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Privacy v. Security and Discipline at the Academic Institution

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Rights attained and clarified under the Fourth Amendment[1] have been considerable in recent years. The major thrust of the liberal trend has been to shift the focus and emphasis of Fourth Amendment protections in respect to searches and seizures from property rights to the right of privacy. However, it appears that students have attained little in this regard.

If one subject to a search and seizure were not a student, a warrantless general search would prove unconstitutional.[2] Evidence seized would be inadmissible in either civil or criminal proceedings.[3] Actually, few students engage in illegal activities. However, significant numbers store and consume alcoholic beverages in their rooms, entertain guests of the opposite sex, and so on in violation of college regulations. A warrantless search in pursuance to these violations may jeopardize a student's entire future. It is estimated that a college graduate earns $100,000 more in a lifetime than one who completes up to three years.[4]

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The two-pronged result of expulsion and criminal proceedings based upon evidence seized, may become the source of a life-long stigma for the student.

An institutional prerogative to maintain campus order and discipline has been offered as a rationale for abrogating students' Fourth Amendment protections.[5] However, in the absence of obvious necessity or special circumstances, such reasoning fails to justify searches and seizures by other administrative authorities,[6] despite the argument that college students who reside in a dormitory have a special relationship with the college, which does not depend upon the general theory of privacy or the traditional property concepts of the Fourth Amendment.

The Dormitory Question

One leading case interpreting the Fourth Amendment in the context of school regulations on searches and seizures is an early California decision, People v. Kelly.[8] Kelly held that a school's right of entry is an implicit right reserved in the school to enable it to properly enforce discipline in the dormitories.[9] Generally, such early cases supported the view that the Constitution placed few restrictions on a school's ability to inspect student areas.[10]

The District Court in Moore v. Student Affairs Committee held that the state university regulation that, "the college reserves the right to enter rooms for inspection purposes", was facially reasonable as necessary to the institution's performance in its duty to operate the school as an educational institution.[11] In Moore, an informer's tip, just prior to the departure of most students for vacation, prompted a search of a student's room by the Dean of Students, two Federal Narcotics agents, and the Chief of Police, with the student present, but without his consent. Marijuana was found, and the result was expulsion from the college and criminal prosecution.[12]

The two theories traditionally advanced to establish the autonomy of college administrators were: in loco parentis, which applied to all educational institutions, and the special contractual relationship between the student and the institution,[13] especially in regard to private educational institutions. In the absence of a clear showing of bad faith or abuse of discretion, the courts have refused to interfere with college administration and discipline under the i.e.p. theory.[14] The second theory established that colleges were under no duty to accept all willing and qualified applicants, and, consequently, admission may become

condition to students' voluntary waiver of certain rights in deference to the institution's own rules.[15]

Neither one of these theories is valid today. A college does not stand in loco parentis to its students, nor is their relationship purely contractual in the traditional sense.[16] Students, many of whom are over 21, should be considered responsible only to themselves, and are in attendance at colleges to obtain an education, not to be disciplined--thus negating the first theory. The contract theory has been dispelled, at least in regard to public institutions, in holdings that no agency or institution acting for the government has power to adopt an unconstitutional rule or procedure, even though it may have been specifically authorized by statute to do so.[17]

It is clear that Constitutional rights, including the right to be free from unreasonable search and seizure, can be waived. However, the Supreme Court requires a high standard of proof to establish such a waiver.[18] In regard to students specifically, it must be shown that the student was aware of the protections of the Fourth Amendment when he signed a housing contract and that he signed with the express intention of waiving Fourth Amendment rights.[19] Moore established that the validity of a regulation authorizing a search of dormitories does not depend on whether the student

waives his right to Fourth Amendment protection or on whether he has contracted it away. The Court in Moore depended on the notion espoused in Dickey v. Alabama State, that the aim should be toward an environment suited to education:

> "...rules and regulations must be reasonable, Courts may only consider whether rules and regulations are a reasonable exercise of the power and discretion vested in those authorities, Regulations and rules which are necesary in maintaining order and discipline are always considered reasonable."[20]

The demise of the contract theory cuts in favor of the administration in the particular situation of Moore.

