutional right to go to Bagdad, but the Government may not prohibit one from going there unless by means consonant with due process of law.'[10]

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[9]William W. Van Alstyne. "Procedural Due Process and State University Students." U.C.L.A. Law Review, 10(1962-63), pp. 368-389.

[10]loc. cit., p. 379. The court was quoting Homer v. Richmond, 292 F.2d 719, 722 (D.C. Cir. 1961) which was cited with approval in Local 473, Cafeteria Workers v. McElroy, 367 U.S. 886, 894 (1961), in dicta rejecting a preliminary argument that federal employment can be terminated without due process because such employment is a privilege rather than a right.

It has also been pointed out by Van Alstyne[11] that the United States Supreme Court has never considered a case raising a due process claim in the matter of student discipline at a state university. Consequently, one is led to believe that the many decisions upholding the right of the university administrators to discipline apparently at will, make unnecessary the establishment of due process requirements. But

> The fact remains, however, that there are but two cases involving state universities in which procedural due process is deprecated and the right to a hearing reduced to a meaningless exercise. (These are) People ex rel. Bluett v. Board of Trustees of the Univ.....; (and) State ex rel. Ingersoll v. Clapp..... Significantly, in neither of these cases was a claim based specifically on the fourteenth amendment considered. Other cases, commonly cited in support of the college's unbridled disciplinary prerogative, are distinguishable in that they concern private colleges not subject to the fourteenth amendment, or, in the case of public secondary schools, they involve discipline not likely to bar the student from other schools or future professional endeavor. Several of the cases are simply beside the point, and in virtually all of these cases no discussion is given to constitutional considerations.[12]

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[11] loc. cit., p. 374.

[12] ibid. Van Alstyne identifies these cases as Steier v. New York State Educ. Comm'r, 271 F.2d 13 (2d Cir. 1949); DeHaan v. Brandeis Univ., 150 F. Supp. 626 (D. Mass. 1957); Stetson Univ. v. Hunt, 88 Fla. 510, 102 So. 637 (1925); Smith v. Board of Educ., 182 Ill. App. 342 (1913); Gott v. Berea College, 156 Ky. 376, 161 S.W. 204 (1914); Woods v. Simpson, 146 Md. 547, 126 Atl. 882 (1924); Tanton v. Mc Kenney, 226 Mich. 245, 197 N.W. 510 (1924); Vermillion v. State ex rel. Englehardt, 78 Neb. 107, 110 N.W. 736 (1907); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y. Supp. 435 (1928); Barker v. Trustees of Bryn Mawr College, 278 Pa. 121, 122 Atl. 220 (1923); Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932).

Conversely, there is an already large and growing number of other decisions all but one of which concern publicly supported colleges and universities which may be cited as requiring some degree of due process.[13] It is these cases which we will examine more closely in the next chapter, in order to determine what the nature of the due process requirement may be.

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[13]Van Alstyne also identifies these cases as Hill v. McCauley, 3 Pa. County Ct. 77 (1887); Baltimore Univ. v. Colton, 98 Md. 623, 57 Atl. 14 (1904); McClintock v. Lake Forest Univ., 222 Ill. App. 468 (1921); Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913); Morrison v. City of Lawrence, 186 Mass. 456, 72 N.E. 91 (1904); Bishop v. Inhabitants of Rowley, 165 Mass. 460, 43 N.E. 191 (1896); Gleason v. Univ. of Minn., 104 Minn. 359, 116 N.W. 650 (1908); Goldstein v. New York Univ., 76 App. Div. 80, 78 N.Y. Supp. 739 (1902); People ex rel. Cecil v. Bellevue Hosp. Medical College, 60 Hun. 107, 14 N.Y. Supp. 490, aff'd mem., 128 N.Y. 621, 28 N.E. 253 (1891); Koblitz v. Western Reserve Univ., 21 Ohio C.C.R. 144, 11 Ohio C.C. Dec. 515 (1901); Geiger v. Milford School Dist., 51 Pa. D & C. 647 (Ct. C.P. 1944); State ex rel. Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), cert. denied, 319 U.S. 748 (1943). In addition, the reader should also see Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930 (1961); Knight v. State Bd. of Educ., 200 F. Supp. 174 (M.D. Tenn. 1961); Matter of Carr et al. v. St. John's Univ., 12 N.Y.2d 802, affirming 17 App. Div. 2d 632 (1962); Due v. Florida Agr. & Mech. Univ., 233 F. Supp. 396 (N.D. Fla. 1963); Cornette v. Aldridge, 408 S.W.2d 935 (Tex. 1966); Goldberg v. Regents of Univ. of Calif., 57 Cal. Rptr. 463 (1967); Dunmar v. Ailes, 348 F.2d 51 (D.C. Circ. 1965); Dickey v. Alabama State Bd. of Educ., 273 F. Supp. 613 (M.D. Ala. 1967); Wright v. Texas Southern Univ., 277 F. Supp. 110 (S.D. Tex. 1967); Esteban v. Central Missouri State College, 277 F. Supp. 649 (W.D. Mo. 1967); Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967); Buttney v. Smiley, and Regents of the Univ. of Colorado, 281 F. Supp. 280 (1968); Hamilton v. Regents of Univ. of Calif., 293 U.S. 245 (1934); West Virginia State Board of Educ. v. Barnette, 319 U.S. 624 (1943); and Hammond v. South Carolina State College, 272 F. Supp. 947 (1967).

Summary

A chief cause for the difficulty in developing rules and procedures for the enforcement of rules in institutions of higher education is the coexistence of the familial concept and the governmental concept of the university-student relationship, with a newly emerging fiduciary concept of this relationship. The familial concept leads to nonspecific rules and informal procedures, while the governmental and fiduciary concepts tend toward the establishment of formal proceedings. The legal theories suggesting the source of the authority which a college or university has to discipline members of its student body are the contract, in loco parentis and constitutional theories. In student disciplinary cases which have been brought under either of the first two of these theories, typically cases involving the private institutions of higher learning, the courts have generally been reluctant to interfere with expulsions and have tended to find for the university. On the other hand, state universities are subject to those constitutional restrictions, substantive and procedural, that proscribe governmental action. Cases involving state colleges and universities, unlike those concerning private institutions, are subject to constitutional considerations, and in recent years an increasing number of such cases have been brought before the federal courts under the fifth and the fourteenth amendments.

CHAPTER III

A REVIEW OF THE CASES INVOLVING "DUE PROCESS"

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In Chapter II reference was made to an already large and growing number of cases, all but one of which developed on the campuses of publicly supported colleges and universities, which could be cited as requiring some measure of due process of law. It is in the decisions of these cases that the "common law" of student disciplinary action has been developed. It is the purpose of this chapter to discuss these cases in order to determine what the nature of the due process requirement may be. Those cases, the majority of them, which are concerned with procedural due process will be discussed first. Thereafter the writer will discuss those few cases which revolve around the issue of substantive due process. In general, these cases will be discussed in chronological order.

In point of time, the case of Hill v. McCauley[1] is perhaps the earliest of the cases involving some measure of due process. John M. Hill enrolled at Dickinson College in Pennsylvania in September of 1885. During a faculty meeting held on the evening of November 9, 1886, a disturbance occurred in the area adjoining the meeting room. On evidence supplied to the president, McCauley, by a janitor

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[1]Hill v. McCauley, 3 Pa. County Ct. 77 (1887).

and to a faculty member by one of the students, Hill was alleged to have been the perpetrator of the disturbance. Hill was summoned to appear before a faculty meeting at which he was adjudged guilty of the charge and the decision was made to expell him. Receiving no satisfaction from letters written to President McCauley seeking reinstatement, Hill filed a petition in the county court for a writ of mandamus.

Judge Sadler, of the Court of Common Pleas of Cumberland County, in being critical of the faculty's action, said

> Investigations such as this ought to be carried on in such a way as the experience of mankind has shown is most conducive to a just determination of the guilt or innocence of the party charged..... in accordance with the principles of natural justice and the laws of the land.[2]

It was Judge Sadler's opinion that Hill should have been (1) notified of the charge of misconduct made against him in such detail that he would have recognized the gravity and the harm that might come to him if the charge were sustained; (2) the testimony against him should have been given in his presence; (3) he should have been afforded a full opportunity to question adverse witnesses; and (4) he was entitled to call other witnesses to explain or contradict the testimony of the accusing witnesses.[3]

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[2] ibid., at p. 88, 3 Pa. County Ct. 77.

[3] Quoting Clark Byse, "Procedures in Student Dismissal Proceedings: Law and Policy." (Proceedings 170-87 44th Anniv. Conf. Nat'l. Assn. of Student Personnel Administrators, 1962), p. 175.

Next, in point of time, is the case of the People ex rel. Cecil v. Bellevue Hospital Medical College.[4] Cecil entered the Medical College of Bellevue Hospital in order to take the prescribed course of study and receive the degree of Doctor of Medicine from that institution. Upon the end of the course of study, and the payment of all fees and fulfillment of all conditions, Cecil was advised by the secretary of the faculty that he would not be permitted to take the final examinations, and that the Medical College would not grant him the sought after degree.

Cecil brought action in the New York County court seeking permission to take the final examinations to which he was entitled, and upon successful completion of such examinations to be granted the degree of Doctor of Medicine. His application was denied by the court, and Cecil then appealed to the New York Supreme Court. Chief Justice Van Brunt reversed the order of the lower court and, in his decision, said

> .....the respondent presents no ground whatever for its action, but insists that it has the right arbitrarily, without any cause, to refuse the relator his examination and degree.....When a student matriculates under such circumstances, it is a contract between the college and himself that, if he complies with the terms therein prescribed, he shall have the degree, which is the end to be obtained.....It may be true that this court will not review the discretion of the corporation in the refusal for any cause or reason to permit a student to be examined and

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[4]People ex rel. Cecil v. Bellevue Hospital Medical College, 60 Hun. 107, 14 N.Y. Supp. 490, aff'd mem., 128 N.Y. 621, 28 N.E. 253 (1891).

> receive a degree; but where there is an absolute and arbitrary refusal there is no exercise of discretion. It is nothing but a willful violation of the duties which they have assumed. Such a position could never receive the sanction of a court in which even the semblance of justice was attempted to be administered.[5]

The Massachusetts case of Bishop v. Inhabitants of Rowley[6] is a public school situation. Bishop, a pupil in the public schools of Rowley, was excluded, or suspended by the teacher because of an alleged fault, or deficiency, until such time as he should obtain permission from the school committee for his return. The committee continued this suspension until young Bishop should apply to one of the members of the school committee for permission to return to school and promise to do his best. This action by the committee assumed that the pupil was guilty of the alleged fault and virtually required his acknowledgement of the fact. Bishop's father requested the school committee to give a hearing to the pupil to determine the matter of misconduct and also to determine the facts of the case. The request for a hearing was refused by the school committee and action was brought on behalf of young Bishop seeking reinstatement.

The Superior Court of Essex County found in favor of the school committee, and the case was appealed to the

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[5] ibid., at p. 490, 14 N.Y. Supp. 490.

[6] Bishop v. Inhabitants of Rowley, 165 Mass. 460, 43 N.E. 191 (1896).

Supreme Judicial Court of Massachusetts. In the decision of the Supreme Court, Judge Allen found that

> If a school committee acts in good faith in determining the facts in a particular case, its decision cannot be revised by the courts..... But this is not a merely arbitrary power, to be exercised without ascertaining the facts..... In the present case the facts were in dispute, and a hearing was asked for on the question of fact, and it was refused. Under these circumstances, the permanent exclusion of the plaintiff from school was unlawful. The school committee should have given the plaintiff or his father a chance to be heard upon the facts, or, in other words, should have listened to his side of the case.[7]

The 1901 case of Koblitz v. The Western Reserve University[8] involves a student who was notified that he would not be permitted to enroll for his second year in the law school of the university. Harry Koblitz was admitted as a student of the law school in September, 1899, and attended the various exercises and lectures in the school during that school year.

It became apparent during that year that Koblitz was not a very desirable student. His scholarship was poor, he was arrested on two different occasions on criminal charges, he threatened a fellow student with a revolver which he carried, he indulged in abusive language and disorderly conduct towards other students, and the faculty found him to be untruthful and a disturbing and undesirable element in

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[7] ibid., at p. 191, 43 N.E. 191.

[8] Koblitz v. Western Reserve Univ., 21 Ohio C.C.R. 144, 11 Ohio C.C. Dec. 515 (1901).

the law school. When he was notified to appear at a hearing before the faculty on some of these offenses Koblitz replied that he did not know whether or not he would attend, and that if the faculty tried to discipline him, they would find that they had a law suit on their hands.

Consequently, the Dean of the law school notified Koblitz, about March 15, 1900, that his continuance in the law school was not desirable. However, the school permitted him to remain in classes for the remainder of the school year and to take his examinations at the end of the school year. During the following summer vacation the Dean of the law school, on several occasions, told Koblitz that he would not be permitted to return to the school in the fall. About September 10, 1900, Koblitz was notified by the university that he would not be readmitted.

Koblitz then brought action in the Court of Common Pleas of Cuyahoga County seeking an injunction prohibiting the university from interfering with his enrollment in the law school. This was denied, and an appeal was brought before the Cuyahoga County Circuit Court. In his opinion upholding the trial court, Judge Caldwell made the following comments with regard to student hearings

> Custom, again, has established a rule. That rule is so uniform that it has become a rule of law; and, if the plaintiff had a contract with the university, he agreed to abide by that rule of law, and that rule of law is this: That in determining whether a student has been guilty of improper conduct that will tend to demoralize the school, it is not necessary that the professors should go through the formality of a trial. They should give the student whose conduct is being

> investigated, every fair opportunity of showing his innocence. They should be careful in receiving evidence against him; they should weigh it; determine whether it comes from a source freighted with prejudice; determine the likelihood, by all surrounding circumstances, as to who is right; and then act upon it as jurors with calmness, consideration and fair minds. When they have done this and reached a conclusion, they have done all that the law requires of them to do.[9]

The case of Goldstein v. New York University[10] was concerned with a student who had allegedly written an annoying letter to a woman classmate. Louis Goldstein was a student in the law school of the university when a young lady became annoyed at the efforts of a student to force his acquaintance upon her by means of a letter bearing Goldstein's name. The young lady reported the matter to the dean of the law school, who interrogated Goldstein. Goldstein denied having written the letter, stating that it had been passed to him by another student and he, in turn, had passed it to a third student for delivery to the young lady.

Because of variations in the stories told by the three students, the dean brought the matter to the attention of the faculty. The three students were summoned to a hearing before the faculty, during which Goldstein presented apparently false testimony against one of the others, although he was advised of the serious nature of the charges

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[9] ibid., at p. 157, 21 Ohio C.C.R. 144.

[10] Goldstein v. New York Univ., 76 App. Div. 80, 78 N.Y. Supp. 739 (1902).

he was making against that student. At the end of the hearing Goldstein was expelled for having deliberately lied in giving false testimony and for having made a false charge against an innocent fellow student. In the litigation which followed, the lower court granted a temporary injunction against the university which was appealed to the New York State Supreme Court. In the decision of that court, Judge Patterson found that

> .....the learned judge below appears to have placed his decision upon the contention that the plaintiff was expelled without notice of charges against him, and without affording him an opportunity to be heard in his defense, or to confront the witnesses against him, or to know what they had said in his absence. So far from the investigation being made in the absence of the plaintiff, it would appear that he was present. The offenses for which he was expelled were directly connected with the subject of the investigation which was being pursued while he was present.....If he were entitled to a hearing, he had it then and there..... Here was a full investigation, at least of the charge which he himself made before the faculty against his fellow student; and that charge having been fully investigated in his presence (for he does not assert that he was not present during the whole investigation), and found to be false, sufficient ground existed for his expulsion.[11]

Another Massachusetts public school case, that of Morrison v. City of Lawrence,[12] may also be helpful in this review. Wilbur F. Morrison, a student in the high school of the city of Lawrence, wrote an article which was alleged to be derogatory to the school principal. This article was published in a newspaper owned by Morrison's father, which

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[11] ibid., at p. 743, 78 N.Y. Supp. 739.

[12] Morrison v. City of Lawrence, 186 Mass. 456, 72 N.E. 91 (1904).

resulted in the indefinite suspension of young Morrison from the high school on the basis of his behavior. Morrison's father requested a hearing before the school committee, which was granted, and the committee allowed both Morrison and the school principal to have the assistance of counsel.

At the hearing which followed it was plain that a great deal of friction had arisen between the plaintiff and the principal, and that this disagreement between them had spread to other pupils of the school. The committee felt that to permit other pupils to testify, especially in contradiction to the principal, would likely weaken his authority and his influence and bring discredit upon the school. Therefore, the committee took the position that they ought not to allow a pupil to be examined on any issue of fact between Morrison and the principal, or allow such pupils to contradict the principal as a witness. The committee then ruled that the only evidence which Morrison could present upon the charge was the testimony of the students. The ruling was then modified to permit such students to voluntarily make a statement, or voluntarily contradict anything that the principal had said of them.

Morrison, when called as a witness, was willing to testify but declined to volunteer after the announcement of the ruling. None of the other students who were present volunteered to testify, and the committee upheld the action of the principal in the suspension of Morrison. The case was then taken to the Superior Court of Essex County which

found in favor of the plaintiff.

The school committee appealed the decision of the lower court to the Supreme Court of Massachusetts. In again finding for Morrison, Judge Braley noted

> At the second trial the plaintiff rested his right to recover solely on the ground that after notice of his exclusion from school, though the committee granted to him an opportunity to be heard, they did not act in good faith, because they refused to allow him to fully present his side of the case, and he contends that their action was equivalent to a denial of a hearing, and his exclusion, which was treated by them as final, became unlawful, and it is therefore necessary to determine whether there was any evidence to be submitted to the jury in support of his contention. A hearing of this nature does not take on all the formalities of a trial usual in a court of law, nor is it necessarily governed by the strict rules of evidence, and a school committee is apparently not included among those special tribunals which have power to summon or compel the attendance of witnesses, or before whom witnesses may be compelled to attend and give evidence.....If the plaintiff had summoned witnesses, their attendance could not have been enforced, or, if voluntarily present, they might have refused to testify, and the committee could not have aided him, and, so far as his case depended on their evidence, he would have been remediless. Nevertheless, they were required to grant him a full opportunity to be heard upon the facts, to hear and consider the testimony of such witnesses as he might call, and permit him to fully present his case in such orderly manner as they might direct. The hearing afforded may be of no value if relevant evidence, when offered, is refused admission, or those who otherwise would testify in behalf of the excluded pupil prevented by the action of the committee.[13]

In a later college case,[14] George S. Colton was enrolled as a student in the law school of Baltimore

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[13] ibid., at p. 92, 72 N.E. 91.

