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College Searches and Seizures: Students, Privacy, and the Fourth Amendment

By Richard Delgado*

Recent developments in the law of search and seizure have had an impact that is essentially libertarian; their effect has been to safeguard the right of individual privacy against the needs of the state for information.¹ The law relating to college students, by contrast, derives from notions that are largely paternalistic and that emphasize institutional values of discipline and order above those of individual rights.² In searches of dormitory rooms and married student housing, the contrasting values underlying these two areas of law come into conflict, and courts so far have been unable to offer a consistent and definitive solution to the problems raised by such searches. Lacking a clear statement from the courts, university officers charged with maintaining order on the campuses generally have failed to formulate fair and effective guidelines for nonconsensual entries of student quarters.³ And, students, their legal status under the Fourth Amendment still un-

* Assistant Professor of Law, Arizona State University. The author gratefully acknowledges the assistance of Professor Stephen Sugarman of the University of California School of Law and Pablo Drobny, Executive Editor of the American Journal of Comparative Law in the preparation of this manuscript, and of numerous members of the University of California campus police and University Housing Office, without whose cooperation this article could not have been written.


3. E.g., notes 136-38 & accompanying text infra.
settled, have often been the victims of this failure to develop adequate standards.  

This article analyzes the legal doctrines that apply when a university official enters the room of a college student without the student's consent or a search warrant in search of incriminating evidence. First, a hypothetical example is used to pose many of the issues that typically arise in such searches. Then, a number of legal theories are reviewed that have been used to justify searches of student quarters under standards less stringent than those applied to police searches of private homes. The deficiencies of each theory are noted. Finally, the recent Moore-Piazzola line of cases is discussed, and it is shown that the rationale of these cases could be used in some circumstances by college administrators to justify warrantless, nonconsensual searches of students' rooms. Because the mandate of these cases is limited, college officials have adopted a number of strategies in an attempt to broaden their authority beyond the scope of Moore and Piazzola. Two of the more common of such strategies are analyzed in detail, together with their relationships to certain recurring problems in the theory of administrative searches. In conclusion, a set of model guidelines is proposed for university administrators who wish to avoid violating the Fourth Amendment rights of university residents while fulfilling their duty to supervise students and to provide a stable environment for learning.

The Problem: A Hypothetical Illustration

The telephone rang in the office of Mary Smith, head resident of Dorm E at State University. It was an anonymous caller. "Ripped-off records," the voice whispered. "From Moses' Bookstore. Look in room 125." Without more, the caller hung up.

After conferring with the University Housing Officer, Mary Smith telephoned the campus police. Minutes later, Lieutenant Harris arrived at her office on the ground floor of the dormitory. Mary and the officer climbed a flight of stairs and approached room 125. Finding the door unlocked, Mary pushed the door open, asking, "Anyone home?" The occupant, Abigail Jones, looked up in surprise from her desk, where she had been reading a copy of Paradise Lost. Explaining to Abigail that there had been reports of illegal activities taking place in her room, Lieutenant Harris proceeded to search the room thoroughly, over Abigail's strenuous objections. At length, the officer found no stolen records, but did find two plump marijuana cigarettes secreted in the recesses of Abigail's bookbag.

Subsequently, Ms. Jones was suspended from State University for one year, and her scholarship was revoked. At her trial for possession of marijuana she was convicted and placed on proba-

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4. E.g., notes 56-77, 122-48 & accompanying text infra.
tion for six months. Her parents, a devout midwestern farm couple, were scandalized and have refused to communicate with her. Today, Abigail lives in a dilapidated communal house on the edge of the university community, while earning a meager income as a cocktail waitress. She says she has lost any interest in returning to the university when her suspension expires, terming university studies a waste of time.

The problems raised by searches such as the one depicted above occur frequently on the nation’s campuses, and affect a population of considerable size.5 When such searches result in the seizure of incriminating evidence, two consequences can result: expulsion from the university and indictment on criminal charges. Both, of course, can have serious effects on a student’s future life.6 While not every student will choose to challenge such a search in court, the increased willingness of students to seek legal redress for such actions and the growing receptiveness of courts to hear challenges make a study of the justifications for such searches timely and important.