> "University officials may search a student's dormitory room without violating Fourth Amendment rights when the official has a reasonable cause to believe that he is fulfilling an affirmative obligation to maintain campus order and discipline. The fact that the student rents a room does not abridge the college administrator's right to search ..."[21]

Moreover, the court determined that the validity of a search and seizure rests not upon waiver via contract, but upon whether it was a reasonable exercise of the college's supervisory power.[22] Further benefit to college officials comes in the holding that:

> "...the standard of 'reasonable cause to believe' is lower than the constitutionally protected criminal law standard of 'probation cause' because of the special necessities of the student-administration relationship and because college disciplinary proceedings are criminal proceedings in the Constitutional sense. This remains true even

> the search's sole purpose is to seek evidence of suspected violations of law."[23]

Thus, the boundary line between the right of a school to search and the right of a student to privacy is "reasonable cause to believe" on the part of the college that the student is using his room improperly.[24] Moore seems to possess the fault of saying too much... to the point of being paradoxical in part. The two bases for the decision, as seen above, were extracted from other cases:

1) necessity for maintaining order and discipline requiring reasonable regulations allowing inspection (People v. Overton.)[25]

2) college disciplinary proceedings are not criminal proceedings, in the constitutional sense,[26] and, thus, do not require an application of the exclusionary rule (Dixon v. Alabama).[27]

But the court confused the issue by saying that the search was reasonable anyway, and any student who "rents" a room waives objection to any reasonable search conducted pursuant to reasonable and necessary regulations.[28]

The Secondary School Locker

Secondary schools have depended on Overton[29] as their main source of authority on the point of searches and seizures. The highly celebrated case, In re Gault,[30] supplied the notion that a student naturally has the right to be free of unreasonable searches and seizures. Overton concerned the search of a junior

high school student's locker for marijuana. A vice-principal had given consent to search two students and their lockers to three detectives armed with an invalid search warrant.[31] The trial court found that the vice-principal and the school had dominion over the locker, and that the invalid search warrant was irrelevant.[32] On appeal, the Appellate Term found that the search was illegal and could not be justified upon the theory of consent on the part of the vice-principal.[33]

The court's opinion was based upon an earlier decision which held that depositories, such as lockers or desks, were safeguarded from unreasonable searches for evidence of a crime.[34] However, the Court of Appeals of New York twice overturned the lower court's opinion,[35] once upon remand by the U. S. Supreme Court[36] for reconsideration in light of Bumper v. North Carolina.[37]

The ultimate holding in Overton was the finding that there was an affirmative obligation on the part of the school authorities to investigate any charge that a student is using or possessing narcotics and to take appropriate steps if the charge is substantiated.[38] Further, the Court said that the student's exclusivity, according to purpose, was vis-a-vis other students, not school authorities.[39] Justice Bergan dissented

both times on grounds that the search, upon which there was reliance by the vice-principal forcing consent, was bad and subsequently the search was invalid, and that the school did not control the locker since the student paid for its use.[40]

THE WAY IT IS

Generally, it may be inferrred from Overton that a reasonable right of inspection of school property and premises, even though it may be set aside for the exclusive use of a particular student, is also the duty of secondary school officials. Overton and Moore have subsequently gone hand-in-hand. In fact, Moore, although recognizing differences existing between discretionary requirements of high school and college students stated:

> "No distinction can be drawn between fundamental duties of educators at both levels to maintain appropriate discipline."[41]

Moreover, Moore and Overton, in holding that a reasonable right of inspection is necessary to the performance of the institution's duty to maintain control and discipline, serve to justify searches even though they may infringe on the outer boundaries of a student's Fourth Amendment rights. Under Moore's standard of a "reasonable cause to believe" there must be a showing that the infringement by the school's regulation is necessary for the school to be able to maintain

order---only a showing of necessity will justify the rule.[42] Following Overton strictly, the school is justified in inspection simply by its control over the premises.[43]

On the basis of the above-mentioned cases, the student dormitory room in a tax-supported public university may be reasonably searched without a warrant and without student's consent, provided a university official authorizes the search.[44] The same holds for secondary schools via Overton. There are, however, no cases directly on point regarding private institutions. Generally, it would seem from the above, that rule-making would be afforded greater discretion and freedom in non-public schools.

It is predictable that more will be handed down in the area of searches and seizures in student areas in the near future. The dichotomy between on and off-campus students which results from the fact that the latter are protected by the Fourth Amendment as are all the other citizens, while the former, in renting campus rooms, are unprotected, may produce two classes of university citizens and a breakdown in the community. Reference to cases such as West Virginia Board of Education v. Barnetic, which held that state actions must be tempered by respect for students' fundamental constitutional rights,[45] the celebrated Tinker case,

holding that, "School officials do not possess absolute authority over students. Students in school, as well as out of school, are "persons" under our Constitution."[46], and Dixon, which held that students are entitled to fundamental due process of law,[47] will become commonplace. One writer in paraphrasing Katz[48] has stated:

> "A student has a justifiable expectation of the private use of his room because one who occupies it, locks the door, and pays the rent is surely entitled to assume that his activities inside will not be revealed to the world."[49]

Thus, the stage is set for further clashing of interests: privacy v. maintaining an academic institution's security and discipline. Although it appears that high school students are more active today than ever before in asserting their demands, life on the college campuses has been tempered by apathy for almost two years. The apex of dissent was reached in spring, 1970, but now the atmosphere has reverted to a mood similar to the pre-Peace Movement period. There are many causes, some substantiated and some only theorized, for this phenomenon. Regardless of the causes, for the purpose of this paper, the phenomenon is relevant as it seems that questions generally involving student-administration relationships regarding school regulations and academic freedom are raised and have an impact proportional to the activism among students.