[14] Baltimore Univ. v. Colton, 98 Md. 623, 57 Atl. 14 (1904).

University. This school was conducted for the benefit of poor young men, and permitted the payment of fees at any time prior to graduation and further permitted the extension of the period of attendance from the normal two years to as much as four or five years and even longer. Colton attended all of the lectures which it was possible for him to do, and paid a part of his tuition. The old faculty resigned during his period of enrollment and a new faculty was appointed. The student continued to attend lectures in those courses in which he was deficient.

At the close of his fifth year of enrollment in the law school, Colton was notified by the faculty that they would not permit him to take the final examinations and that they would not consider him for graduation. Their reason was that Colton had attended only a few lectures and was not known to the faculty. In return, Colton offered to pay whatever sum the school thought that he owed, but no further payment was demanded. Colton sought relief through a petition for mandamus, which was granted by the Baltimore City Court. The decision was appealed by the university, and the Court of Appeals of Maryland found in favor of Colton. In its decision, Judge Fowler said

> But here there is not only an expulsion without notice, but it does not appear that the defendant corporation has ever enacted any by-laws on the subject, or that, if any, they were complied with. Want of notice has always been regarded as sufficient ground for invoking the aid of mandamus in cases of membership in corporations organized for the purpose of business or profit.....And now it is generally held that the same rule also applies to the restoration to membership in a private

> corporation when no pecuniary interests are involved.....[15]

Next, in point of time, is the case of Gleason v. University of Minnesota,[16] in which John L. Gleason was admitted to the department of science, literature and the arts of the University in the fall of 1902, and continued as a student in that department for three years. In the fall of 1905 he was enrolled as a student of the law department, and this enrollment continued until the close of the school year in June, 1907. In September, 1907, Gleason attempted to again enroll as a student in the department of law. Thereupon, he was notified that he had been dropped as a student because of deficiencies in his work and he was also charged with insubordinate acts towards the faculty. Upon further inquiry, Gleason was informed that he would not be considered for enrollment in any department of the university. Gleason applied for a writ of mandamus, which was granted by the District Court of Hennepin County.

The decision of the lower court was appealed to the Supreme Court of Minnesota. In again finding for Gleason, Judge Lewis noted

> .....it appears that the relator was dropped at the end of the school year then just closed on account of deficiency in work, but it does not appear in what respect he was deficient.....The petition

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[15] ibid., at p. 17, 57 Atl. 14.

[16] Gleason v. Univ. of Minnesota, 104 Minn. 359, 116 N.W. 650 (1908).

> admits that the relator was deficient in his work and not qualified to advance with his class; but it is also alleged that he had not knowingly violated any rule of the institution... 'Deficiency in his work' does not necessarily imply persistent inattention and failure to take advantage of his opportunities, and the fact that he was 'charged' with insubordination does not warrant the inference that he was guilty, or that he had proved himself in all respects unworthy to be retained as a student.[17]

Chronologically, the next case is another Massachusetts public school case.[18] Clinton F. Barnard entered the Shelburne, Massachusetts, high school as a freshman in the autumn of 1910. By December of that year he had fallen below the required standard of excellence, and a letter was sent to his father advising that the student could no longer continue in the high school. Alternate preparation of the boy was suggested, after which he could again enter the local high school.

When young Barnard next presented himself for re-enrollment at the high school, and it was determined that he had not further prepared himself, his exclusion from the high school was continued. Suit was brought in the Superior Court of Franklin County, seeking reinstatement, and the verdict of the court was in favor of the plaintiff. This verdict was appealed by the school committee of Shelburne to the Supreme Court of the state.

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[17] ibid., at p. 652, 116 N.W. 650.

[18] Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913).

Although the Supreme Court of Massachusetts found in favor of the school committee, the following excerpt from the decision of Chief Justice Rugg is of interest to the writer's position.

> Failure to attain to a given standard of excellence in studies is not misconduct in itself. The reason for this distinction in the statute is obvious. Misconduct is a very different matter from failure to attain a standard of excellence in studies. A determination as to the fact involves investigation of a quite different kind. A public hearing may be regarded as helpful to the ascertainment of misconduct and useless or harmful in finding out the truth as to scholarship.[19] (Emphasis by the writer.)

W. S. McClintock made application for the admission of his son to the Academy (a preparatory school for boys) branch of Lake Forest University.[20] Young McClintock was accepted, and his father made advance payment for tuition, board and other charges for the first half year in the amount of $500. Young McClintock arrived at the Academy in the late afternoon of September 17, 1918. Following an alleged violation of a school regulation prohibiting the use of tobacco by the students, Oliver McClintock was expelled late in the evening of September 18. After he had been refused another chance, Oliver left for home on the morning of September 19. Oliver requested refund of the monies paid on his behalf and this was refused. Subsequently, Oliver's father requested return of the money, which was again

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[19] ibid., at p. 1097, 102 N.E. 1095.

[20] McClintock v. Lake Forest Univ., 222 Ill. App. 468 (1921).

refused, and the headmaster of the Academy advised him that he was liable to the University for tuition, board and room for the whole year. After the school year had closed, the elder McClintock brought suit in the county court of Lake County for the money which he had paid. When the court found in favor of McClintock, the case was appealed by the University. In again finding for McClintock, Justice Dibell, in his opinion, made the following statement regarding school regulations:

> .....without express grant such a school has the power to adopt and enforce such rules as its governing body deem expedient for the government of the institution, and the courts may not interfere with their enforcement if they do not violate good morals or the law of the land or unless their enforcement is from malicious or improper motives other than the due enforcement of the rules and regulations of the school.[21]

A Tennessee case in which mandamus was sought as a remedy for expulsion,[22] involved students who were enrolled in the College of Medicine of the University of Tennessee. These students were charged with the theft of final examinations and the subsequent sale of these examinations to their fellow students. The University, through the dean's office, appointed a student council to investigate the case, determining that all who were involved in the theft or sale of examinations or all who refused to cooperate with the

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[21] ibid., at p. 474, 222 Ill. App. 468.

[22] State ex rel. Sherman v. Hyman, 180 Tenn. 99, 171 S.W. 2d 822 (1942), cert. denied, 319 U.S. 748, 63 Sup. Ct. 1157 (1943).

council would be expelled. Philip J. Sherman and John V. Avakian denied the charges and the council heard testimony against them, although the names of the witnesses were not revealed, and refused them the opportunity to cross-examine the witnesses. Finally, Sherman and Avakian appeared at hearings which were conducted by the faculty and by the board of trustees, but the appearance of witnesses was limited to the hearing held by the student council. As a result of these procedures both students were expelled from the College of Medicine and subsequently brought action in the Tennessee courts seeking reinstatement, which was granted by the Chancery Court of Shelby County.

The decision was appealed by the University of Tennessee, and reversed by the higher court. In his decision, Justice Neil stated

> Conceding that the right to study medicine and practice medicine is a property right, we hold that it is a qualified right.....The due process clause of the Constitution.....can have no application where the governing board of a school is rightfully exercising its inherent authority to discipline students. When acting rightfully it does not proceed to enforce any rule of conduct arbitrarily and summarily. All the authorities agree that students may not be dismissed or suspended or deprived of any right without notice and a fair hearing.....We find it to be the unanimous holding of the authorities that the courts will not interfere with the discretion of school officials in matters affecting discipline of students unless there is a manifest abuse of discretion or where their action has been arbitrary or unlawful.[23]

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[23] ibid., at pp. 111, 113, 180 Tenn. 99, and at pp. 827, 828, 171 S.W.2d 822.

In addition, Judge Neil said

> .....We think the student should be informed as to the nature of the charges, as well as the names of at least the principal witnesses against him when requested, and given a fair opportunity to make his defense. He cannot claim the privilege of cross-examination as a matter of right. The testimony against him may be oral or written, not necessarily under oath, but he should be advised as to its nature, as well as the persons who have accused him. Students should not be compelled to give evidence incriminating themselves or which might be regarded as detrimental to the best interests of the school.....As to the right to meet his accusers face to face in an investigation of wrongdoing, we cannot fail to note that honorable students do not like to be known as snoopers and informers against their fellows, that it is most unpleasant even when it becomes a duty. In these circumstances they should not be subjected to a cross-examination and, as is often seen in a trial court, to their displeasure if not their public humiliation.[24]

Edward N. Geiger was suspended from school by the principal on February 4, 1944, because of immoral conduct.[25] Edward's parents were advised that they could appear at a hearing before the school board at its next regular meeting. Edward and his mother were present at that hearing. After the meeting had been convened, a special committee of the school board presented the charges to Edward, and the entire charges and all information were later presented to both Edward, his mother, and to the board members present. A special committee was then appointed to investigate the

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[24] ibid., at pp. 109, 110, 180 Tenn. 99.

[25] Geiger v. Milford School Dist., 51 Pa. D. & C. 647 (Ct. C. P. 1944).

charges and the information. After the committee had completed its investigation the school board permanently expelled young Geiger.

The court, in the action which followed, centered its findings on the problem of "a proper hearing." Judge Shull, in his opinion, made the following observation:

> .....there was no stage of the proceeding at which Edward N. Geiger was given, under any construction of the words 'proper hearing,' a proper hearing. A proper hearing can only be one held after an accused has had due and reasonable notice of the nature of the offense charged, the names of his accusers, the time and place where he may, if he desires, appear before a tribunal having jurisdiction of the matter in question, and there be given an opportunity to face his accusers, to hear their testimony, examine any and all witnesses testifying against him, have the right to offer testimony in his own behalf by himself and his witnesses if he so desires, and to be represented by counsel if he so elects.[26]

The 1961 case of Dixon v. Alabama State Board of Education[27] may very well be considered as a "landmark" case since it is the first case in which college students sought relief from expulsion on constitutional grounds. St. John Dixon and eight other students were expelled from the Alabama State College at Montgomery. Some twenty other students were placed on probation.

These students, all Negro, were alleged to have been leaders in a variety of civil rights demonstrations in the area surrounding the campus of the Alabama State College,

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[26] ibid., at pp. 651, 652, 51 Pa. D & C 647 (Ct. C. P. 1944).

[27] Dixon v. Alabama State Board of Education, 294 F2d 150 (5Th Cir.), cert. denied, 368 U.S. 930 (1961).

and to have participated in a sit-in demonstration at the lunch room of the Montgomery County Courthouse.

Dr. Trenholm, a Negro educator and president of the College, notified the nine students of their expulsion by letters mailed to each of them, but did not specify the misconduct for which the expulsions came about. The students brought suit against the Alabama State Board of Education seeking an injunction prohibiting the Board from obstructing their right to attend college. The United States District Court for the Middle District of Alabama upheld the Board of Education and refused to issue the injunction. The students then appealed the case to the United States Court of Appeals, Fifth Circuit, where, by a majority opinion, the decision of the lower court was reversed. In the majority opinion, Judge Rives laid down certain guidelines for the parties in the case. Judge Rives said

> .....we state our views on the nature of the notice and hearing required by due process prior to expulsion from a state college or university.....The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education... The case before us requires something more than an informal interview with an administrative authority of the college. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full

> dress judicial hearing, with the right to cross-examine witnesses is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him, and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are allowed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled.[28]

Closely following the Dixon case is that of Knight v. State Board of Education[29] in 1961. In this case thirteen Negro students at the Tennessee A & I State University challenged their suspension from the university on constitutional grounds. After the completion of their school work for the year, these students participated in "freedom rides" to Jackson, Mississippi, for the purpose of protesting segregation laws in that state. While in Jackson, they were arrested, charged with disorderly conduct, and convicted of the offense in a Magistrate's Court. Each

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[28] ibid., at pp. 158, 159, 294 F2d 150 (1961).

[29] Knight v. State Board of Educ., 200 F. Supp. 174 (M.D. Tenn. 1961).

student was fined and given a suspended jail sentence, although all spent approximately thirty days in jail pending efforts to post an appeal bond.

A day or so after most of the convictions, but on the same day as one of them and even before another, the discipline committee of the Tennessee A & I State University held an ex parte hearing and suspended the students. Letters setting forth the action of the committee were sent to the Nashville, Tennessee, residences of the students. It must be remembered that during this time the students were still in the Mississippi jail attempting to post bonds for appeals, and they did not learn of this action until they returned to Nashville some thirty to forty days later. At this time they attempted to protest their suspensions to the university authorities. They were able to obtain a meeting with the President, after a series of demonstrations, and were then advised that the action of the discipline committee was mandatory under the terms of a policy letter from the State Board of Education on April 8, 1960, and was due to their convictions in Mississippi. They were further advised that their only recourse would be to the courts. Action was then brought by the students in the United States District Court for the Middle District of Tennessee, alleging that their suspensions violated their constitutional rights.

In a lengthy opinion, based on analogy to the earlier Dixon decision, Chief Judge William E. Miller found for the students.

The 1963 case of Due v. Florida Agricultural and Mechanical University[30] is another case in which reference is made to the Dixon decision. This action was brought by Patricia Due and Reubin Kenon in the United States District Court for the Northern District of Florida, seeking an injunction requiring reinstatement of suspended students of a tax-supported university. Mrs. Due and Kenon were convicted on October 3, 1963, in the Circuit Court of Leon County, Florida, for contempt of that court. Each paid a fine under protest and filed notice of an appeal to the next higher court.

The Acting Dean of Students of the university called each of the students by telephone, individually, on the morning of October 17, 1963, asking if they had received a letter from the university requiring their appearance before the Disciplinary Committee, to which each replied that no such letter had been received. The Acting Dean then suggested their return to the campus and that they contact the chairman of the Disciplinary Committee. Mrs. Due returned to Tallahassee from Jacksonville, and Kenon returned from Marianna that same day. They presented themselves, separately, to the chairman of the Disciplinary Committee which was then in session. During the latter part of the afternoon they appeared separately before the Committee.

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[30]Due v. Florida Agr. & Mech. Univ., 233 F. Supp. 396 (N. D. Florida 1963).

Each was asked if they had received the letter from the Disciplinary Committee, and each denied having received the letter. The Chairman then read the text of the letter to them and advised that they were being charged with misconduct as a result of their earlier conviction, this being a violation of the rules and regulations of the university. After being questioned by the Committee about the events leading to the conviction and about the charge of contempt conviction, each was given an opportunity to be heard and did respond. Following the hearing, the Committee voted to suspend both students on the charge of misconduct, and they were notified of the decision by letter. The action for reinstatement was then begun.

In finding for the university, Chief Judge Carswell referred extensively to the Dixon decision and, in his opinion, made the following comments:

> The facts here simply do not support plaintiffs in their premise. The disciplinary committee was duly established and organized by standard, well-defined procedure. It functioned in a normal manner.....The disciplinary committee was not bound to suspend, but it plainly had the authority to do so after notice and an opportunity to be heard.....There was notice to each of these plaintiffs, the charge was made explicit, and each was afforded full opportunity to be heard, and, in fact, was heard to the point where each said he had nothing more to say.....More specific routines of notice and advisement may be indicated in this regard, but a foisted system of rigid procedure can become so ritualistic, dogmatic, and impractical as to itself be a denial of due process. The touchstones in this area are fairness and reasonableness.[31]

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[31] ibid., at pp. 402, 403, 233 F. Supp. 396 (1963).

An action to restrain the Secretary of the Army from dismissing a student from the Corps of Cadets of the United States Military Academy is found in the 1965 case of Dunmar v. Ailes.[32] John H. Dunmar, a Cadet at the United States Military Academy was charged with violating the Honor Code of the Academy. He appeared before a Board of Officers who found that he was guilty of the offense, and the Superintendent of the Academy ordered his separation from the Corps of Cadets. Dunmar brought action before the United States District Court, which found in favor of the Academy. Action was then brought by Dunmar, in the nature of an appeal, before the United States Court of Appeals, District of Columbia Circuit.

Cadet Dunmar based his appeal that the separation order was invalid on the theory that it was based on procedures which were not consistent with procedural due process and which violated rules and regulations of the Army and of the Academy; that the Honor Code was too vague to supply a constitutional predicate for his separation; and that power to effect his administrative separation resided only in the President of the United States.

Two regulations of the Academy were at point during the hearing of this case before the Court of Appeals. One regulation, No. 17.13, provided generally for separations because of violations of the Cadet Honor Code. This

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[32]Dunmar v. Ailes, 348 F.2d 51 (D.C. Cir. 1965).

regulation provides that Cadets who violate the Cadet Honor Code may, at the discretion of the Superintendent, be allowed to resign, be tried by courts-martial, or be brought before a board of senior officers convened by the Superintendent to investigate the matter and to make findings and recommendations. The second regulation, No. 9.09, states:

> When a cadet exhibits habits or traits of character which appear to render his retention at the Academy undesirable, it shall be the duty of the Superintendent to report in writing such fact to the Academic Board, with a full statement of the facts upon which his report is based. This step shall be taken with view to ascertaining the Board's recommendation as to whether such cadet shall be separated from the Academy. Any cadet so reported shall be furnished a copy of the Superintendent's report in his case, with reference to which a cadet may submit a statement in writing which shall be fully considered by the Board.[33]

It should be carefully noted that in neither regulation is there made any provision for the Cadet to be assisted by counsel, of any opportunity for the Cadet to make his views known to the Academic Board, for the presentation of evidence or for the cross-examination of witnesses.

Circuit Judges Fahy, Burger and McGowan, in finding against the Cadet, made the following comments in their decision:

> Following the recommendation of the Cadet Honor Committee, before which he appeared in person, that Appellant be separated from the Corps of Cadets, he was given the option of resigning or appearing before a board of senior officers, and after consulting with his family and his counsel, he chose the latter alternative. Throughout the

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[33] ibid., at p. 53, 348 F.2d 51 (1965).

> subsequent proceedings Appellant was represented by counsel, who was a member of the Academy Department of Law and a lawyer. He was given a seven-day continuance before appearing before the board of officers, in order that he could prepare his case. Before the board he was allowed to cross-examine witnesses, to present nine witnesses of his own, and to make a closing argument. He testified on his own behalf, but only after being warned of his privilege to remain silent. Following referral of his case to the Academic Board, which made the final recommendation that he be separated, Appellant filed a brief with that body, though he did not appear before it in person. There is no suggestion that the Academic Board relied on evidence of which the Appellant was not aware, or that it failed to consider his brief..... In holding that Appellant has no complaint calling for judicial redress we need not - and we do not - undertake to formulate standards of procedural due process generally applicable to Cadets or other personnel of the military establishment..... It is sufficient for the purposes of this case to say that Appellant received at least what was due him in his circumstances.....Appellant's conduct was first found to violate this code by the Cadet Honor Committee, a student body entrusted with such matters, second by a board of officers before which Appellant had a full trial-type hearing, third by a reviewing board, fourth by the Superintendent of the Academy, and finally by the Secretary of the Army. We are in no position to find too vague the code thus found applicable.[34]

A 1966 case, that of Cornette v. Aldridge,[35] was an action in mandamus in which the officials of the West Texas State University appealed such writ issued to Darrel Aldridge, a suspended student.