College Students, Constables, and Chancellors: A Brief Review of Search and Seizure on Campus

Traditional Approaches

Historically, theories of contract,7 waiver,8 property rights,9 and

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5. There are more than six million university students currently enrolled in more than 2,000 American public and private institutions of higher learning. 1973 WORLD ALMANAC 303–26 (Delury ed.). Of this figure, the exact number of students who will reside in a university dormitory or married student apartment is not known with any precision. Some colleges, particularly small, private ones, require all students to live in institutional housing. Large commuter colleges located in metropolitan areas, on the other hand, may have no dormitory facilities at all. Probably between one-third and one-half of all college students reside in a dormitory at some time in their career.

6. Although expulsion from the university may sometimes have an effect as severe as that of a criminal penalty, this article deals primarily with the criminal consequences of warrantless, nonconsensual searches. A future article will consider the relationship of such searches to academic disciplinary actions.


8. E.g., North v. Board of Trustees, 137 Ill. 296, 306, 27 N.E. 54, 56 (1891); see Hamilton v. Regents of Univ. of California, 293 U.S. 245 (1934).

in loco parentis have been used to limit or deny students' procedural rights in campus disciplinary proceedings. Variants of these theories have been cited by courts and commentators in an effort to circumscribe the rights of students under the Fourth Amendment. Perhaps the most venerable of these is the doctrine of in loco parentis.

Many of the early cases, citing the doctrine of in loco parentis, held that the legal relationship of university officials to students was that of parent and child. It was said that in permitting the student to enroll, the student's parents in effect delegated to school authorities their power to supervise their child's activities. Because of the broad powers parents have to supervise the activities of their minor children, universities were not required to afford students the full range of rights extended to adults under the Constitution. In particular, since parents have the right to inspect the private rooms and areas of their dependent children, this right was thought to be transferred to university authorities when the student entered school. One court went so far as to say:

College authorities stand in loco parentis concerning the physical and moral welfare, and mental training of the pupils, and we are unable to see why . . . they may not make any rules and regulation for the government or betterment of their pupils that a parent could for the same purpose. Whether the rules or regulations are wise, or their aims worthy, is a matter left solely to the discretion of the authorities, or parents as the case may be . . . .

Although governance by in loco parentis may still have some vitality in the treatment of very young children, it has fallen into dis-
favor with respect to college students. College students today are generally more independent and older than in former years. Many have attained the age of majority, while others have acquired the status of emancipated minors. Because the doctrine of in loco parentis rests on the fiction that parents transfer to the school supervisory powers over their children, an educational institution can acquire no authority in this manner where the students have reached the age of majority and are no longer under the legal supervision of their parents. Even in the case of college students who are below the age of majority, the applicability of the doctrine is unclear. Since In re Gault, considerable caution is appropriate in approaching reduced forms of constitutional protection for juveniles. Although Gault dealt with Fifth Amendment rights against self-incrimination, the close relationship that the Fourth and Fifth Amendments historically have enjoyed should sound a cautionary note. Thus, it is not surprising that court decisions in many jurisdictions have rejected the doctrine of in loco parentis, while others have qualified it almost beyond recognition.

Other courts and commentators have sought to justify limitations on the exercise of constitutional rights by reference to certain aspects