Thus, it may be concluded that the clashes between students and school administrators, at least at the college level, and in particular the clash over searches and seizures will largely hinge on the potentiality of a renewed atmosphere of dissent on the campuses. Until such time, the general situation is that no student dormitory resident (or locker user) may claim protection under the Fourth Amendment, as individual rights to privacy and property remain undeveloped in the university community.[50] No court has yet conceded a student's total right to privacy.

FOOTNOTES

1. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Amendment 4, U.S. Constitution.

2. Note, College Searches and Seizures: Privacy and Due Process Problems on Campus, 3 Ga. L. Rev. 426 (Winter, 1969).

3. Id.

4. Id. at 427.

5. Moore v. Student Affairs Committee, Troy State University, 284 F. Supp. 725, 729 (M.D. Ala. 1968).

6. 3 Ga. L. Rev. 426, at 428, n. Reeves v. Warden, 226 F. Supp. 953 (D. Md. 1964); Camara v. Municipal Court, 387 U.S. 523 (1967):

> "Administrative searches: Fourth Amendment precludes prosecution of a person who refuses to permit a warrantless housing code enforcement inspection of his personal residence, whether owned or leased."

7. Amendment 4, U. S. Constitution.

8. 195 Cal. App. 2d 72 (1961).

9. Note, Public Universities and Due Process of Law: Students' Protection v. Unreasonable Searches and Seizures, 17 Kan. L. Rev. 512, 514 (April 1969).

10. Id.

11. 284 F. Supp. at 725.

12. Id. at 727.

13. 3 Ga. L. Rev., supra at 444.

14. Id.

15. Baker v. Trustees of Bryn Mawr College, 278 Pa. 121, (1923).

16. Comment, Private Government on the Campus... Judicial Review of University Expulsions, 72 Yale L. J. 1362 (1963).

17. Dickey v. Alabama State, 273 F. Supp. 613 (M.D. Ala. 1967).

18. Johnson v. Zerbst, 304 U. S. 458 (1938); Miranda v. Arizona, 384 U. S. 436 (1965).

19. Wren v. United States, 352 F. 2d 617 (10th Cir. 1965).

20. 273 F. Supp. at 617-18.

21. 284 F. Supp. at 730.

22. Bible, 4 U. S. Fran. L. Rev. 49, 55 (Oct. 1969).

23. 284 F. Supp. at 731.

24. Bible, supra n. 22, at 55.

25. 20 N. Y. 2d 360 (1967).

26. 284 E. Supp. at 731.

27. 294 F. 2d 150 (1961).

28. Note, Dormitory Student's Fourth Amendment Right to Privacy, 9 Santa Clara Law 143, 145 (Fall 1968).

29. People v. Overton, on remand, 24 N. Y. 2d 522 (1969).

30. 387 U. S. 1. (1967).

31. 20 N. Y. 2d 360.

32. Id.

33. People v. Overton, 51 Misc. 140 (1967).

34. United States v. Blok, 188 F. 2d 1019 (1951).

35. 20 N.Y. 2d 360 (1967) and 24 N.Y. 2d 522 (1969).

36. People v. Overton, 393 U. S. 85 (1969).

37. 391 U. S. 543 (1968):

> Supreme Court found that where old woman made low-toned, ineffectual remark, no consent was present to search and evidence inadmissible in light of strong indication of coercion in the presence of several armed police. Overton court distinguished this from case at hand finding no coercion.

38. 5 Crim. L. Bull. 532.

39. Id.

40. 20 N. Y. 2d at 366, and 24 N. Y. 2d at 527.

41. 284 F. Supp. at 730, n. 10.

42. 17 Kan. L. Rev., supra n. 9, at 517.

43. Id.

44. 9 Santa Clara Law, supra n. 28, at 143.

45. 319 U. S. 624 (1942).

46. Tinker v. Des Moines Independent Community School District, 393 U. S. 503, 509 (1969).

47. 294 F. 2d at 150.

48. 389 U. S. 347 (1967).

49. Bible, supra n. 22, at 61.

50. 3 Ga. L. Rev. at 440.