Aldridge was first apprehended by a university security officer and a Liquor Control Board officer in the process of

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[34] ibid., at pp. 54, 55, 348 F.2d 51 (1965).

[35] Cornette v. Aldridge, 408 S.W.2d 935 (Texas 1966), reh. denied, 1966.

getting out of his automobile in one of the dormitory parking lots, along with two minor students. There were found, in the car, several partially filled bottles of various types of liquor which Aldridge denied owning, even though he was the only adult of the three who could legally have purchased the intoxicants. However, Aldridge did admit that he had been drinking, and for this he was given disciplinary punishment which allowed him to select from several alternatives. It was his choice to perform some fifteen hours of assigned manual labor duties in the university security office.

Some six days later Aldridge was observed speeding at the rate of some 60 mph in a 20 mph zone on the campus, after having consumed some three bottles of beer, where students were crossing. For this offense, Aldridge was placed on probation by the university officials, with the conditions that he was not to have his car on campus and was not to drive his or any other car on the campus or in the city of Canyon during the period of his probation. It might be said, at this point, that Aldridge had received a second opportunity to conform to the rules of the West Texas State University. On the very next night, Aldridge was identified as the driver of a speeding automobile and was eventually apprehended by a city of Canyon patrolman for the offense.

Aldridge was brought before the university disciplinary committee on February 3 and was given an opportunity to state his case. After he had done so, Dr. Carruth, Dean of Student

Life at the university presented the facts with regard to Aldridge's record. Following this, both Aldridge and Carruth retired from the room, and the disciplinary committee discussed the case and voted unanimously for an indefinite suspension of Aldridge from the university.

Aldridge brought action for mandamus against the state university officials, which was granted by the 47th District Court of Randall County. The case was then appealed to the Court of Civil Appeals of Texas, which reversed the judgment of the trial court. In its opinion, the court said

> .....the important legal matter shown by such statements of the court in issuing the harsh remedy of mandamus against the officials is that the court recognized the conduct of Aldridge was a discredit both to himself and to the school, that punishment was long overdue, but he felt personally that the punishment was too harsh. The court, therefore, showed by such statements that it was exercising its discretion for that vested in the school officials.....It is difficult to imagine a period in the life of our nation when the courts need to give greater support to public school authorities concerning their discretion in dealing with students than now, so long as such discretion is not exercised in an unreasonable, arbitrary and capricious manner.....We agree.....that a fair hearing before school officials does not contemplate a trial as in a chancery court or court of law. The student should be given every fair opportunity of showing his innocence, which Aldridge had. When they have done this and the disciplinary committee has reached a conclusion, they have done all the law requires them to do.[36]

The so-called "free speech movement" on the Berkeley Campus of the University of California, in 1965, gave rise

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[36] ibid., at pp. 938, 942, 408 S.W.2d. 935 (1966).

to the case of Goldberg v. Regents of University of California,[37] which was ultimately decided by the First District Court of Appeals in 1967.

Goldberg and three fellow students participated in differing ways in rallies that were held on the campus on March 4 and 5 protesting the arrest of a non-student who had displayed an objectionable sign on the campus. Three of these students were arrested on March 4, 1965, and charged with violations of the obscenity statutes and disturbing the peace on the basis of the same facts which led to the university disciplinary proceedings against them. The criminal prosecutions were still pending at the conclusion of the university disciplinary action.

The Dean of Men wrote to each of the four students on March 17, advising them that they had been charged with violating the university policy on student conduct and detailing the charges against each. The students were further informed in the letters that a special Ad Hoc Committee had been appointed to hear their cases, and that they might wish to be represented by counsel. They were represented by their attorney at a prehearing conference at which the issues to be considered were formulated and the procedures to be followed were established.

The hearing for two of the students began on March 29 and resumed on April 6 for all four. The final hearing took

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[37]Goldberg v. Regents of Univ. of Calif., 57 Cal. Rptr. 463 (1967).

place on April 15. The Committee found that the charges against the students had been proved, but noted that there were substantial differences between the conduct of the four students and because of this made a recommendation of different disciplinary measures for each. Goldberg was dismissed from the university on April 20, 1965, two of the students were suspended until the following September and the fourth student was suspended until the following June. The students then brought action in the Superior Court of Alameda County contesting their dismissal and/or suspension on constitutional grounds and sought mandamus requiring their reinstatement, which was denied. They then brought an appeal before the First District Court of Appeal which affirmed the judgment of the trial court.

In his opinion, Judge Taylor relied heavily on the prior decisions in the Dixon and Knight cases, and noted the decision in the Due case with approval. He made the following comments concerning the making and enforcing of university regulations:

> Broadly stated, the function of the University is to impart learning and to advance the boundaries of knowledge. This carries with it the administrative responsibility to control and regulate that conduct and behavior of the students which tends to impede, obstruct or threaten the achievements of its educational goals. Thus, the university has the power to formulate and enforce rules of student conduct that are appropriate and necessary to the maintenance of order and propriety, considering the accepted norms of social behavior in the community, where such rules are reasonably necessary to further the University's educational goals.....the academic community has been unique

> in having its own standards, rewards and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference.....in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure, be left to the educational institution itself.[38]

The 1967 case of Wasson v. Trowbridge[39] is essentially a Fifth Amendment[40] case in which Robert F. Wasson, Jr., was appealing his dismissal from the Merchant Marine Academy without a hearing.

The standards of discipline required of the students at the Merchant Marine Academy, although necessarily high, are quite explicitly stated in the Regulations of the Academy. Breaches of student discipline at the Academy fall into three classifications. Class I offenses are of a serious nature and punishable by immediate dismissal. Class II offenses are of intermediate seriousness and punishable by the assignment of demerits up to, but not more than, 100. Class III offenses are the least serious and are punishable by the assignment of not more than 50 demerits. When a cadet at the Academy accumulates more than a fixed number of demerits in a given school year he becomes liable for dismissal. In the case of a third-year student, the allowable

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[38] ibid., at p. 472, 57 Cal. Rptr. 463 (1967).

[39] Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967).

[40] It should be noted, at this point, that in cases where the Federal Government or its agencies are involved, the Fifth Amendment says to the government essentially what the Fourteenth Amendment says to the individual states.

number of demerits is 200.

Reports of alleged cadet misconduct may originate from several sources; an officer of the Academy, an instructor or a Cadet officer. These reports are then presented to the Battalion Officer who either investigates it, or assigns another person to investigate the report, and forwards the report of the investigation to the Regimental Officer, along with his recommendations.

Following the report of the investigation, disciplinary procedure may vary according to the manner in which the Regimental Officer classifies the offense. If the offense is classified as Class III, punishment is determined by the Regimental Officer and there is no appeal. Should the offense be considered as Class I, the other extreme, the cadet receives a written statement of the charges, to which he may reply. The cadet is entitled to a hearing before a board of officers who are drawn from regiments other than that of the cadet charged. The cadet may be represented by counsel of his choice at the hearing, but only officers of the staff of the Academy are eligible for this duty. The decision of the hearing board takes the form of a recommendation to the Superintendent of the Academy and, if the recommendation is for dismissal, the Superintendent may forward the recommendation to the Maritime Administrator for final action. The cadet has an opportunity to appeal at each of these different stages.

On March 30, 1967, Wasson, then a third-year student at the Academy, was accused of engaging in and perhaps leading

'an unauthorized mass movement' of his fellow students for the purpose of throwing a Cadet Regimental Officer into Long Island Sound. Since this action was a breach of the student disciplinary regulations at the Academy, Wasson was charged with a Class II offense. On April 10 he was given a detailed specification of the charges against him and notified of the time and place of hearing. Wasson filed a statement in reply to the charges, prior to the hearing, and demanded counsel. This demand was denied since the regulations did not provide for counsel at hearings on Class II offenses. The Regimental Board of Investigation which hears Class II offenses, contrary to the procedure governing a Class I offense, is drawn from the same regiment as the accused cadet. On April 12 Wasson protested the composition of the hearing board on the ground that it violated an article of the regulations of the Academy. This protest was rejected on the basis that none of the members of the panel had been involved with the cadet, although the accompanying memorandum of the Regimental Officer is ambiguous in regard to whether any members of the panel had investigated or reported other cadets involved in the same incident with which Wasson was charged. The hearing board concluded its investigation on April 13 and awarded 75 demerits to Wasson because of his misconduct. Since the cadet had already accumulated 148 demerits, this award subjected the cadet to dismissal from the Academy.

Wasson appealed the decision to the Superintendent of

the Academy, who conferred with Wasson, and rejected his appeal. Then the Superintendent convened the Senior Board of Aptitude, Conduct and Discipline Review. This board was drawn from the Academy staff and faculty and has the responsibility to interview the cadet and review his entire discipline and conduct record and determine whether or not he should be retained. At this time, Wasson again demanded counsel which was denied. Wasson appeared before the board and presented his case, but the board recommended dismissal. Again Wasson appealed to the Superintendent, and again his appeal was rejected. Wasson then brought action in the United States District Court for the Eastern District of New York, which found in favor of the Academy. Wasson then brought an appeal before the United States Court of Appeals for the Second Circuit, where Judge Moore reversed the decision of the lower court and remanded the case back to the District Court for a hearing on whether the procedures used against Wasson comported with due process of law.

In his opinion, Judge Moore said

> .....due process only requires for the dismissal of a Cadet from the Merchant Marine Academy that he be given a fair hearing at which he is apprised of the charges against him and permitted a defense. It would be most unwise, if not impossible, for this Court to spell out in detail the specific components of a fair hearing in the context of expulsion from the Academy without the benefit of findings from a District Court because Regulations which appear harsh in the abstract to Judges more attuned to adversary civilian trials may prove entirely reasonable within the confines of Academy life. For the guidance of the parties, however, the rudiments of a fair hearing in broad outline are plain. The Cadet must be apprised of the specific charges against him. He must be given

> an adequate opportunity to present his defense both from the point of view of time and the use of witnesses and other evidence.....The hearing may be procedurally informal and need not be adversarial.....In substance Wasson charges that members of the panel which awarded the demerits had participated in the investigation against him. This combination of the functions of policeman and judge, he argues, resulted in a biased panel and, thus, the hearing was not fair. It is too clear to require argument or citation that a fair hearing presupposes an impartial trier of fact and that prior official involvement in a case renders impartiality most difficult to maintain.....Wasson alleged that he was denied a continuance in order to obtain favorable witnesses and that he was given only three days in which to prepare for the hearing and that the effect of this ruling deprived him of the opportunity to defend himself..... he alleges that he was never fully told of the evidence against him. Here again, this allegation, even if true, does not necessarily constitute a violation of due process.....the charge is a serious one, for a Cadet is utterly unable to defend against unknown evidence, and should not be dismissed without the holding of an evidentiary hearing into the nature of the concealed evidence, if any, and the reason for withholding it.[41]

The case of Wright v. Texas Southern University[42] concerned eight former students of the school who claimed that they had been denied admission to the university in violation of their constitutional rights. It was the contention of these students that they had been denied admission to the university for the fall term, 1967, because they had been suspended at the end of the previous spring term for their participation in several peaceable assemblies

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[41] op.cit., at pp. 812, 813, 382 F.2d 807 (2d Cir. 1967).

[42] Wright v. Texas Southern Univ., 277 F. Supp. 110 (S. D. Tex. 1967).

protected by the First Amendment. The students further alleged that their suspension violated the due process clause of the Fourteenth Amendment since they were not given notice and some opportunity for a hearing on the grounds for their suspension.

During the course of the court proceedings it became apparent that the First and Fourteenth Amendment questions raised by the students would not have to be resolved, since the action of the university officials in denying admission to the students actually rested on different and substantial ground. Evidence brought before the court disclosed that five of the students were scholastically ineligible for admission to the fall term. Judge Singleton noted, in his opinion, that

> No student has a constitutional right to remain in attendance at a public university irrespective of his academic performance.[43]

The Dean of Students testified that another of the students, Stanley Wright, had been accused of violating one of the university regulations on March 17, 1967. Further, on April 18, during a period of serious unrest and turbulence on the campus, the Dean had personally observed Wright on the campus after curfew hours. At that time he confronted the student and a companion and requested them to leave, which they refused to do. The Dean then asked Wright to come to his office to discuss the incident, and

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[43] ibid., at pp. 111, 112, 277 F. Supp. 110 (1967).

again Wright failed to comply. The Dean then attempted to contact Wright by mail, but was unable to find a mailing address for the student although each student was required by university regulation to keep the school informed of his mailing address and any changes thereof. The Dean then contacted Wright's father who also disclaimed knowledge of the student's address. Finally, Wright voluntarily withdrew from the university on May 2, and he was notified by registered mail that he would not be permitted to reenter the school.

The Dean of Students further testified that a seventh student, William Richards, had been reported to have violated university regulations and that on January 18, 1967, the Dean had personally called at Richard's dormitory residence to request a conference regarding the reported violation. The conference was held and the student was told that he would be under observation for the remainder of the semester. On April 30, 1967, Richards was personally observed by the Dean in the act of exhorting fellow students to block the entrance to one of the university buildings in order to prevent entry by both faculty and students. The Dean then sent a letter to Richards asking him to report for a conference. The letter was returned undelivered because Richards had changed his mailing address and, like Wright, had failed to notify the university. The student was then notified after the close of the spring term that he would not be permitted to reenter the university.

In commenting on this portion of the case, Judge Singleton said

> I think this evidence clearly demonstrates that diligence was exercised in attempting to give proper notice to both Wright and Richards. Wright was given personal notice at a time when he was in the act of violating a valid University regulation. Certainly that situation itself should have impressed him with the necessity of compliance with the Dean's command to visit his office. Moreover, written communications were sought to be delivered to both Wright and Richards. Only because of their failure to comply with a valid University regulation was delivery of the communications unsuccessful. The Dean of Students, I am convinced, exercised his best efforts to inform these two students of the nature of the University's complaints against them. I do not think more is required. To now order defendants to reinstate these plaintiffs subject to holding a hearing on their grounds for suspension would, it seems to me, be tantamount to condoning the irresponsible attitude exhibited by these plaintiffs. It would be unreasonable indeed for this Court to hold that a University could not take disciplinary action against students who could not be contacted although diligent attempts were made, particularly where their whereabouts were not disclosed to the University in violation of a valid regulation.[44]

The eighth plaintiff in this case, Lowe, was shown by the evidence to have been given notice to report to the Dean's office, which he did. The Dean discussed with the student his conduct during the spring semester, and the student was given an opportunity to speak in his own defense. At the conclusion of the conference, Lowe was referred to the President and discussed with him the university's complaints against him. After the conference between the

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[44] ibid., at p. 113, 277 F. Supp. 110 (1967).

President and Lowe, the President and the Dean conferred and decided to deny re-admission to the student.

Judge Singleton found no evidence to indicate that the hearing given to Lowe was inadequate, and concluded

> .....with respect to the activities of each of these students, as presented to this Court, the constitutional umbrella should afford no protection to those who choose to go out in the rain bareheaded.[45]

Like the earlier Dixon case, the 1967 case of Esteban v. Central Missouri State College[46] may also be considered as a "landmark" case since it presents, for the first time, the right of the student to inspect affidavits or exhibits which are intended to be used against him.

Steve Roberds, a student on disciplinary probation, and Alfredo Esteban, a student on scholastic probation and who had previously been on disciplinary probation, were suspended from Central Missouri State College following two nights of student demonstrations which were variously described as "disturbances," "incidents," and "riots."

Each student was orally advised of the reason that the College was considering disciplinary action against them, although there appeared that there was some uncertainty in the minds of the students as to the exact grounds upon which the school proposed to take action. Each student was given an opportunity to make such explanation of his actions as he

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[45] ibid., at p. 113, 277 F. Supp. 110 (1967).

[46] Esteban v. Central Missouri State College, 277 F. Supp. 649 (W. D. Mo. 1967).

desired to the Dean of Men. Further, each student was advised that if disciplinary action was recommended they were entitled to appeal to the President of the College. Each of the students discussed his version of the circumstances with the Dean of Men, after which the suspensions from the College were made. The students then applied to the United States District Court for the West District of Missouri for injunctive relief.

In his decision, Judge Elmo B. Hunter addressed himself to the nature of procedural due process extended to the suspended students, and was particularly critical of the fact that the Dean of Men, to whom the suspended students were permitted to make their explanation, was only one of a number of persons on the board which made the recommendation of suspension. Judge Hunter also noted with approval the earlier decisions in the cases of Dickey, Hammond, Due and Dixon. Judge Hunter said

> The question before this Court is rather, were the plaintiffs entitled to procedural due process before they were suspended, and if so, were they afforded procedural due process?.....implicit in the concept of due process as it concerns these students are the elements of notice and impartial hearing. The students are entitled to know the ground or grounds upon which the college is considering taking disciplinary action, should be afforded an opportunity to appear before the person or persons responsible for taking disciplinary action and make such showing or explanation as they wish to make, and should be advised in some adequate manner of the nature of the evidence against them.....It is imperative that the students charged be given an opportunity to present their version of the case and to make such showing as they desire to the person or group of persons who have the authorized responsibility

> of determining the facts of the case and the nature of action, if any, to be taken.[47]

In directing the College to grant each of the plaintiffs a new hearing on whatever charges the College wanted to press, Judge Hunter laid down the following guidelines:

> The procedures to be followed in preparing for and conducting such a hearing shall include the following procedural features: (1) a written statement of the charges to be furnished each plaintiff at least 10 days prior to the date of the hearing; (2) the hearing shall be conducted before the President of the college; (3) plaintiffs shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the college intends to submit at the hearing; (4) plaintiffs shall be permitted to have counsel present with them at the hearing to advise them; (5) plaintiffs shall be afforded the right to present their version as to the charges and to make such showing by way of affidavits, exhibits, and witnesses as they desire; (6) plaintiffs shall be permitted to hear the evidence presented against them, and plaintiffs (not their attorney) may question at the hearing any witness who gives evidence against them; (7) the President shall determine the facts of each case solely on the evidence presented at the hearing therein and shall state in writing his findings as to whether or not the student charged is guilty of the conduct charged and the disposition to be made, if any, by way of disciplinary action; (8) either side may, at its own expense, make a record of the events at the hearing.[48]

The last, and most recent, case involving procedural due process is that of Buttney v. Smiley and the Regents of the University of Colorado[49] which was heard in the United

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[47] ibid., at p. 651, 277 F. Supp. 649 (1967).