16. Van Alstyne, The Student as University Resident, 45 DENVER L.J. 582, 590-92 (1968) [hereinafter cited as Van Alstyne].
18. Less than 4% of the United States college population is under 18 years of age. U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, 1973 STATISTICAL ABSTRACT 110-11. Although many universities attempt to maintain a "balanced" ratio of freshmen, sophomores, juniors, and seniors in the dormitories, it seems likely that the population of dormitory residents is somewhat younger than that of undergraduates generally. For example, at Berkeley, 51% of all dormitory residents in the fall of 1973 were freshmen, 18% were sophomores, 17% were juniors, 7% were seniors, and 5% were graduate students. Interview with Mrs. Margaret Dewell, Supervisor, Housing Office, University of California, in Berkeley, California, March 28, 1974. Nevertheless, less than 3% of all undergraduates at Berkeley are under 18 years of age. Interview with Ms. Liz Kearns, Office of Institutional Research, University of California, in Berkeley, California, March 28, 1974. It seems probable that the proportion of under-18 residents at the dormitories is quite small.
19. See note 12 supra.
of the student's status as a university resident. One such aspect is the landlord-tenant relationship. It is sometimes asserted that landlords have a common law right to enter tenants' property for various purposes, such as to view waste or to effect repairs. Today, many landlords reserve similar rights in the lease agreement. Because the relationship of the university and the student resident is for some purposes like that of landlord and tenant, it might be urged that the student's right to be free from warrantless searches by university officials or campus police is limited by the university's interest in managing the uses to which its own property is put.

In general, however, even where private landlords have retained a right to enter the premises of their tenants for a particular purpose, they cannot use that power to make entries for other purposes, such as to seize evidence of criminal activity. Neither can they consent to warrantless searches of their tenants' premises by law enforcement officers, "because of the greater danger in event of violation and the additional element of state action, it seems improbable that courts would treat university-landlords more leniently than private landlords." Certainly courts would not be expected to treat university landlords more leniently.

23. See, e.g., Humphreys v. United States, 272 F. Supp. 947 (D.S.C. 1967) (suggests that a limitation on First Amendment rights of students at a state-supported university might be a valid exercise of school's right to control its own property); Van Alstyne, supra note 16, at 585.


27. See Chapman v. United States, 365 U.S. 610, 616 (1961); cf. United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951). It should be added that the exclusionary rule which has grown out of the Fourth Amendment prohibition against illegal searches and seizures is inapplicable when the individual making the search is acting strictly as a private individual and not as an agent of a governmental unit. Barnes v. United States, 373 F.2d 517 (5th Cir. 1967); People v. McKinnon, 7 Cal. 3d 899, 500 P.2d 1097, 103 Cal. Rptr. 897 (1972); Mercer v. Texas, 450 S.W.2d 715 (Tex. Civ. App. 1970) (search by high school administrator of high school student not state action). For a discussion on the degree of state action involved in searches and seizures of dormitory rooms by private university officials, see Note, Admissibility of Evidence Seized by Private University Officials in Violation of Fourth Amendment Standards, 56 CORNELL L. REV. 507 (1971).


29. In People v. Cohen, 57 Misc. 2d 366, 292 N.Y.S.2d 706 (Dist. Ct. 1968), the court noted that private university officials with a limited right of entry into dormitory rooms could not delegate this right by consent to law enforcement personnel. Id.
In general, solutions to search and seizure problems that focus on the status of the victim have incurred increasing judicial disfavor in recent years. Distinctions for standing purposes among the rights of guests, tenants, licensees, and invitees have been challenged; today, it can be argued that anyone legitimately on the premises has standing to object to the introduction of evidence against him that has been obtained through an improper search. Consequently, the peculiar relationship between student tenants and college administrators should not afford the latter a right to search superior to that of the average landlord who suspects his tenant may be engaged in illegal activity, much less invest them with authority to make unannounced, warrantless searches for criminal evidence.

Another approach would seek to characterize students as an exceptional class under the Fourth Amendment. The Fourth Amendment, which provides for the right of the people "to be secure in their persons, houses, papers, and effects against unreasonable [i.e., war-

at 709. The court impliedly compared university officials with landlords when it said: "To suggest that a student who lives off campus in a boarding house is protected [by the Fourth Amendment] but that one who occupies a dormitory room waives his constitutional liberties is at war with reason, logic and law." Id. at 713. If a state-supported university were to attempt to reserve an unlimited right to enter students' rooms, its action would undoubtedly be unconstitutional. The Fourth Amendment does not distinguish between governmental and proprietary state action, and a state-supported university must abide by constitutional standards even when it acts in a proprietary capacity. Van Alstyne, supra note 16, at 589. Because of the increasing interdependence of private universities and the federal government, and the heavily subsidized nature of many academic research programs at private schools, state action can probably be found even in non-public universities. Wright, The Constitution on Campus, 22 VAND. L. REV. 1027, 1035 (1969). See generally, Note, Admissibility of Evidence Seized by Private University Officials in Violation of Fourth Amendment Standards, 56 CORNELL L. REV. 507 (1971). State colleges, of course, have always been regarded as governmental bodies. See Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 155-56 (5th Cir.), cert. denied, 368 U.S. 950 (1961).