[48] ibid., at pp. 651, 652, 277 F. Supp. 649 (1967).

[49] Buttney v. Smiley and Regents of the Univ. of Colorado, 281 F. Supp. 280 (1968).

States District Court for the District of Colorado in February, 1968.

In this case John David Buttney and several of his fellow students were either suspended or placed on probation for having prevented recruitment on the campus of the University of Colorado by the Central Intelligence Agency. The students involved in this case prevented the recruitment by physically blocking the entrances to the university placement service. The disciplinary action was based on a university regulation which read in part as follows: "HAZING. Hazing in all forms is prohibited in this University. Students who thus interfere with the personal liberty of a fellow student are rendered liable to immediate discipline. This rule is extended to cover..... interference in any manner with the public or private rights of citizens."

The students claimed a denial of their right to freedom of speech, due process, and equal protection under the First and Fourteenth Amendments to the United States Constitution.

Although the rule regarding hazing did not prohibit specific types of conduct, the Court said that it set standards for acceptable conduct that are readily determinable and should be easily understood. The rule was not so vague as to deny due process of law. The Court noted that university authorities have an inherent power to maintain order on campus and to afford students, school officials and invited guests freedom of movement on the

campus. Enrollment in the university does not give students the right to violate the constitutional rights of others. Furthermore, the Court said, the First Amendment guarantee of free speech does not extend to aggressive physical action and does not give students the right to prevent lawful access to campus facilities.

The fact that different types of punishment were imposed based on the student's class year in school was not unreasonable so as to deny equal protection of the laws. The Court ruled there was no violation of procedural due process in the method used in disciplining the students. They were furnished with a written list of charges against them and the names of witnesses. At their request, they were granted an open hearing with the right to testify on their own behalf and cross-examine witnesses. The punishment was not arbitrary. The court felt that judicial review in such cases was limited to the reasonableness of the rules, and not the discretion exercised under it.

There are but five cases which the writer can cite at this time as supportive of the matter of substantive due process. These cases are Hamilton v. Regents of the University of California,[50] West Virginia State Board of Education v. Barnette,[51] Knight v. State Board of

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[50]Hamilton v. Regents of Univ. of Calif., 293 U.S. 245 (1934).

[51]West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

Education,[52] already discussed on pages 45-46 of this chapter, Hammond v. South Carolina State College,[53] and Dickey v. Alabama State Board of Education.[54]

The case of Hamilton v. Regents of the University of California[55] is the earliest of the public school cases in which the issue of substantive due process was decided by the courts. It is also interesting to note that, although the United States Supreme Court has not heard a student case concerned with procedural due process, it has decided at least two student complaints involving the issue of substantive due process.

The instant case was brought to the California state courts by young Hamilton and a schoolmate, minors, and their fathers as guardians, protesting the validity of a state law which required male students at the University of California to take prescribed courses in military science

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[52]Knight v. State Board of Educ., 200 F. Supp. 174 (M. D. Tenn. 1961).

[53]Hammond v. South Carolina State College, 272 F. Supp. 947 (1967).

[54]Dickey v. Alabama State Board of Educ., 273 F. Supp. 613 (M. D. Ala. 1967).

[55]Hamilton v. Regents of Univ. of Calif., 293 U.S. 245 (1934).

and tactics.[56] The minors were members of the Methodist Episcopal Church, and of the Epworth League, and their fathers had been ordained ministers of that church for many years.

In October, 1933, these minors registered in the University and became students, conforming fully to all of the requirements of the university except that which called on them to take the course in military science and tactics in the Reserve Officers Training Corps. The students and their guardians contended that the R.O.T.C. was an integral part of the military establishment of the United States and was not in any way connected with the militia of the State.

The Methodist Episcopal Church, at its Southern California Conferences in 1931 and 1933, and at its General

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[56]The University of California is a land-grant college, established under the 1862 Morrill Act. In 1931, the Regents of the university established the following order, pursuant to the provisions of the Act: "Every able-bodied student of the University of California who, at the time of his matriculation at the University, is under the age of twenty-four years and a citizen of the United States and who has not attained full academic standing as a junior student in the University and has not completed the course in military science and tactics offered to freshman and sophomore students at the University shall be and is hereby required as a condition to his attendance as a student to enroll in and complete a course of not less than one and one-half units of instruction in military science and tactics each semester of his attendance until such time as he shall have received a total of six units of instruction or shall have attained full academic standing as a junior student." 293 U.S. 245 (1934). Michigan State College was one of fifteen land-grant colleges which intervened in this case.

Conference in 1932, had adopted resolutions requesting the exemption of members of that church from military service as conscientious objectors. Accordingly, these students petitioned the university, at the beginning of the fall term in 1933, to exempt them from such military training on the grounds of their religious and conscientious objection to war and to military training for war. Upon receipt of this petition, the Regents of the university refused to make military training optional, or to exempt these students.

When these students still refused to take the prescribed R.O.T.C. training course, the Regents gave formal notice of their suspension from the university, allowing them to apply for readmission at any time that they were willing to comply with all of the applicable regulations which governed matriculation and attendance. This lead to the action in the California courts and, ultimately, to an appeal from the highest court of California to the United States Supreme Court.

In the opinion of the Supreme Court, finding against the students, Mr. Justice Butler made the following observations:

> The clauses of the Fourteenth Amendment invoked by appellants declare: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law.' Appellants' contentions are that the enforcement of the order prescribing instruction in military science and tactics abridges some privilege or immunity covered by the first clause and deprives of liberty

> safeguarded by the second.....If the regents' order is not repugnant to the due process clause, then it does not violate the privileges and immunities clause. Therefore we need only decide whether by state action the 'liberty' of these students has been infringed.....The fact that they are able to pay their way in this university but not in any other institution in California is without significance upon any constitutional or other question here involved. California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education.....Plainly, there is no ground for the contention that the regents' order, requiring able-bodied male students under the age of twenty-four as a condition of their enrollment to take the prescribed instruction in military science and tactics, transgresses any constitutional right asserted by these appellants.[57]

In another case decided by the United States Supreme Court,[58] and in which some reference was made to the earlier Hamilton decision, the issue of substantive due process was successfully raised. As a result of the 1940 decision by the United States Supreme Court in the Gobitis case,[59] the legislature of West Virginia amended its statutes to require

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[57] ibid., at pp. 261, 262 and 265, 293 U.S. 245 (1934).

[58] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

[59] Minersville School District v. Gobitis, 310 U.S. 586. In this decision, the Supreme Court said that the State may "require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country." At p. 604.

that all public schools in the state conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the State in order to teach, foster, and perpetuate the ideals, principles and spirit of Americanism, and to increase the knowledge of the organization and machinery of the government. The State Board of Education was directed, with the advice of the State Superintendent of Schools, to prescribe the courses of study to advance these objectives. The Act also made it the duty of private, parochial and denominational schools to establish courses similar to those which were required by the public schools. Further, the State Board of Education, in January, 1942, adopted a resolution which said, in part,

> that the salute to the flag become 'a regular part of the program of activities in the public schools,' that all teachers and pupils 'shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly.'[60]

This resolution defined the form in which the salute was to be made. Several groups, such as the Parent and Teachers Association, the Boy and Girl Scouts, the Red Cross and the Federation of Women's Clubs objected that the form of the salute was "too much like Hitler's." Because of these objections, some modification was made, but no concession was made to the Jehovah's Witnesses, which had offered to

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[60] op.cit., at p. 626, 319 U.S. 624 (1943).

periodically and publicly give a special pledge in lieu of participating in the flag salute ceremony.

As stated, the West Virginia Act required that failure to conform to the provisions thereof would be considered as insubordination and dealt with by expulsion of the pupil. The statute denied readmission until the student would comply. In addition, the statute required that an expelled pupil be considered as unlawfully absent from school, and that he should be acted against as a delinquent. The parents or guardians of such a delinquent could also be acted against, with the possibility of a fine of up to $50 and a jail term of not more than thirty days levied upon conviction.

The Jehovah's Witnesses is an unincorporated religious sect which teaches that God's laws are superior to those laws which are enacted by a temporal government. Their religious beliefs include a literal interpretation of verses 4 and 5 of the twentieth chapter of the Book of Exodus, which says: "Thou shalt not make unto thee any graven image, or any likeness of anything that is in the heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them." Members of the Witnesses brought suit in the United States District Court asking that the State of West Virginia be enjoined from enforcement of this law and regulation against them, claiming that they consider the flag to be an "image" within the meaning of this command

and could not, therefore, comply with it.

The Witnesses pointed out that children of their faith had been expelled from the schools and had been threatened with exclusion for their failure to comply with this law. They further claimed that the school officials had threatened to send their children to reformatories which were established and maintained for the imprisonment of criminally inclined juveniles, and that the parents of these excluded pupils were threatened with prosecution, or were actually prosecuted, for causing the delinquency of their children. Their suit claimed that the state law and regulation created an unconstitutional denial of religious freedom and of freedom of speech and was, therefore, in direct opposition to the "due process" and "equal protection" clauses of the Fourteenth Amendment.

The lower courts found in favor of the Witnesses, and the State Board of Education brought an appeal to the United States Supreme Court. In the decision of this highest tribunal, finding again for the Witnesses, Mr. Justice Jackson pointed out that

> The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual.....The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child.....we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected route to aroused loyalties constitutionally may be short-cut

> by substituting a compulsory salute and slogan.....It is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard..... We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.[61]

It may be recalled that the Knight case concerned the suspension of thirteen Negro students from the Tennessee A & I University following their Mississippi convictions on charges of disorderly conduct resulting from their participation in a "freedom ride."

On April 8, 1960, the Tennessee Commissioner of Education, acting in his capacity as Chairman of the State Board of Education, had sent a letter to each institution of higher learning under the jurisdiction of the Board, in which he had formulated a rule governing the disciplining of students for misconduct. This rule was later ratified and approved by the entire Board. The regulation prescribed in the letter was interpreted by the President of Tennessee A & I University as requiring the prompt and mandatory

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[61] ibid., at pp. 630, 631, 639 and 642, 319 U.S. 624.

suspension or dismissal of any student who was convicted of a criminal offense involving personal misconduct, regardless of whether such conviction might have been appealed to a higher court. Although this ruling had not been invoked against students arrested and convicted for disorderly conduct in connection with the various lunch counter demonstrations in the city of Nashville at about the time that the ruling was issued, it was invoked to discipline the students in this case for activities taking place in May and June of 1961.

Chief Judge William E. Miller cited, with approval, the Dixon and Sherman decisions and said, in his decision

> .....the authorities uniformly recognize that the governmental power in respect to matters of student discipline in public schools is not unlimited and that disciplinary rules must not only be fair and reasonable but that they must be applied in a fair and reasonable manner..... If the regulation of April 8, 1960, means that a student convicted of any criminal offense regardless of its nature and seriousness should be automatically dismissed, and if the regulation so construed should be deemed a reasonable one, then there would be merit in the defendants' argument that the discipline committee was vested with no discretion and that its sole function was to determine whether or not the plaintiffs had actually been convicted of a criminal violation... But is this the correct construction of the regulation? The Court is satisfied that it is not.....In the first place, the unreasonableness of such a construction argues strongly against it. There are countless convictions for violation of the criminal law which do not necessarily reflect seriously upon the person so convicted. For example, it is inconceivable that the State Board intended in promulgating the regulation of April 8 that a minor traffic violation, such as overtime parking or running a traffic light, would

> subject a student to summary dismissal without any discretion whatever being vested in the schools involved.[62]

The substantive due process case of Hammond v. South Carolina State College[63] invoked the doctrine of prior restraint. Joseph Hammond and two fellow students, John W. Stroman and Benjamin F. Bryant, Jr., engaged in a demonstration on the campus of the South Carolina State College on February 23, 1967. These three students, accompanied by some three hundred other students, gathered on the campus of the school for the purpose of expressing their feelings regarding some practices of the college. The three students claimed that the demonstration was carried out in an orderly and peaceful manner. The college authorities maintained that the three students were the leaders of a noisy and disorderly event.

At the time of this demonstration, the college had in effect a rule which read

> The student body or any part of the student body is not to celebrate, parade, or demonstrate on the campus without the approval of the Office of the President. The Board of Trustees meeting in March of 1960 went on record as disapproving of demonstrations which involve violation of laws or of College regulations, or which disrupt the normal College routine.[64] (This was known as Rule 1 Section 4).

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[62] Knight v. State Board of Educ., at p. 179, 200 F. Supp. 174 (1961).

[63] Hammond v. South Carolina State College, 272 F. Supp. 947 (1967).

[64] ibid., at p. 948, 272 F. Supp. 947 (1967).

However, the President of the college had publicly delivered a written report on February 21, 1967, in which the students were assured that no rule deprived them of the constitutional right of free speech or the right of peaceful assembly.

As a result of the demonstration, each of the three students was notified by the Dean of Students, on February 24, 1967, directing them to meet with the Faculty Discipline Committee in his office on that same day, and charging them with violation of Rule 1, section 4, page 49, of the student handbook.

The three students then met separately with the Faculty Discipline Committee, at the time and place specified in the Dean's communication. Before the Discipline Committee's hearing, each student objected to the notice which he had been given, and each refused to answer questions on the ground that they desired the assistance of counsel. (One of the three felt that he might incriminate himself by answering the committee's questions.) The three students also demanded that they be allowed to confront their accusers and to be allowed to question them. The three students also made known to the committee that they had received notice of the hearing only a few hours prior.

The Faculty Discipline Committee did not wish to postpone the hearing, or to allow the students time to obtain counsel, or to allow the students a confrontation and questioning of the witnesses. However, the students did manage to establish that they were acting as

participants in a lawful assembly, and that in exercising their right to do so they would deny any violation of the rule in question. On the same day, and immediately following this hearing, each of the three students was notified that he had been suspended from the institution effective that day and until August 1, 1970, after which he might apply for readmission. However, readmission would be dependent on unanimous approval by the full membership of the Faculty Discipline Committee.

The students then requested a rehearing which was held on March 2, 1967. After this hearing they were advised that their suspensions would remain in effect but that they would be permitted to apply for reinstatement in August of 1967. Hammond and his fellow students then brought suit on March 10, 1967, before the United States District Court for the District of South Carolina, Orangeburg Division, in which they sought protection of their constitutional rights. On March 15, 1967, they asked the court to grant a temporary restraining order and that same day the court ordered their readmittance pending litigation, and ordered the college to show cause why these suspensions should not be given injunctive relief.

The case was finally heard in June, 1967, and the decision of Judge Hemphill was handed down in August. In finding for the students, the judge observed

> The controversy here revolves around the school rules of deportment and discipline. Their

> obvious purpose is to protect the authority and administrative responsibility which is imposed on the officers of the institution... colleges, like all other institutions, are subject to the Constitution. Academic progress and academic freedom demand their share of Constitutional protection. Here we find a clash between the Rules of the school and the First Amendment to the Constitution of the United States. The First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of the press. It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society will allow.'.....These rights of the First Amendment, including the right to peaceably assemble, are not to be restricted except upon the showing of a clear and present danger, of riot, disorder, or immediate threat to public safety, peace, or order.....Rule 1 is on its face a prior restraint on the right to freedom of speech and the right to assemble. The rule does not purport to prohibit assemblies which have qualities that are unacceptable to responsible standards of conduct: it prohibits 'parades, celebrations, and demonstrations' without prior approval without any regard to limiting its proscription to assemblies involving misconduct or disruption of government activities or non-peaceable gatherings.....It may well be that the conduct of these students would have warranted disciplinary action under some disciplinary rule such as Rule 4, but in point of fact they were not suspended under Rule 4. They were charged under Rule 1, they were given hearings under Rule 1, and they were suspended under Rule 1. In no way is it my intention to rule that school officials may not make disciplinary rules and enforce them. Most certainly they may. I am constrained to rule, however, that the rule under which these students were suspended was incompatible with the constitutional guaranties and is invalid.[65]

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[65] ibid., at pp. 949, 950, 272 F. Supp. 947 (1967). Rule 4, referred to in the court's decision, says: "Students are expected to conduct themselves as ladies and gentlemen at all times. Boisterousness, profanity, insubordination, unkempt appearance, and any other undesirable quality will not be tolerated and is not expected of students at the College."

The issue of substantive due process is perhaps nowhere more clear than it is in the case of Dickey v. Alabama State Board of Education.[66] In this case, Gary Clinton Dickey was a student in good standing at Troy State College during the 1966-67 school year. He had earned, at the end of the school year in June, 1967, 147 quarter hours toward a degree in English, which required 192 quarter hours according to the standards of Troy State College.

Dickey appears to have been an outstanding student at Troy State College since, during the school year 1966-67, he was chosen as an editor of the Troy State College student newspaper, The Tropolitan, and he was also chosen as editor-in-chief of the Troy State College literary magazine; and he was already serving as the copy editor of the college's annual student yearbook and was editor-in-chief of the student handbook. Dickey was also a member of a national honorary journalism fraternity.

Early in April, 1967, Dr. Frank Rose, the President of the University of Alabama, came under attack by a number of Alabama state legislators for his refusal to censor the University of Alabama student publication known as "Emphasis 67, A World in Revolution." This publication served as the program for a series of guest speakers and panel discussions held at the University of Alabama in March, 1967. Included in this publication were brief biographical sketches of the

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[66]Dickey v. Alabama State Board of Educ., 273 F. Supp. 613 (M. D. Ala. 1967).

participants and excerpts from the speeches of such persons as Secretary of State Dean Rusk, James Reston of the New York Times, Professor Robert Scalapino, Bettina Aptheker, Stokely Carmichael and General Earl G. Wheeler. Because Dr. Rose took a public stand in support of the right of the University students for academic freedom, he came under rather intense criticism of certain state legislators. The controversy was widely publicized by the newspapers and it became a matter of public interest throughout the state of Alabama.

Editor Dickey determined that The Tropolitan should be heard on this matter. Consequently he prepared and presented to the faculty advisor an editorial supporting the position which Dr. Rose had taken. Dickey was instructed by his faculty advisor not to publish such an editorial, and he then took the editorial to the head of the English Department at Troy State College, who approved the publication of the proposed editorial. When Dickey returned to his faculty advisor, he was again informed that the editorial could not be published. Dickey then took his case directly to the President of the college, Ralph Adams, who also decided that the editorial could not be published.

It was determined that the basis for the denial of Dickey's right to publish his editorial supporting Dr. Rose was a rule that had been invoked at Troy State College to the effect that there could be no editorials written in the school paper which were critical of the Governor of the State of Alabama or the Alabama Legislature. This rule did

not prohibit editorials or articles of a laudatory nature concerning either the Governor or the Legislature. This rule had come to be known as the "Adams Rule."

The faculty advisor then furnished substitute material concerning "Raising Dogs in North Carolina" for the purpose of publication in place of Dickey's proposed editorial. Dickey, as editor of The Tropolitan, then determined that the editorial on North Carolina dogs was not suitable, and acting against the specific instructions of his faculty advisor and the President of the college, arranged to have - with the exception of the title, "A Lament for Dr. Rose" - the space ordinarily occupied by the editorial left blank, with the word "Censored" diagonally across the blank space. Additionally, Dickey also mailed this censored editorial to a Montgomery newspaper which published it.[67]

Now Dickey had already made known his intention to attend Troy State College for the 1967-68 school year, beginning in September, 1967, by giving written notice as required by the college. On July 18, 1967, Dickey had received "Official Notice of Admission" from the institution, admitting him to the undergraduate division of the college for the fall quarter of 1967. However, on August 11, 1967, Dickey received a certified letter signed by the Dean of

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[67] see ibid., at p. 617, 273 F. Supp. 613 (1967), for a reprint of Dickey's editorial which was well written and appears to be in good taste.

Men of Troy State College which advised him that the Student Affairs Committee at the college had voted not to admit him "at this time."

Dickey then brought action in the United States District Court for the Middle District of Alabama seeking to have his suspension set aside. Chief Judge Johnson's decision noted

> Upon the verified complaint filed with this Court on August 16, 1967, and the matters alleged therein, this Court observed that, in cases involving suspension or expulsion of students from a tax-supported college or university, due process requires notice and some opportunity for a hearing before suspension or expulsion..... It was further observed in said order that, upon Dickey's verified allegations of deprivation of constitutionally guaranteed rights and where there is factual evidence of a clear and imminent threat of irreparable injury, judicial action was required.....the defendants were, by formal order made and entered on August 17, 1967, directed to rescind the action suspending or expelling Dickey without any notice of hearing and to afford him an administrative hearing as required by the constitutional principle of due process.[68]

The officials of Troy State College then rescinded the action taken by the Student Affairs Committee in suspending Dickey and, on August 21, 1967, notified Dickey that he would be given a hearing on the "charge of insubordination resulting from his refusal to comply with specific instructions of his Faculty Advisor in defiance of such instructions." The hearing was then conducted on August 25, before the Student Affairs Committee at which Dickey was present with his attorney, and at which witnesses appeared

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[68] ibid., at p. 615, 273 F. Supp. 613 (1967).

and were questioned. On August 28 Dickey was notified by the Troy State College Dean of Men that the Student Affairs Committee had decided that he would not be admitted for one academic year beginning with the fall quarter of 1967.

Dickey again returned to the United States District Court seeking injunctive relief from his suspension on the theory that his substantive rights of due process had been and were being deprived by reason of such suspension. The court, in finding for the student, enjoined and restrained the college from denying, upon the basis of his conduct, admissions to Troy State College and ordered the reinstatement of Dickey as a student beginning on September 11, 1967. In his decision, Judge Johnson made the following comments:

> .....the evidence in this case reflects that solely because it violated the "Adams Rule," Dickey's conduct, in acting contrary to the advice of the faculty advisor and of President Adams, was termed 'willful and deliberate insubordination.' This insubordination is the sole basis for his expulsion and/or suspension.
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> It is basic in our law in this country that the privilege to communicate concerning a matter of public interest is embraced in the First Amendment right relating to freedom of speech and is constitutionally protected against infringement by state officials. The Fourteenth Amendment to the Constitution protects these First Amendment rights from state infringement.....and these First Amendment rights extend to school children and students insofar as unreasonable rules are concerned.....Boards of education, presidents of colleges, and faculty advisors are not excepted from the rule that protects students against unreasonable rules and regulations... the conclusion is compelled that the invocation of such a rule against Gary Clinton Dickey that resulted in his expulsion and/or suspension from Troy State College was unreasonable.....The attempt to characterize Dickey's conduct, and the basis for their action in expelling him, as 'insubordination'

> requiring rather severe disciplinary action, does not disguise the basic fact that Dickey was expelled from Troy State College for exercising his constitutionally guaranteed right of academic and/or political expression.[69]

To date, these cases, particularly those recent cases based on the Fourteenth Amendment arguments of students who have suffered long suspensions or expulsion from a tax-supported institution of higher learning, have not been the subject of review by the United States Supreme Court. Should these judicial opinions, and particularly those of the Dixon, Esteban and Dickey cases, endure we should be able to determine the meaning of procedural due process as it presently pertains to student disciplinary cases. We must, at the same time, be mindful of Van Alstyne's warning that

> One may search the case reports in vain for some meaningful verbal encapsulation of procedural due process, for the Supreme Court 'has always declined to give a comprehensive definition of it, and has preferred that its full meaning should be gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise.' With a certain pardonable pretentiousness, the Court has suggested that due process of law reflects: 'certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard,' procedures which 'have been found to be implicit in the concept of ordered liberty,' and 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.'[70]

Judge William E. Miller, in his decision on the Knight case, also addressed himself to a statement of what

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[69] ibid., at pp. 617, 618, 273 F. Supp. 613 (1967).

[70] Van Alstyne, op.cit., p. 380.

constitutes due process of law. He noted

> .....'consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.' It was there further stated: 'The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation..... 'Due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.' It is 'compounded of history, reason, the past course of decisions.....'[71]

Summary

There is much evidence in the case literature concerning student disciplinary problems that the courts are not willing to interfere in those instances in which the rules are fair and reasonable and where those rules have not been enforced in an arbitrary or capricious manner. At the same time, it is clearly apparent from a review of the preceding cases that there is a considerable judicial concern for the safeguarding of students during serious disciplinary proceedings. That students are entitled to these safeguards is apparent from recent developments in the federal courts,[72] where the Fourteenth Amendment requirement for due process is applied

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[71] See Knight v. State Board of Educ., at p. 178, 200 F. Supp. 174 (1961), where the jurist was quoting from the Supreme Court opinion in Cafeteria and Restaurant Workers, etc., v. McElroy, 367 U.S. 886, 895, 81 S. Ct. 1743, 1748, 6 L.Ed.2d 1230.

[72] For a discussion outlining these developments, see note 37, Van Alstyne, op.cit., p. 378.

to state colleges and universities in the manner in which they discipline their students.

The weight of judicial opinion in the previously detailed cases would seem to indicate that procedural due process in student disciplinary proceedings, although varying somewhat with the individual case and its circumstances, must, at least, consist of the following:

1. A written notice containing a statement of the offense charged which, if proven, would result in suspension or expulsion of the student under the regulations of the college.

2. Reasonable notice of the time and place at which the student is to appear for a hearing, in order to permit him to prepare his defense against the charges.

3. The names of the witnesses against the student together with an oral or written report of the facts to which each witness testifies.

4. The right of the student charged to inspect in advance of the hearing any affidavits or exhibits which the college intends to submit at the hearing.

5. The right of the student charged to be represented by counsel of his choosing, should the student so desire.

6. An opportunity for the student charged to present his own defense against the charges and an opportunity to present oral testimony or written affidavits in his behalf.

7. The right of the student charged to hear the evidence presented against him, and his right (not his attorney) to question any witness who gives evidence against him.

8. The results and findings of the hearing should be presented in a report open to the student's inspection.[73]

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[73]The wording of items 1 through 8, above, closely follows that of the decisions in the Dixon and Esteban cases reported in this chapter.

While the requirements for procedural due process may, with a little effort, be determined by a review of these cases, the same cannot be said to be true for the requirements of substantive due process. Even with the decisions of the Hamilton, Barnette, Knight, Hammond, and Dickey cases as points of reference, it still remains extremely difficult for the layman to spell out what may be required by substantive due process. Here the writer relies heavily on a masterful discourse on that subject by Van Alstyne, who equates substantive due process, equal protection and the doctrine of unconstitutional conditions. Van Alstyne says

> While the problem is essentially one of equal protection, certain elements of substantive due process turn out to be of great significance in determining the minimum content of equal protection. A doctrine which encapsulates the vital connection between due process and equal protection, in testing the reasonableness of conditions which restrict a state-supplied opportunity, is the doctrine of unconstitutional conditions. (This doctrine) generally holds that enjoyment of governmental benefits may not be conditioned upon the waiver or relinquishment of significant constitutional rights, in the absence of some compelling social interest which justifies the subordination of those rights under the circumstances.[74]

Van Alstyne then sums up his review by saying

> .....the opportunity to maintain one's association with a university is undoubtedly protected by the equal protection clause. That whether particular university rules restrict

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[74]William W. Van Alstyne. "Student Academic Freedom and the Rule-Making Powers of Public Universities: Some Constitutional Considerations." Law in Transition Quarterly, 2(Winter, 1965), pp. 20-21.

that opportunity in an arbitrary fashion which denies equal protection is a function of several variables. That among these are: (1) the legitimacy of the purpose served by the rule; (2) the relative significance of that purpose in discharging the lawful functions of the university; (3) the substantiality of the connection between that purpose and the general or particular conduct forbidden by the rule; (4) the substantiality of the connection between that purpose and the punishment prescribed by the rule; (5) the relative importance to the individual student-citizen of the activity which he is forbidden to pursue; (6) the relative importance of the interest which will be denied him if he violates the rule; (7) the availability of alternative means for protecting the university's legitimate interests without so adversely affecting the student's educational opportunities.[75]

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[75] ibid., pp. 32-33.

CHAPTER IV

A REVIEW OF STATE UNIVERSITY PRACTICE IN PROVIDING DUE PROCESS

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A REVIEW OF STATE UNIVERSITY PRACTICE IN PROVIDING DUE PROCESS

Introduction

In Chapter III a number of court decisions were reviewed. These twenty-six cases were all concerned with the problem of lengthy suspension or expulsion of students from publicly supported institutions of learning. The majority of these cases concerned the disciplinary action accorded to students enrolled in institutions of higher learning. A review of the judicial opinions rendered in these cases lead to the identification of eight major items which appear to be required by the courts in assuring that due process of law has been accorded to those students who find themselves involved in circumstances of misconduct which may lead to their suspension and/or expulsion.

It is the purpose of this chapter to review the publications (specifically the undergraduate bulletins and the student handbooks) of the publicly supported colleges and universities of the State of Michigan with respect to the manner in which they meet the requirements set forth in these judicial opinions. Each school will be discussed individually, on the basis of their publications. There are many obvious differences between the way in which one such

institution states its method of student discipline as compared to the manner in which another institution does so.

In order to provide a common ground for comparison, a brief questionnaire[1] covering the major items developed in Chapter III was prepared and sent to the Deans of Students at the institutions included in this study. The results of this questionnaire are tabulated at the end of this chapter.

Since the State of Michigan presently has no statute which attempts to regulate, uniformly, the procedures which apparently must be observed in the process of student disciplinary action involving suspensions or dismissals, the responses from the various institutions of higher learning in the State of Michigan will be compared to two items: (1) the proposed model statute[2] as developed in the recent literature by a contributor to The Vanderbilt Law Review, and (2) to Section VI, Procedural Standards in Disciplinary Proceedings of the "Joint Statement on Rights and Freedoms

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[1] This questionnaire is reproduced as Appendix B in this study.

[2] _____. "College Disciplinary Proceedings." The Vanderbilt Law Review, 18(March, 1965), pp. 828-30. This proposed model statute is reproduced as Appendix C of this study.

of Students"[3] as expressed in a recent issue of The Bulletin of the American Association of University Professors.

It must be remembered that the judicial opinions, in the cases reviewed, required at least (1) a written notice, (2) a reasonable notice of the time and place of the hearing, (3) the names of the witnesses bringing the charges, (4) an opportunity for the student charged to inspect the affidavits and exhibits which the school intends to submit at the hearing, (5) the right of the student to be represented by counsel of his own choosing, (6) an opportunity for the student to present his own defense against the charges, (7) the right of the student charged to hear the witnesses presented against him, and his right to question any witness who gives evidence against him, and (8) a report of the results and findings of the hearing board.

Central Michigan University

This institution is one of the few state supported colleges and universities whose undergraduate bulletin

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[3]Appendix D, of this study, quotes from Section VI, Procedural Standards in Disciplinary Proceedings, "Joint Statement on Rights and Freedoms of Students." American Association of University Professors Bulletin, 53(December, 1967), pp. 367-68. This statement has been the joint product of a drafting committee comprised of representatives from the American Association of University Professors, United States National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors. This statement has been submitted to and endorsed by the USNASA and the AAUP. The other organizations are expected to take appropriate action during the current calendar year.

contains an abrogation of contract clause.[4] The current bulletin from Central Michigan University says:

> Matriculation at Central Michigan University is a privilege which carries with it responsibilities of university life..... When problems occur, the University may reserve the responsibility for guiding future behavior through official warning, social probation, administrative probation, or cancellation of matriculation.....[5]

In its student handbook, however, Central Michigan University outlines a specific judicial procedure for

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[4]This type of clause has its origin in the idea held by many college and university administrators that college matriculation is a privilege and not a right. William W. Van Alstyne, "Procedural Due Process and State University Students," U.C.L.A. Law Review, 10(1962-63), p. 370, shows this when he says that "since enrollment is extended solely at the pleasure and sufferance of the college, it may be withdrawn upon whatever conditions the college shall decide in its uncontrolled discretion to be sufficient. A classic statement of this rationale for denying due process was involved in university regulations relied upon in Anthony v. Syracuse University, where the university bulletin said: '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.'" However, Michael T. Johnson, "The Constitutional Rights of College Students," The Texas Law Review, 42(1964), p. 350, confirms that "There existed for many years a question whether or not the opportunity to obtain a college education was a 'right' or a mere 'privilege,' the latter not being entitled to constitutional protection. However, it is well settled today that, regardless of its classification, this is an interest which is entitled to constitutional protection.....even though the student's interest is not categorized as a 'legal right.'" This has been shown to be true by the decisions of many cases involving students enrolled in state supported, or public, institutions of higher learning.

[5]Central Michigan University Information Bulletin, Vol. 73, No. 4 (Mt. Pleasant: July, 1967), p. 71.

handling student discipline. This procedure includes (1) a notice to appear by means of summons, (2) the responsibility for investigation and the presentation of evidence to the court is either assumed or delegated by the office of the Dean of Students, (3) the student charged with misconduct shall have the right to counsel of his choice, but such counsel shall be a member of the academic community, (4) the student charged may present his own defense against the charges and call witnesses in his behalf, (5) a record of the case and the judgment reached shall be maintained, and (6) the method of appeal of an unfavorable decision is outlined for the student charged.[6]

The Student-Faculty Judicial Committee at Central Michigan University is composed of the Dean of Students, one representative from the Division of Student Personnel Services, two members of the teaching faculty appointed by the President of the University, the President and Vice President of the Student Body, plus two students who are appointed by the Student Senate. The Dean of Students serves as the Chairman of this Committee.[7]

Eastern Michigan University

This institution, as does Central Michigan University, also includes an abrogation of contract clause in its

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[6] Central Michigan University Student Handbook, 1965-66, Vol. 72, No. 1 (Mt. Pleasant: 1965), pp. 118-19.

[7] ibid., p. 116.

undergraduate bulletin. This clause states

> Permission to enroll at Eastern Michigan University is a privilege and carries with it certain responsibilities. The University reserves to itself, and the student concedes to it, the right to cancel enrollment and to require withdrawal whenever it becomes evident that the student is not conforming to the standards of scholarship and conduct established by the University.[8]

In its student handbook, Eastern Michigan University provides that the student charged with misconduct may have the right to an open or closed hearing, based on his decision; that the student so charged shall have a minimum of two days notice before his hearing; that the student charged shall have the right to know his accuser, that he shall have the right to a full opportunity to be heard in his own defense, and to present his side of the case and to present witnesses in his behalf; and that the accused student shall be notified of his right to appeal an unfavorable decision, and the method of initiating such an appeal.[9]

Eastern Michigan University claims that it is the only state institution of higher learning in Michigan having an all-student court. The members of this court are elected each year by the student body.[10]

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[8] The Undergraduate Catalog: Announcements for 1967-68. Eastern Michigan University, Vol. LVII, No. 3 (Ypsilanti, Mich., May, 1967), p. 11.

[9] Eastern Michigan University Student Guidebook, 1967-68, Ypsilanti, Mich.: Eastern Michigan University, 1967, pp. 72-3.

[10] ibid., p. 43.

Ferris State College

In its undergraduate bulletin for the current academic year, this institution advises that

> Admission to Ferris State College carries with it obligations in regard to conduct both on and off campus. Students are expected to act in such a manner as to be a credit both to themselves and to Ferris State College. Students are amenable to the laws governing the community as well as to the regulations prescribed by the School.....Any student, or group of students, who fails to observe either the general standards of conduct or any specific ruling adopted by Ferris State College or who acts in a manner not in the best interests of fellow students or the College shall be liable to disciplinary action by the proper authorities.....If a student is arrested and charged with a felony, he automatically will be suspended from college by administrative action pending disposition of the charge by the courts.[11]

It thus appears that a student who is charged with misconduct and found to be guilty, is subject to both the penalties of the civil statutes as well as sanctions by this institution if the student is charged with conduct unbecoming a Ferris State College student.

Nowhere in the publications (the undergraduate bulletin or the student handbook) of Ferris State College does there appear any outline of the procedural due process to which a student charged with misconduct may be entitled in those situations likely to lead to lengthy suspension or expulsion.

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[11] Ferris State College School Bulletin: Catalog for 1967-68, Vol. 43, No. 9 (Big Rapids: March, 1967), p. 68.

However, when students become involved in situations on the campus, the Security Officers prepare a report on the complaint. This report includes the name of the complainant and an outline of the charges against the student. Further written statements are obtained from other people who are knowledgeable. The information in this report is then forwarded to the Dean of Students. Notice of the hearing is usually given by telephone and the time and place of the hearing are established at this time. The student charged with misconduct is given the opportunity of having a hearing before the Dean of Students, the Assistant Dean of Students or before an all-college Committee on Discipline. The student has the opportunity to present whatever facts he may desire during the hearing. (This same procedure would occur regardless of whether the hearing is before one of the Deans, or before the Committee.) After the hearing a recommendation is forwarded to the President of the College for approval. When the President has approved, the student is notified in person of the decision, and confirming letters are forwarded.[12]

The student handbook of Ferris State College makes reference to the College Committee on Discipline,[13] but the make-up of this committee is outlined only in the undergraduate

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[12]Although the Ferris State College publications reviewed do not outline the judicial process by which its students are disciplined, the facts stated here were obtained from a letter to the writer from Assistant Dean of Students, James S. Young, Ferris State College, April 17, 1968.