31. Jones v. United States, 362 U.S. 257, 266 (1960); see State v. Matias, 51 Haw. 62, 451 P.2d 257 (1969). The continued viability of Jones depends on the degree to which the United States Supreme Court follows its recent holding in Brown v. United States, 411 U.S. 223 (1973). In dictum the Court stated that the Jones automatic standing rule may now be unnecessary in light of Simmons v. United States, 390 U.S. 377 (1968). Without directly deciding this point, the Court arguably modified Jones when it declared: "In deciding this case, therefore, it is sufficient to hold that there is no standing to contest a search and seizure where, as here, the defendants: (a) were not on the premises at the time of the contested search and seizure; (b) had no proprietary or possessory interest in the premises; and (c) were not charged with an offense that includes, as an essential element of the offense charged, possession of the seized evidence at the time of the contested search and seizure." Id. at 229.
rantless] searches and seizures," has been held to be subject to a number of exceptions, such as stop-and-frisk searches, emergency searches, and searches of mobile premises. In earlier years students appear to have been considered an additional exception to the warrant requirement. Guarantees of due process were considered to be waived by the student on entrance, sometimes on the theory that attendance at a public university was a "privilege" to be granted or

32. U.S. Const. amend. IV. By way of insuring this right the amendment set out that "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." Id. The amendment has been construed to be binding upon the states, Wolf v. Colorado, 338 U.S. 25 (1949), as has been the exclusionary rule, Mapp v. Ohio, 367 U.S. 643 (1961). Probable cause has been defined by the Supreme Court as facts and circumstances within the officer's knowledge and any other reasonably trustworthy information which would be sufficient to warrant a man of reasonable caution to believe that illegal property is to be found in a particular place. Carroll v. United States, 267 U.S. 132, 162 (1924). The oath-or-affidavit requirement can be satisfied by the personal observation of a police officer or other reliable affiant, or the statement of an informer of demonstrated credibility. Spinelli v. United States, 393 U.S. 410 (1969). The ultimate purpose of the Fourth Amendment has been construed to be the protection of the privacy of citizens in the places reasonably expected to be free from governmental intrusion. See cases cited note 1 supra.

withheld by the state at its pleasure.\textsuperscript{36}

Since then, however, the Supreme Court has indicated that status as a student, in itself, does not justify denial of basic liberties. \textit{West Virginia Board of Education v. Barnette},\textsuperscript{37} a school flag-salute case involving the free exercise clause, stated this principle in unmistakable terms:

\textit{The Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself and all its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights.}\textsuperscript{38}

The same position has been articulated and reinforced by other federal\textsuperscript{39} and Supreme Court\textsuperscript{40} decisions, and today it seems well established that students are "persons" under the Constitution.\textsuperscript{41} Although most of these cases have dealt with First Amendment and due process rights, the variety of the contexts in which students' rights have been upheld, the generality of the language, and the virtual unanimity of judicial opinion justify the presumption that appellate courts will decide search and seizure cases similarly. The handful of lower court decisions that have dealt with the status of students under the Fourth Amendment law support this presumption.\textsuperscript{42} As has been pointed out by other commentators, it makes little sense for courts to insist on due process rights such as adequate notice and an opportunity to be heard, if the student is permitted to arrive at his hearing with his substantive rights irreversibly compromised as a result of an earlier illegal search.\textsuperscript{43}