[13]The Ferris State College Student Handbook (Big Rapids, Mich., 1967), p. 44.

bulletin. The committee is composed of the Dean of Students, the Academic Dean or his representative, a member of the Student Personnel Staff and a representative of the Student Government.[14]

It should be added that the Student Government of Ferris State College has established a sub-committee[15] which is in the process of developing a judicial system for this institution at this present time.

Grand Valley State College

The undergraduate bulletin for Grand Valley State College[16] is mute with respect to any aspect of student disciplinary action other than academic disciplinary action.

The student handbook published by Grand Valley State College,[17] however, is more explicit in outlining the procedures for carrying out disciplinary action. In the case of minor offenses, disciplinary action may be taken by the Dean of Student Affairs if he so desires, or the student involved may request that he be given a hearing. If no hearing has been held, the Dean of Student Affairs may (1) dismiss the matter with notice to the reporting party,

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[14]Ferris State College School Bulletin, op.cit., p. 41.

[15]Young, ibid.

[16]Grand Valley State College: Catalog 1967-1968-1969, (Allendale, Mich.: June, 1967), pp. 1-107.

[17]Student Handbook, Grand Valley State College, 1967-68, (Allendale, Mich.: August, 1967), pp. 1-72.

(2) determine the disciplinary action to be taken with notice to the student and a copy to the reporting party, or (3) request in writing to the Council of Order, with copies to the student and to the reporting party, that a hearing be held for purposes of determination of the case.[18]

When a hearing and determination by the Council of Order has been requested, the student handbook indicates that the hearing and determination on each case shall be in accord with the applicable provisions of the United Collegiate Organization charter and such further rules of procedure as it adopts. Each party applying for a hearing or being otherwise involved in a hearing will be given a copy of such rules. It is the intention of these rules to provide for a fair and adequate hearing after due notice. It is indicated that hearings of cases will be held only after (1) reasonable notice in writing to the accused student of the time and place of the hearing, (2) the Council of Order hears the witnesses and the accused in the presence of each other, and (3) a copy of every decision and recommendation of this council is promptly made to the college administration with a copy to the accused student. The accused student has a period of five days after the receipt of such notice to request, in writing to the Dean of Student Affairs, an appeal.[19]

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[18] ibid., pp. 46-47.

[19] ibid., pp. 61-62.

According to the Grand Valley State College student handbook, the Council of Order is composed of three to five student members, elected annually by the Student Assembly, and an administrative adviser, with alternate, appointed by the President of the College.[20] The appeal board consists of three persons, appointed by the President of the College, from among the college faculty, staff and students who have not previously been involved in the case.[21]

Lake Superior State College

The undergraduate bulletin for this institution[22] is mute with respect to any aspect of student disciplinary action, excepting academic disciplinary action.

In its student handbook,[23] however, this institution sets forth that as a minimum, the student involved in a disciplinary proceeding will (1) have notice of the nature of the proceeding against him, (2) have a hearing before a quasi-judicial body, at which the student has an opportunity to be apprised of the evidence against him, and to be allowed to present his defense against this evidence, (3) notification of the decision of the judicial body, and

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[20] ibid., p. 60.

[21] ibid., p. 48.

[22] Bulletin of Lake Superior State College: Announcement of Undergraduate Programs, College Year 1967-68, (Sault Ste. Marie, Mich., April, 1967), pp. 1-160.

[23] Laker Flags: A Handbook for Lakers, Lake Superior State College, (Sault Ste. Marie, Mich., September, 1967), pp. 1-32.

(4) notification of the right to appeal to a higher body.[24]

Although no indication of the composition of the student hearing board is found in either the undergraduate bulletin or the student handbook for Lake Superior State College, the Dean of Students advises that the student body annually elects seven students in the spring to serve as members of the court. These court members then elect their own chairman. Additionally, the members elected to the court are trained by the outgoing court in May and receive additional training in the fall. The court uses procedures established by Eastern Michigan University and revised to suit their own purposes.[25]

Michigan State University

The undergraduate bulletin for this institution, like those of several other Michigan institutions of higher learning, is mute with respect to any aspect of student disciplinary action other than that brought about for academic reasons.

In its publication, Academic Freedom for Students at Michigan State University, there is outlined a most complete judicial process to be followed in cases in which students

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[24] ibid., p. 29.

[25] Letter to the writer from Dean of Students, Bernard M. Smith, Lake Superior State College, April 15, 1968.

are charged with various types of misconduct.[26] There are four established judiciaries, the living unit judiciary, the governing group judiciary, the All-University Student Judiciary and the Student-Faculty Judiciary.[27]

The Living Unit Judiciary is composed of members who are selected by the members of the living unit in accordance with the constitution of that living unit. This judiciary has jurisdiction over those cases involving violation of regulations established by the hall or house, violation of regulations specific to all residences in a major governing group, and those violations of regulations established university-wide, when such violations are referred to it by the office of the Dean of Students. Appeals from this judiciary are referred to the All-University Student Judiciary.[28]

The Governing Group Judiciaries are the Men's Halls Associations, the Women's Inter-residence Council, the Interfraternity Council, the Panhellenic Council and the Intercooperative Council. These judiciaries have responsibility for judicial determination of both individual and group violations of university-wide regulations. Appeals from these judiciaries are directed to the All-University

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[26] Academic Freedom for Students at Michigan State University, Michigan State University, (East Lansing, Mich., March, 1967), pp. 10-20.

[27] ibid., pp. 12-19.

[28] ibid., p. 12.

Student Judiciary.[29]

The All-University Student Judiciary is composed of members determined according to the Constitution of the Associated Students of Michigan State University. The jurisdiction of this judiciary lies over violations of regulations of living group or governing group judiciaries, when the violator is not a member of the unit or group in which the violation occurred; violations of other regulations when referred to it by other judiciaries having proper jurisdiction, violations of the Constitution of ASMSU or an action of the Student Board of ASMSU, and the decision of constitutionality of actions of the Student Board of ASMSU, the constitutionality of any act taken by a student organization or governing group, and constitutional conflicts between campus organizations. Appeals from this judiciary are directed to the Student-Faculty Judiciary.[30]

The Student-Faculty Judiciary is made up of four students appointed by the Student Board, ASMSU, from among nominees submitted by the All-University Student Judiciary. Two of these students are juniors and two are seniors. Seven members of this judiciary are members of the faculty. The secretary of this judiciary serves ex officio, without vote, and is appointed by the Vice President for Student Affairs. The jurisdiction of the Student-Faculty Judiciary lies in those cases referred to it by the office of the Vice President

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29 & 30 ibid., pp. 14-15.

for Student Affairs, cases involving charges of academic dishonesty, and cases involving requests for readmission from suspension for non-academic reasons.[31]

All of the aforementioned judiciaries are expected to abide by specified procedural guidelines which include (1) a written notice to the student, seventy-two hours prior to the hearing, including notice of time and place of the hearing, statement of the charges to enable the student to prepare his defense, notice of the names of the witnesses who are responsible for reporting the alleged violation, (2) an opportunity for the student to appear, or not to appear, in person before the hearing and to call witnesses in his own behalf, (3) the right of the charged student to be accompanied by counsel of his own choice, but such counsel shall be a member of the academic community, (4) the right of the student to an explanation of the reasons for any decision adversely affecting him, and (5) notification of the right to appeal an unfavorable decision.[32]

A further comment by Robert R. Fedore, Assistant to the Vice President for Student Affairs, is of interest. He says:

> .....Actually, our students are subject to both student regulations and University ordinances which are similar to municipal laws. Generally, the University does not take additional action (what the students refer to as double jeopardy) for civil convictions unless the student presents a danger to himself or to the University

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[31] ibid., pp. 16-19.

[32] ibid., p. 11.

> community, or his presence clearly interferes and disrupts the functions of the University.[33]

Michigan Technological University

Michigan Technological University, like Central and Ferris, has an abrogation of contract clause in its undergraduate bulletin. This clause says

> .....Every student is expected to exercise good taste and good citizenship in all behavior and to accept personal responsibility for conducting himself so as to adhere to the accepted social standards of the University and community.....The University is rarely disappointed in this expectation. But the University must reserve the right to discipline any student for infraction of any rule, ordinance, or law or for any conduct damaging to him or to the University, whether or not explicitly covered by written rules, by such means as it may consider suitable, including suspension or dismissal.[34]

It appears, therefore, that a student who is charged with misconduct and found to be guilty, may be subject to both the penalties of the courts as well as sanctions by the institution.

In its outline of procedure for hearing student cases, Michigan Technological University provides that (1) the student shall receive written notice at least two days prior to a hearing, this notice to include a statement of the charges, (2) the student shall have the right to another

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[33]Letter to the writer from Assistant to the Vice President for Student Affairs, Robert R. Fedore, Michigan State University, April 23, 1968.

[34]Bulletin Announcing Undergraduate Programs for 1968-69 Academic Year, Michigan Technological University, Vol. 40, No. 2 (Houghton, Mich.: September, 1967), p. 41.

student as counsel, (3) the hearing shall be private unless the student requests otherwise, (4) reports of cases heard by the judiciary are open to the public with the names of the principals to the action omitted, and (5) the student is notified of his right to appeal an unfavorable decision and the manner in which the appeal is to be initiated.[35]

The Student Judiciary of Michigan Technological University consists of five upper class or graduate full time students appointed by the Student Council President, with the approval of two-thirds vote of the total membership of the Student Council. The Chief Justice is chosen from among the five appointed members, in a like manner.[36]

Northern Michigan University

Northern Michigan University, like Central, Ferris and Michigan Technological University, includes an abrogation of contract clause in its undergraduate bulletin. This clause states

> Matriculation at a college or university is a privilege and carries with it certain responsibilities. The university reserves the right to cancel a student's matriculation and to require withdrawal whenever it becomes evident that the student is not conforming to

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[35] Student Judiciary, Michigan Technological University, (Houghton, Mich.: undated ditto), p. 2.

[36] ibid., p. 1.

> the standards of scholarship and conduct established by the university.[37]

Both the undergraduate bulletin and the student handbook published by Northern Michigan University are mute with respect to itemized procedures intended to safeguard the granting of legal "due process" to the members of its student body who may be charged with various forms of misconduct or violation of regulations. However, Allan L. Niemi, Dean of Students, provides the following comment:

> 1. Student is notified orally at time he or she holds initial interview with someone in Dean of Students' office. The student is given an opportunity to read the formal charges plenty of time before the official hearing.
> 2. Currently we do not provide names of witnesses and their written testimony to the student, but are proposing a change which would provide such a provision.
> 3. The student may have anybody but an attorney represent him or speak in his behalf at the hearing.
> 4. At a preliminary interview, the student is presented the full evidence against him.
> 5. No formalized recording is made of the proceedings, but what records we do make regarding the situation are available for the student's information.[38]

Northern Michigan University has a regularly established Faculty Committee on Student Conduct. This committee is composed of three faculty members and two members of the Student Personnel Office. It is the responsibility of this committee to provide a fair and impartial hearing "according

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[37] Northern Michigan University Bulletin: Announcements 1967-68, Vol. LXVI, No. IV (Marquette, Mich.: 1967), p. 77.

[38] From letter to the writer from Dean of Students, Allan L. Niemi, Northern Michigan University, May 3, 1968.

to due process," for those cases which could result in a student being required to withdraw.[39]

Oakland University

Similar to the undergraduate bulletins of several other Michigan institutions of higher learning, the undergraduate bulletin of Oakland University[40] is mute with respect to any aspect of student disciplinary action, other than that for academic reasons. The student handbook, however, indicates that disciplinary action may be instituted with specific reference to the use of alcohol, falsification of University records and failure of the student to register his correct residence.[41]

The Oakland University student handbook does outline a series of judicial procedures which include (1) written notice seventy-two hours prior to the hearing of the charges, the circumstances surrounding the incident, and the time and place of the hearing, (2) the names of the witnesses against him, (3) the right of the charged student to be represented by counsel of his choice, so long as that person is a member

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[39] Student Handbook, Northern Michigan University (Marquette, Mich.: 1967), p. 12.

[40] Oakland University Catalog 1967-68, Vol. VIII, No. 1 (Rochester, Mich.: July, 1967), pp. 1-212.

[41] Student Handbook 1967-68, Oakland University (Rochester, Mich.: 1967), pp. 45-46.

of the academic community, (4) an opportunity to appear in his own defense, (5) notice of the decision and the reasons for the action, and (6) the right to appeal an adverse decision and the method of initiating such appeal.[42]

At Oakland University, the University Committee on Student Conduct is made up of three faculty members who are appointed by the Chancellor, two administrative officers also appointed by the Chancellor, and two student members (one of which is the Chairman of the Women's Judiciary and the other is selected by the Chancellor from a list of nominees submitted by the Commuter Council and the Dormitory Council.)[43]

Saginaw Valley College

Like the undergraduate bulletins of several other public colleges and universities in the state of Michigan, the undergraduate bulletin of Saginaw Valley College also contains an abrogation of contract clause. This clause says

> Attendance at Saginaw Valley College is a privilege and not a right. The college reserves the freedom to suspend or dismiss any student at any time when, in the considered judgment of the college authorities, such action is deemed advisable for the best interests of the college or the student.[44]

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[42] ibid., pp. 49-50.

[43] ibid., p. 50.

[44] Catalogue for 1967-68, Saginaw Valley College (University Center, Mich.: 1967), p. 29.

At this writing, Saginaw Valley College is still in the process of developing a "Code of Student Conduct,"[45] and there is no outline of procedural due process to which an involved student may be entitled in those situations likely to lead to a lengthy suspension or dismissal.

University of Michigan

In its general information bulletin for the 1968-69 academic year, this institution advises that

> Enrollment in the University carries with it obligations in regard to conduct, not only inside but also outside the classrooms, and students are expected to conduct themselves in such manner as to be a credit both to themselves and to the University. They are amenable to the laws governing the community as well as to the rules and orders of the University and its officials, and they are expected to observe the standards of conduct set by the University.
>
> Whenever a student or group of students fails to observe either the general standards of conduct as above outlined or any specific ones which may be adopted by the proper authorities, he or they shall be liable to disciplinary action by the proper authorities.[46]

It thus appears, as is the case at Ferris State College and Michigan Technological University, that a student who is charged with misconduct and found to be guilty is subject to both the penalties of the civil statutes as well as to sanctions by the institution. However, Shirley Strong,

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[45] From letter to the writer from the Dean of Faculty, Samuel Levine, Saginaw Valley College, March 5, 1968.

[46] General Information 1968-69, University of Michigan, Vol. 69, No. 30 (Ann Arbor, Mich.: September, 1967), pp. 116-17.

Advisor to the Joint Judiciary Council, says

> No, this is only a possibility in rare instances where a student's professional ethics might be in question, i.e., law school, medical school.[47]

There are a number of judiciaries in the student judicial structure at the University of Michigan. The Driving Court, the Co-op Judics, the Residence Hall Judics, the Sorority Standards Committees and the Fraternity Chapter Judics all deal with individual violations. The Panhel Judicial Standing Committee and the IFC Judicial Committee deal with sorority and fraternity violations. It appears that the Joint Judiciary Council is the main disciplinary body at this institution, since it accepts and hears appeals from the lower judiciary bodies on grounds of (1) new evidence, (2) violation of due process, (3) excessive penalties, (4) all cases that are waived to it by a lower judiciary body, (5) improper consideration of fact, and (6) non-student legislated regulation.[48]

The publication, University Regulations,[49] of this institution outlines in very broad form the nature of the judicial proceedings. This outline, however, is apparently directed toward student organizations. A mimeographed publication indicates a more specific listing of due process

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[47] In notes to the writer from Advisor to the Joint Judiciary Council, Shirley Strong, University of Michigan, April 24, 1968.

[48] Item 6 in this listing has not yet been approved by the University, ibid.

[49] University Regulations, University of Michigan, (Ann Arbor, Mich.: undated), pp. 12-13.

requirements as they affect the individual student.[50] These requirements currently include (1) notice to the accused student of the nature of his alleged violation, his right to witnesses, to a closed hearing, and his right to ask for the absence of any member who may be prejudiced in advance of his hearing, (2) the right of the accused student to know all of the evidence presented, (3) the right of the accused student to bring witnesses in his own defense, (4) the maintenance of a record of all cases and their decisions, and (5) the right of the accused student to appeal a decision with which he is dissatisfied and the procedure to initiate such an appeal.[51]

It should be noted, at this point, that the non-academic judicial structure at the University of Michigan is currently under revision. Article VIII of the proposed Constitution of the Joint Judiciary Council has this to say about procedures:

> Procedures: Rules of procedure shall be as herein provided, and may be modified through bylaws or by amendments to this Constitution.
>
> > Section 1: The Council will pursue such enquiry as may be necessary to reveal the relevant facts in such fashion as to ensure a fair and equitable hearing to any student or group charged with breach of properly student passed rules or regulations.
> >
> > Section 2: Council members shall not discuss or review matters under consideration

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[50] Due Process: Joint Judiciary Council, University of Michigan (Ann Arbor, Mich.: mimeo., February, 1967).

[51] ibid.

outside of the hearing itself. Failure to observe this constitutional provision will render such member subject to disciplinary action by the Council.

Section 3: All information presented to the Council for consideration must be given with a bona fide signature.

Section 4:
(1) No disciplinary action is valid, unless the student disciplined has, before such action, been shown a copy of this set of rules, and has signed it.
(2) Disciplinary proceedings must accord the rights of due process to all student defendants. These rights include:

a. The right to an impartial tribunal, which in reaching its decision considers only the arguments and evidence offered to it in the presence of the student defendant.
b. The right to be fully informed in writing of the nature of the charges made, and the evidence to be offered in support of these charges, sufficiently in advance of the hearing to permit preparation of an adequate defense.
c. The right to rebut and to cross-examine all hostile evidence, and to offer evidence and argument in one's own behalf.
d. The choice of a public or a closed hearing.
e. The right to invite others to assist in preparing and waging one's defense.

(3) No student may be disciplined for violating any rule unless that rule has, at the time of his alleged offense, been asserted by an autonomous student body to be its own responsibility, to be enforced independently of non-student ratification or veto.
(4) Only a student judiciary, or non-student body whose decisions are appealable to student judiciaries, can impose discipline on a student for any non-academic offense; the appropriate student judiciary must grant a full hearing to all who appeal disciplinary action by a sub-ordinate non-student body.

(5) All actions of student judiciaries may be appealed to Joint Judiciary Council (including any refusal to hear appeals under (4), supra.).
(6) All judiciaries shall put the burden of proof on those alleging that a violation of regulations has occurred; they shall make written findings of fact in every case, and shall keep a written record of their proceedings.

Section 5: The Council shall provide the student appearing before it with a statement defining the composition and authority of the Council and the channel of appeal available.

Section 6: After arriving at a decision the Council will, as promptly as possible, inform the defendant, the complainant and any lower judiciary involved in writing of the disposition of the case.

Section 7: The Daily Official Bulletin shall be used periodically for informing the campus of action taken and procedures adopted by the Council. Such notification is to be in the form of anonymous summary when the case involves an individual. In a case involving a group, the facts of the case and the penalty will be announced in the Daily Official Bulletin of the Michigan Daily.

Section 8: The Council may reconstitute itself as an all male or all female group at, and only at, the student's request. A quorum shall be the entire membership eligible to sit on the reconstituted body.[52]

The publications of the University of Michigan indicate that the Joint Judiciary Council is composed of ten students. Shirley Strong advises that the members are selected by an interviewing board which is composed of two members of the Student Government Council and two members of the Joint

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[52] Constitution of the Joint Judiciary Council, University of Michigan (Ann Arbor, Mich.: mimeo., March 7, 1968), pp. 3-4.

Judiciary Council and that the slate is then approved by the Student Government Council. Mrs. Strong further advises that currently there is no appeal board, and all appeals from the decisions of the Joint Judiciary Council are made directly to the Vice President for Student Affairs.[53]

Wayne State University

Like those of many other Michigan institutions of higher learning, the undergraduate bulletins of the several colleges comprising Wayne State University are mute with respect to student disciplinary action, except for academic disciplinary action.

The student handbook of this institution,[54] however, outlines a number of procedures with respect to student conduct. These procedures, designed to provide the student with the protection of due process, include (1) a written notice to the student in advance of the hearing so as to

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[53]Notes to the writer, Strong, loc.cit. In an accompanying letter to the writer, under date of April 24, 1968, Mrs. Strong says: "As you are probably aware the University non-academic judicial structure is currently under revision.....enclosed is the most recent revision of the Joint Judiciary Council's Constitution. This constitution has not been accepted by the University at this time, but may offer ideas on current student thought in the area.....The students are striving for total authority in both the legislation and adjudication of non-academic regulations as evident in the proposed constitution. A presidential commission is studying the total area of student involvement including student government and student judiciaries, but at this point no new structure has been approved by all the appropriate parties."

[54]Student Activities Manual of Policies and Procedures, Wayne State University (Detroit, Mich.: November 8, 1966), pp. 1-76.

afford reasonable time for the preparation of his defense, (2) the student is permitted to be represented by counsel of his own choosing, (3) the student is to be allowed to testify in his own defense and to present witnesses in his behalf, and (4) the student will be notified of his right to appeal and the procedure for initiating an appeal.[55]

At Wayne State University responsibility for the handling of student discipline lies with the Council of Deans. As a practical matter, this responsibility has been delegated to a standing Committee on Student Conduct. The student handbook indicates that this standing committee is made up of the Dean of Students, as Chairman, the University legal officer, two academic Deans, one of whom is the Dean of the college or school in which the accused student is enrolled, one faculty representative from the University Council, and one student representative from the Student-Faculty Council.[56]

Appeals from the decisions of the Committee on Student Conduct, where it is alleged that the rights of the student were violated in either the adjudication or administration of the action, are heard by the Student-Faculty Council.

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[55] ibid., pp. 62-63.

[56] ibid., p. 61. In a note to the writer from the Dean of Students, J. Duncan Sells, Wayne State University, May 11, 1968, it is indicated that the makeup of the standing committee has been changed. The committee now consists of three students nominated by the Student-Faculty Council, three faculty members nominated by the University Council, and the committee is chaired by a Dean not in the subject student's college.

The membership of this Council consists of eighteen students and eight faculty members. Eight of the student members are chosen in a University-wide election. Ten of the student members are chosen by and from the respective College/School councils or boards in any manner that they see fit. One student is to be selected from each of the College/School component units. The eight faculty members of this Council are appointed by the President of the University, with the advice of the Steering Committee of the University Council. The appointees are selected in such a manner as to maintain an equitable pattern of representation among the component units of the University.[57]

Western Michigan University

Western Michigan University is one of several of the state supported institutions of higher learning that includes an abrogation of contract clause in its undergraduate bulletin. This clause says

> Admission to the University is a privilege that carries with it certain responsibilities. The University reserves the right to cancel matriculation and to require withdrawal whenever it becomes evident that the student is not conforming to the University's standards of scholarship and conduct.[58]

In its student handbook, Western Michigan University outlines disciplinary procedures. Under these procedures,

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[57] ibid., pp. 70-72.

[58] Undergraduate Catalog 1967-68, Western Michigan University, Vol. 62, No. 4 (Kalamazoo, Mich.: April, 1967), p. 15.

the student charged with an offense is entitled to (1) a written notice of the offense charged at least forty-eight hours prior to a hearing, including the names of the person or organization initiating the charge and specifying the time and place of appearance before a hearing board, (2) a list containing the names of the members of the hearing board and the right to challenge any member of the board for bias or prejudice, (3) to present his own defense to the charges and to present witnesses in his own behalf, (4) to a written copy of the result and recommendation of the hearing board, and (5) to be given notice of the right and the procedure to be followed in order to appeal an adverse decision of the hearing board.[59]

The student may appeal an adverse decision to the University Discipline Committee from one of the lower judiciary committees. (These are the Student Motor Vehicle Appeals Committee, the Residence Hall Discipline Committees, the Women's Discipline Committee, the Men's Discipline Committee, the Inter-Fraternity Council Judicial Board, and the Panhellenic Council.)[60] Final appeal in all cases is to the President of the University. Nowhere in the publications of this University (the undergraduate catalog or the student handbook) does the composition of the original hearing boards, or the composition of the

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[59] Code of Student Life, Western Michigan University (Kalamazoo, Mich.: June, 1966), pp. 18-19.

[60] ibid., pp. 16-18.

University Discipline Committee, appear.

Survey of Due Process Procedures in State Colleges and Universities of Michigan

The preceding part of this chapter has been devoted to determining the method in which each of the state supported institutions of higher learning in Michigan are procedurally concerned with the problem of student discipline. In doing so, reference has been made to the undergraduate bulletins, student handbooks, other publications of these institutions and information given to the writer by various officers of these institutions. The outlines of due process obtaining to the individual student in each of these institutions has been identified. Additionally, the writer has tried to indicate the composition of the disciplinary bodies when that information has been given.

It became evident that there are many rather obvious differences between the way in which one institution states its disciplinary procedure as compared to the manner in which another institution does so. It followed, therefore, that there should be some common ground upon which these institutions could be compared. Accordingly, each Dean of Students, or Vice President for Student Affairs, at the institutions covered in this study were asked to respond to a brief questionnaire[61] concerning the major items

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[61] See Appendix B.

summarized in Chapter III. Additionally, each such official was asked to indicate whether or not he felt that some form of state legislation, similar to the proposed model statute,[62] would be helpful in the area of student suspension or dismissal. The responses to the questionnaire were also compared to Section VI, Procedural Standards in Disciplinary Proceedings of the "Joint Statement on Rights and Freedoms of Students," as expressed in a recent issue of The Bulletin of the American Association of University Professors,[63] as indicated at the beginning of this Chapter.

The results of this survey are shown in Table I on the following page.

In the state of Michigan there are thirteen colleges and universities that are tax-supported and were included in this study. Of the thirteen institutions of higher learning, all responded to the survey instrument.

Two institutions out of the thirteen responding to the survey, or 15%, reported that a student accused of misconduct was not given a written notice, in reasonable time, of the place and time at which he was to appear for a hearing.

Of the thirteen institutions responding to the survey, only two, or 15%, reported that the accused student was not furnished with the names of the witnesses who brought the charges against him. One Dean of Students indicated

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[62] See Appendix C.

[63] See Appendix D.

TABLE I

DUE PROCESS PROCEDURES IN STATE COLLEGES AND UNIVERSITIES IN MICHIGAN

Item	Institution														
	A	B	C	D	E	F	G	H	I	J	K	L	M	1*	2#
1. Accused student receives a reasonable notice in writing of the time and place to appear for a hearing, together with an explicit statement of the offense charged.	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
2. Accused student is given the names of witnesses bringing charges, together with an oral or written report of the facts to which each witness testifies.	N	Y	Y	Y[6]	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	3
3. Accused student has the right to be represented by counsel of his choice, whether such counsel is a member of the faculty, staff or student body of the college, or an attorney.	N	N	Y	Y	Y	4	N	4	N	Y	Y	Y	N	Y	Y
4. Accused student permitted to inspect in advance of hearing any affidavits or exhibits which the college intends to submit at the hearing.	N	Y	N	N[7]	Y	Y	N	Y	Y	Y	Y	Y	Y	3	3

TABLE I (Continued)

DUE PROCESS PROCEDURES IN STATE COLLEGES AND UNIVERSITIES IN MICHIGAN

Item	Institution														
	A	B	C	D	E	F	G	H	I	J	K	L	M	1*	2#
5. Accused student has the opportunity to present his own defense against the charges, and to present oral testimony or written affidavits of witnesses in his own behalf.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
6. Accused student is permitted to question witnesses who give evidence against him.	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
7. Results and findings of the hearing are presented in a report which is open to the accused student's inspection.	Y	Y	N	Y	Y	Y	Y	4	Y	Y	Y	Y	Y	Y	Y
8. In your opinion, would the adoption of such a statute (proposed model statute) by the Michigan legislature be a helpful step in assisting your college with problems of student disciplinary procedures?	N	Y	Y	Y	Y	N	N	N	4	Y	N	N	N	5	5

TABLE I (Continued)

DUE PROCESS PROCEDURES IN STATE COLLEGES AND UNIVERSITIES IN MICHIGAN

Notes:

1* This column indicates the position of the "Proposed Model Statute," reproduced as Appendix C, with respect to the first seven survey items. The eighth survey item does not apply.

2# This column indicates the position of the "Joint Statement on Rights and Freedoms of Students," reproduced as Appendix D, with respect to the first seven survey items. The eighth survey item does not apply.

Y Indicates a "Yes" response to the survey item.

N Indicates a "No" response to the survey item.

3 Indicates that the response to the survey item was not available.

4 Indicates that reference should be made to the discussion of this survey item in the chapter material.

5 Indicates that this survey item did not apply to the materials contained in Appendices C and D.

Y[6] No written information is forwarded.

N[7] No opportunity has developed yet. If presented with demand - the student would be allowed.

that "no written information is forwarded."

Five of the thirteen institutions responding to the survey, or 38.5%, reported that the student accused of misconduct was not entitled to representation by counsel of his choice. This may be somewhat misleading. All of the State colleges and universities in Michigan reported that a student accused of misconduct and required to appear before a hearing board was entitled to be represented by counsel. However, only seven of the thirteen institutions concerned in this survey, allowed such counsel to be an attorney. The other six institutions required that the counsel must be a member of the academic community.

Four institutions out of the thirteen responding to this survey, or 30.7%, did not allow the accused student to inspect, in advance of his hearing, any affidavits or exhibits which that institution intended to introduce at the hearing. One Dean of Students, at a relatively new college, made the following comment after entering a "No" response to this item:

> No opportunity has developed yet. If presented with demand - the student would be allowed.

All of the state supported colleges and universities in Michigan, or 100%, reported that they allowed the accused student an opportunity to present his own defense before the hearing board, and to present oral testimony and written affidavits of witnesses on his behalf.

Only one of the thirteen institutions responding to the survey, or 7.6%, indicated that the student accused of

misconduct was not permitted to question, or cross-examine, the hostile witnesses who presented evidence against him.

Of the thirteen institutions responding to this survey only one school, or 7.6%, indicated that either no record of the hearing was kept or that if such a record was maintained it was not open to the accused student's inspection.

Seven of the thirteen institutions who replied to this survey indicated by a "No" response that they did not favor the idea of the Michigan Legislature adopting any statute providing for the uniformity of student disciplinary procedures throughout all of the state supported colleges and universities. Thus, 53.8% of the respondents were against anything resembling the "Proposed Model Statute." Some of the comments in regard to this survey item may be of interest. One Administrative Assistant of Student Personnel Services said:

> Thank you for sending the proposed model statute for our attention and response. This document in itself is not only interesting, but certainly opens the door for further discussion of many issues regarding judicial proceedings on university campuses. At this point we feel we are not in a position to advocate such a model either favorably or unfavorably.

The Assistant to the Vice President for Student Affairs at another institution said:

> The statute which you refer to does not seem necessary for our situation under the Constitution of the State of Michigan.

The Dean of Students at a third institution said:

> The model statute would be of no help to us here in Michigan. In fact, it would complicate our procedures immeasurably since we now have students only involved in our disciplinary cases, with not even faculty, let alone legal counsel, involved. I also have serious doubts as to the constitutionality of such legislative action in Michigan since each state university has been granted constitution status by the people of Michigan and thus are authorized to make their own rules, regulations, ordinances, etc.

The Vice President of Student Affairs at a fourth university made this comment:

> Do not know quite how to answer this one - the proposal doesn't outline much that is different from present procedures.....So, in a way, it may not help but neither would it do any harm. I do not approve it, nor do I wish to 'campaign for it.'

Finally, it appears that the due process procedures currently in use in the public institutions of higher learning in the State of Michigan, at least in the larger universities, compare favorably with, or exceed, the provisions suggested by both the "Proposed Model Statute" and the "Joint Statement on Rights and Freedoms of Students."

CHAPTER V

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

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SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Introduction

> It is a matter of common knowledge that college age Americans are being encouraged to continue their formal education, at least through the baccalaureate level, with an intensity never before observed. These young people are assured that their prospects for future success are directly related to their level of achievement in the classroom. This emphasis on extended schooling is obviously well placed for many students, and their interest in being allowed to pursue and complete a program of study is a vital one. Institutions of higher learning have a correlative vital interest as they meet and cope with burgeoning enrollments - the maintenance of order and discipline among their students, including the power to expel and to administer other appropriate punishment. Actually of course, neither the individual student's interest in completing his education nor the individual college's interest in maintaining reasonable discipline are phenomena originating in the current emphasis on higher learning. But the sheer size of present and predicted enrollments, brought on both by population increase and by the apparent prerequisite of college training to financial and cultural fulfillment, may make the reconciliation of these sometimes opposing interests more significant to society as a whole than ever before.[1]

Summary

The stated purpose of this study was to ascertain the legal framework within which the publicly supported degree

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[1] _____. "College Disciplinary Proceedings." The Vanderbilt Law Review, 18(March, 1965), p. 819.

granting colleges and universities of the State of Michigan are privileged to exercise discipline which may result in either the lengthy suspension or expulsion of their students. An adjunctive purpose of this study was to determine the extent to which these same institutions are presently observing this framework in carrying out the disciplinary function.

The institutions of higher learning with which this study was concerned included (1) Central Michigan University, (2) Eastern Michigan University, (3) Ferris State College, (4) Grand Valley State College, (5) Lake Superior State College, (6) Michigan State University, (7) Michigan Technological University, (8) Northern Michigan University, (9) Oakland University, (10) Saginaw Valley College, (11) The University of Michigan, (12) Wayne State University, and (13) Western Michigan University.

The law which regulates public higher education, and has an impact on student disciplinary action, consists of: (1) the Federal and State Constitutions, (2) the Federal and State statutes, (3) the administrative rules and regulations of the colleges and universities, as agencies of state government, and (4) the "common law" as derived from the decisions of the federal and state courts.

The difficulty in developing regulations as well as the procedures for the enforcement of the regulations is due to the coexistence of two basically different concepts of the relationship between a university and its students. One

such concept is represented by the phrase in loco parentis. This quasi-familial type of relationship generally leads to nonspecific rules and to informal procedures for the enforcement of the rules. The other concept looks on the student as a constituent of the university. Here higher education becomes a government service (in the case of the tax-supported schools) or a contracted service (in the case of privately operated schools) to which the consumers have "rights." In this governmental concept the direction is toward codified regulations and formalized procedures of an adversary nature to determine the guilt of an independent actor and the appropriate sanctions to impose. It was noted also, that at least one authority is suggesting the emergence of a third such concept, characterized as a fiduciary relationship.

> It can probably be safely assumed that the vast majority of incidents of college or university discipline are settled completely within the administrative machinery of the school concerned. This should continue to be true. But it has been by no means uncommon for students to seek the aid of the courts in their efforts to have adverse decisions by school authorities reversed. Generally, courts have been understandably reluctant to intervene in matters which possess, in the view of the judges, so much of the appearance of parent-child relationships. There has developed, however, a significant body of case law in which the courts have wrestled with this problem, and the decisions have evolved some reasonably discernible rules.[2]

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[2] ibid.

There exist several legal theories which are used to explain the source of the authority which a college or university has to discipline its students. The contract theory, indicating a contractual agreement between the university and the student (parties of obviously disparate bargaining strength), has generally resulted in the courts finding for the institution when students have brought suits seeking redress from unfair disciplinary action.

> The use of contract logic painfully obscures the realities of the college-student relationship. Students and colleges do not meet in an open market, like two merchants, to negotiate whether the agreement will be or will not be terminable at the will of the college. To make believe that they do is to indulge in myths. And this myth may be highly detrimental in its effect upon students confronted with no legal redress against expulsion for questionable reasons or with unfair procedures in inflicting it. Dismissal from college affects a student's life too drastically to be left to even the barest possibility of arbitrary action by college administrators. Expulsion carries with it an ineradicable stigma which usually prevents admission to another institution, with the result that a student's chances for higher education may be gone forever. This is much too high a price to pay for a threadbare legal doctrine that blocks judicial review.[3]

The in loco parentis theory has, likewise, resulted in the courts finding for the schools in disciplinary actions. The application of a constitutionally derived doctrine to student disciplinary cases has resulted in the state university, as an agency of state government, becoming subject to all of the

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[3]Sol Jacobson. "The Expulsion of Students and Due Process of Law." Journal of Higher Education, 34(1963), pp. 254-255.

restrictions, both substantive and procedural, that generally circumscribe governmental action.

There has been no question about the right of the college or university to make rules and regulations and to impose sanctions for the violations of those rules when such rules are concerned with the performance of academic requirements and standards of scholarship. In the past the courts have appeared reluctant to interfere in cases of college disciplinary action involving alleged misconduct on the part of the student because of the historical independence of the universities from intervention by outsiders in their internal affairs. This situation, however, is changing as may be seen in the already large and rapidly growing number of decisions in which the courts have upheld the right of the student to "due process of law."

> Education of the youth by public and private colleges and universities is a highly important function in which society has a profound interest. The interest is profound because these educational institutions exercise crucial powers in shaping the character not only of the individual but of society itself. Not the least important aspect of the society's character is its moral complexion. Due process of law is a normative precept implicit in a concept of essential fairness rooted in the tradition and conscience of our society. Is it too much to expect colleges to abide by those precepts of fairness which the society as a whole prescribes for itself, when, legislatively and administratively, it imposes social controls?[4]

Cases involving state colleges and universities, unlike those concerning private institutions of higher education,

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[4] ibid.

are subject to constitutional considerations, and in recent years an increasing number of students have brought their cases before the federal courts under the Fifth and the Fourteenth Amendments.

In the absence of statutory law giving some degree of uniformity in student disciplinary procedures throughout all state supported colleges and universities, it is necessary to rely upon both constitutional law and "common law."

Research into a large number of student disciplinary cases which have been brought into state and federal courts, and particularly the twenty-six cases reviewed in this study, lead to the inescapable conclusion that (1) the constitutional rights of a student cannot be unduly abridged, but the university does have some latitude in maintaining discipline, (2) a university can enforce reasonable rules to insure that it is able to maintain an orderly educational climate, and (3) that a university administration cannot dismiss a student without a fair hearing.

In the light of the decisions in these twenty-six cases, and particularly those decisions in the Dixon, Knight, Esteban and Dickey cases, it becomes crystal clear that there is a considerable judicial concern for the safeguarding of students during serious disciplinary proceedings. The federal courts, in the decisions of the cases just mentioned, have identified the components of a "fair" hearing to be: (1) a written notice explicitly

detailing the offense charged; (2) adequate time prior to the hearing for the student to prepare his defense against the charges; (3) providing the accused student with the names of the hostile witnesses and the nature of their testimony; (4) the right of the student to inspect the affidavits and/or exhibits which the school intends to submit at the hearing; (5) the right of the student to be represented by counsel of his own choosing; (6) an opportunity for the student to present his own defense, including witnesses, against the charges; (7) the right of the student to hear the evidence against him and to question the witnesses who present such evidence; and (8) the presentation of the results and findings of the hearing in a report open to the student's inspection.

The research in this study, supported by the decisions in those cases involving substantive due process, has disclosed that whether or not university rules act in an arbitrary manner is a function of the following variables: (1) the legitimacy of the purpose served by the rule; (2) the relative significance of that purpose in discharging the lawful functions of the university; (3) the substantiality of the connection between that purpose and the general or particular conduct forbidden by the rule; (4) the substantiality of the connection between that purpose and the punishment prescribed by the rule; (5) the relative importance to the individual student of the activity which he is forbidden to pursue; (6) the relative importance of the interest which will be denied him if he

violates the rule; and (7) the availability of alternative means for protecting the university's legitimate interests without so adversely affecting the student's educational opportunities.

The official publications of the colleges and universities supported by the taxpayers of the State of Michigan with which this study was concerned, specifically the undergraduate bulletins and the student handbooks for the current academic year, were used as an initial basis for the determination of the "due process of law" accorded to their students under their disciplinary procedures.

Because of the many differences which were found in the manner in which one institution reported its disciplinary process as compared with the manner in which another school did so, it was felt necessary to compare the various state supported colleges and universities on a more common ground. Each institution was then queried specifically on the items identified as being components of a "fair" hearing and, additionally, their responses were compared to two other proposals being made in this same area. Lastly, each institution with which this study was concerned was asked whether or not it would be advantageous for the Michigan Legislature to consider the adoption of a statute which would provide uniformity in the procedures which might lead to the lengthy suspension or dismissal of a student.

Conclusions

Based on the published information, and the responses of the several colleges and universities to the survey instrument, it is noted that there exists a considerable variation in the degree to which each of these institutions meet the requirements of "common law" with respect to the components of a "fair" hearing. In essence, those schools having the larger enrollments much more closely meet these requirements, while the schools having the smaller enrollments vary considerably in doing so.

The research of existing policies and procedures for providing student hearings, as outlined in their official publications, did not reveal conclusive evidence for the existence of these variations in the procedural due process accorded the students.

With the exception of Saginaw Valley College, it seems to be evident from this research, that those publicly supported colleges and universities of Michigan that were formerly under the control of the State Board of Education are those same institutions which today retain the abrogation of contract clause in their undergraduate bulletins; while the other publicly controlled institutions do not have such a clause. It can only be conjectured by the writer that the retention of this clause is a holdover from the days of such control on the part of those institutions, and that the time has come for a reevaluation of this item.

It is apparent, from the responses to the survey instrument, that the due process procedures presently in use in the public institutions of higher learning in the State of Michigan in general compare favorably with, and in some instances exceed, the provisions suggested by both the "Proposed Model Statute" and the "Joint Statement on Rights and Freedoms of Students."

Although, on the basis of the results of the survey of the institutions in this study, all such colleges and universities permitted a student accused of misconduct to be represented by counsel at his hearing, five of these schools restricted such counsel to one who is a member of the academic community.

The results of the survey indicate a desire, on the part of disciplinary authorities in Michigan's public colleges and universities, to continue to establish and use such procedures as they see fit rather than to come under any form of state legislation which would provide for uniformity of disciplinary proceedings at all of the state schools.

Recommendations

Based on the research reported herein, the following recommendations appear to be in order:

1. That all publicly supported colleges and universities in Michigan review and revise their student disciplinary hearing procedures to include: (a) a written

notice explicitly outlining the charges; (b) provide a reasonable notice prior to the hearing to allow the accused student to adequately prepare his defense; (c) the right of the accused student to know the names of his accusers and the nature of their testimony; (d) the right of the accused student to be represented by counsel of his choice, without restricting such counsel to membership in the academic community;[5] (e) the right of the accused student to inspect in advance of the hearing any affidavits or exhibits which the school intends to submit at the hearing; (f) the right of the accused student to question those witnesses who give evidence against him; and (g) the right of the student to inspect the results and findings in the report of the hearing board.

2. That all institutions of higher learning operated by the State of Michigan, as well as the Michigan Legislature, give serious consideration to the enactment of such legislation as will reflect the basic components of a "fair" hearing. This will insure that a student accused of misconduct of a serious nature at one such institution will receive exactly the same opportunity for treatment of his case as would a student similarly involved at any other state supported school. (The idea expressed by one Dean

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[5]In a serious case, a disciplinary hearing becomes a quasi-legal matter of great importance to the accused student. It would seem, therefore, that the student should have the right to choose legal counsel if he so desires, rather than be forced to depend on the somewhat dubious advice of a counselor who, although a member of the academic community, may not be so trained and experienced.

of Students that such legislation would not be constitutional is, in the opinion of the writer, open to question inasmuch as in matters where the general laws and welfare are affected, the attorney general has held that the legislature has the same powers of legislation as over any other portion of the state. In addition, the Michigan courts have also held this view.[6]

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[6]Attorney General, Opinion No. 227, Dec. 9, 1955. Legislation purporting to designate the college faculty, its president and his powers were held unconstitutional by the attorney general as an invasion by the legislature of the board's authority. Likewise an attempt by the legislature to exempt certain students from military courses was held unconstitutional by the attorney general as depriving the board of supervision and control conferred by the constitution. (Atty. Gen. Opn. No. 1099, Dec. 8, 1948. See 11 Michigan Statutes Annotated, Powers of Board, p. 182. Quoting from A Comparative Analysis of the Michigan Constitution, Vol. II (Lansing, Mich., 1961), p. xi-36. Moreover, the Michigan courts have been heard on this matter. In the case of Branum v. State of Michigan, 145 N.W.2d 860 (Mich., 1966), Judge McGregor of the Michigan Court of Appeals said: "The defendants argue that historically, by judicial decisions of the Supreme Court of the State of Michigan, the Board of Regents of the University of Michigan has not been held subject to the control of the legislature .....It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this state, and a constitutional corporation such as the Board of Regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the state of Michigan, but it is not an island. Within the confines of the operation and the allocation of funds of the University it is supreme. Without these confines, however, there is no reason to allow the Regents to use their independence to thwart the clearly established public policy of the people of Michigan." The reader is also referred to Peters v. Michigan State College, 30 N.W.2d 854 (Mich., 1948), in which the Supreme Court of Michigan held that a state college was subject to the workmen's compensation act of the state legislature. Still later cases found that the public employee's negotiating statute of Michigan was applicable to the state colleges and universities. See also 55 Michigan Law Review 729 for further information on this matter.

3. That all state colleges and universities in Michigan undertake a careful review of the administrative rules and regulations which have been established for the governance of student conduct, with the intent of ascertaining that such rules and regulations are, indeed, reasonable. This review should be undertaken by considering each such rule and regulation in the light of the variables which enter into the determination of reasonableness, as outlined on pages 135 and 136 of this chapter.

4. That those state supported institutions of higher learning in Michigan which still include an abrogation of contract clause in their official publications give serious consideration to the elimination of this item. The research in this study indicates that it is clearly settled that, for a qualified individual, attendance at a tax-supported college or university is a right, protected by the Federal Constitution from unreasonable restrictions, which the courts will undertake to protect when a student has been unfairly treated in the disciplinary process; and it is not a privilege as this type of clause states.

It is clearly evident from the data presented in this study that the area of student disciplinary procedures by which a student may be suspended for a long period of time, or dismissed from a state college or university in the State of Michigan, needs immediate and constructive attention. A critical evaluation, at the institutional level, should be made of such procedures, and the regulations which they are

intended to enforce, and some official statement of policy should be included in the official publications of the institutions regarding such revised disciplinary procedures.

The college student of today is much more concerned with social and political problems than were his forebears, as evidenced by the increasing number of student rallies, demonstrations, sit-ins and other forms of protest. It can be expected that out of these student activities the courts will eventually be called upon to determine what types of student activities fall beyond the legitimate concern of college and university administrators. There is a difference in the jurisdiction of the college over those student offenses which take place on the campus as compared to those offenses occurring elsewhere. As Van Alstyne has pointed out

> The disciplining of students for off-campus political expression will once again present the question of the right of a college to treat its students as children in need of paternalistic guidance. It will doubtless also challenge the right of a college to discipline students where the real concern is only to protect the college itself from unwarranted censure by a community which has misconstrued the college's true responsibility.[7]

It appears reasonable to expect that in the future the attention of the courts will be increasingly directed toward the issues of substantive due process. The cases discussed in this study have largely been those in which procedural

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[7]William W. Van Alstyne. "Procedural Due Process and State University Students," U.C.L.A. Law Review, 10(1962-63), p. 388.

issues were raised and out of which have been evolved clearly defined components of fair procedures. Procedural issues and substantive issues are closely related, however, and it is likely that students will insist that there is little meaning to observance of procedural due process in institutions of higher learning if it is not combined with observance of substantive due process.

APPENDICES

APPENDIX A

SELECTED PORTIONS OF THE UNITED STATES CONSTITUTION AND ITS AMENDMENTS

Article I, Section 10.

Paragraph 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

Questionnaire Concerning Due Process Procedures in Michigan Publicly Supported Colleges and Universities

		Please encircle the appropriate response	
1.	Does the accused student receive a reasonable notice in writing of the time and place at which he is to appear for a hearing, together with an explicit statement of the offense with which he is charged?	Yes	No
2.	Is the accused student given the names of the witnesses bringing the charges, together with an oral or written report of the facts to which each witness testifies?	Yes	No
3.	Does the accused student have the right to be represented by counsel of his choice, whether such counsel is a member of the faculty, staff or student body of the college, or an attorney?	Yes	No
4.	Is the accused student permitted to inspect in advance of the hearing any affidavits or exhibits which the college intends to submit at the hearing?	Yes	No
5.	Does the accused student have the opportunity to present his own defense against the charges, and an opportunity to present oral testimony or written affidavits of witnesses in his behalf?	Yes	No
6.	Is the accused student permitted to question witnesses who give evidence against him?	Yes	No

7. Are the results and findings of the hearing presented in a report which is open to the accused student's inspection?	Yes No
8. In the recent literature regarding college disciplinary proceedings, a writer has proposed a model statute providing for uniformity of such proceedings. (A copy of this model statute is attached for your ready reference.) In your opinion, would the adoption of such a statute by the Michigan legislature be a helpful step in assisting your college with the problems of student disciplinary procedures?	Yes No
9. If you wish to comment on any of the above items, or qualify your response, please do so on the back of this page. Thank you.	

APPENDIX C

PROPOSED MODEL STATUTE[1]

I. The administrative officers of colleges and universities which receive their principal support from the legislature of this state shall have the power to make and enforce all regulations pertaining to student conduct which are appropriate and necessary to the maintenance of order, discipline, and propriety at such colleges and universities, considering the normal standards of behavior within the local community; provided, however, that no regulation may be enforced which exceeds the reasonable interest of the school in furthering its educational goals, or which unduly restricts the freedom of students to express themselves on matters of genuine social and moral significance.

II. When any student at any college or university described in Part I has been accused of violating a regulation of such college or university, for which violation he may be punished by expulsion or suspension for as long as one school term, he shall be entitled to the protection hereinafter provided:

   A. In cases in which the guilt of the student has been established by his own voluntary admission or by conviction in a court of justice in the county where the college or university is located, of an offense which clearly amounts to a violation of the regulations of the college or university, the student may be subjected to suspension or expulsion, or lesser punishment, in the discretion of the disciplinary body, upon the delivery to the student of notice in writing of the action to be taken. In such case, the student need not be accorded a hearing unless it is necessary to establish his identity as the convicted offender or to confirm the voluntary nature of his admission of guilt.

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[1] _____. "College Disciplinary Proceedings." The Vanderbilt Law Review, 18(March, 1965), pp. 828-30.

B. In cases in which the guilt of the student has not been established under the provisions of the preceding paragraph: (1) He shall be entitled to a hearing before the disciplinary body of the college or university. (2) He shall be further entitled to receive a statement in writing, at least two days prior to the hearing, setting forth the charges against him with sufficient clarity to enable him to present a reasonable defense thereto. (3) He shall be further entitled to know the names of the witnesses who are directly responsible for having reported the alleged violation to the disciplinary body, or if there be no such witnesses, to be fully informed of the manner in which the alleged violation came to their attention. (4) He shall be further entitled to present his defense to the disciplinary body while the members are assembled for hearing, including the presentation by him of a reasonable number of witnesses in his own behalf. (5) He shall be further entitled, if he so chooses, to be accompanied and represented by legal counsel or by a lay adviser; provided, however, that in all hearings before the disciplinary body, the normal rules of procedure of said body shall be observed. (6) He shall be further entitled to expeditious handling of his case with prompt decision after the hearing, consistent with the requirements of mature and careful reflection by the disciplinary body upon the charges and the defenses raised thereto. (7) He shall be further entitled to an explicit explanation in writing of the basis for any decision rendered against him.

III. A. Any student of any college or university described in Part I who has been expelled or suspended for as long as one school term on the ground that he is guilty of misconduct in violation of the regulations of the college or university, may, if the expulsion or suspension be ordered pursuant to a final decision by the highest disciplinary officer or body of the college or university that is empowered to make such decisions, petition any court of general equity jurisdiction in the county where the college or university is located for review of the decision; provided, however, that such petitions must contain allegations that the decision of which he seeks review was rendered contrary to the provisions

of Part I or of Part II of this Act, or of both, or that the action taken against him by the college or university was taken arbitrarily or in bad faith.

B. Upon receipt by a proper court of a petition duly submitted pursuant to the provisions of the preceding paragraph, said court shall examine the facts and shall make a determination as to the merits of the allegations contained in the petition. Upon a finding that the allegations are without merit, the court shall dismiss the petition. Upon a finding that the allegations are meritorious, the court shall order a new hearing, or a revocation, or a modification of the regulations in issue, or, upon a finding of arbitrary conduct or bad faith by any party before the court, shall render whatever judgment is required by principles of equity.

C. Any student who seeks review of any decision of any college or university in this state shall be fully responsible for all costs incurred by the college or university in defending the action, including all attorneys' fees, in any case in which judgment shall ultimately be in favor of the respondent college or university and the court shall find that the student did not have reasonable grounds for bringing the suit.

APPENDIX D

PROCEDURAL STANDARDS IN DISCIPLINARY PROCEEDINGS[1]

In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to example, counseling, guidance, and admonition. At the same time, educational institutions have a duty and the corrollary disciplinary powers to protect their educational purpose through the setting of standards of scholarship and conduct for the students who attend them and through the regulation of the use of institutional facilities. In the exceptional circumstances when the preferred means fail to resolve problems of student conduct, proper procedural safeguards should be observed to protect the student from the unfair imposition of serious penalties.

The administration of discipline should guarantee procedural fairness to an accused student. Practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied. They should also take into account the presence or absence of an honor code, and the degree to which the institutional officials have direct acquaintance with student life, in general, and with the involved student and the circumstances of the case in particular. The jurisdictions of faculty or student judicial bodies, the disciplinary responsibilities of institutional officials and the regular disciplinary procedures, including the student's right to appeal a decision, should be clearly formulated and communicated in advance. Minor penalties may be assessed informally under prescribed procedures.

In all situations, procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its actions, and that there be provision for appeal of a decision. The following are recommended as proper safeguards in such proceedings when there are no honor codes offering comparable guarantees.

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[1] Quoted from Section VI, "Joint Statement on Rights and Freedoms of Students." American Association of University Professors Bulletin, 53(December, 1967), pp. 367-68.

A. Standards of Conduct Expected of Students.

The institution has an obligation to clarify those standards of behavior which it considers essential to its educational mission and its community life. These general behavioral expectations and the resultant specific regulations should represent a reasonable regulation of student conduct but the student should be as free as possible from imposed limitations that have no direct relevance to his education. Offenses should be as clearly defined as possible and interpreted in a manner consistent with the aforementioned principles of relevancy and reasonableness. Disciplinary proceedings should be instituted only for violation of standards of conduct formulated with significant student participation and published in advance through such means as a student handbook or a generally available body of institutional regulations.

B. Investigation of Student Conduct.

1. Except under extreme emergency circumstances, premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admission of guilt or information about conduct of other suspected persons.

C. Status of Student Pending Final Action.

Pending action on the charges, the status of a student should not be altered, or his rights to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety and well-being of students, faculty, or university property.

D. Hearing Committee Procedures.

When the misconduct may result in serious penalties and if the student questions the fairness of disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of procedural due process in situations requiring a high degree of formality.

1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to insure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matters. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording, of the hearing.

8. The decision of the hearing committee should be final, subject only to the student's right of appeal to the president or ultimately to the governing board of the institution.

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