A related rationale for limiting a student's Fourth Amendment rights focuses on the transience of student populations and their reasonable expectation of privacy. Apart from their status as students, most residents of university dormitories form a highly mobile, shifting population. With the exception of the relatively few universities that require all students to reside in university owned housing, many

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\textsuperscript{36} Hamilton v. Regents of the Univ. of California, 293 U.S. 245 (1934); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y.S. 435 (1928).
\textsuperscript{37} 319 U.S. 624 (1943).
\textsuperscript{38} Id. at 637.
\textsuperscript{40} E.g., Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969).
\textsuperscript{41} Id. at 511.
\end{flushleft}
schools find that a sizeable proportion of dormitory residents remain in the dormitory for only a few semesters. Those students who do remain from year to year rarely spend more than nine months at the dormitory in a calendar year; and even these students may change rooms from year to year. If the transience of these students limits their expectation of privacy, their right to the full protection of the Fourth Amendment might be justifiably reduced.

Judicial opinion holds, however, that even temporary occupancy of a room or other dwelling entitles the occupant to the benefit of the Fourth Amendment. Eng Fung Jem v. United States, for example, a federal court case arising from a California incident, involved a search of the room of a short-term resident in a hotel for transients. Without consent or a warrant, police officers entered the defendant's room and found contraband. The court held that the brevity of the guest's stay at the hotel did not justify relaxation of the requirements of probable cause and a warrant. The right of privacy was held to apply "with equal vigor both to transient hotel guests and to occupants of private, permanent dwellings." Other cases also hold that the duration of a resident's occupancy is not dispositive, and at least one has explicitly declared that a dormitory room is comparable to an apartment or hotel for Fourth Amendment purposes. Accordingly, transience, like the theories considered earlier, offers little justification for lowering the constitutional standard for searches of students' dormitory rooms.

The Modern Housing Contract

Frequently, university housing contracts contain a provision permitting college officials to enter the rooms of students at specified times or for certain enumerated purposes. Because universities are

44. Interview with Mrs. L. Rawls, Housing Office, University of California, in Berkeley, California, Feb. 2, 1973 [hereinafter cited as Rawls].
45. Id.
46. 281 F.2d 803 (9th Cir. 1960).
47. Id. at 805.
48. Id.
49. E.g., Peguer v. United States, 302 F.2d 214, 249 (8th Cir. 1962) and cases cited therein; see Lustig v. United States, 338 U.S. 74 (1949) (hotel room held area entitled to reasonable expectation of privacy); cf. Jones v. United States, 362 U.S. 257, 265-66 (1960) (transient occupant of a dwelling held entitled to protection against unreasonable search).
51. The provision in the contract used by the University of California at Berkeley is fairly illustrative: "(Sec. 7) DAMAGES. Residents are individually responsible for loss or damage to their rooms, and residents of a hall may be jointly held re-
understandably anxious to avoid giving university residence a prison-camp aura, they seldom feature such clauses prominently. Instead, these clauses may be placed in the section of the contract dealing with damages or may be couched in the seemingly innocuous language of a health and safety regulation. When a university seeks to rely on such a contractual provision as effecting the waiver of a student's right to protest searches of his room, obvious problems arise as to the constitutional validity of the notice given and the informed nature of the consent. In practice, however, a major attraction for some universities in seeking to retain contractual rights to enter student rooms is their belief that in so doing they may secure admission to student quarters of agents of the campus or municipal police. At the University of California, for example, the campus police operate under the assumption that such a provision in the housing contract permits them to enter students' rooms without benefit of a search warrant or probable cause. These searches are possible because the university, hav-

52. This practice has been observed and criticized by a number of commentators. E.g., Van Alstyne, supra note 16, at 588; cf. Note, Judicial Review of the University-Student Relationship: Expulsion and Governance, 26 Stan. L. Rev. 95, 104-05 (1973). See Van Alstyne, Procedural Due Process and State University Students, 10 U.C.L.A. L. Rev. 368, 369-71 (1963), for discussion of the view that all student-university relations are ultimately based on contract.

53. See notes 51-52 & accompanying text supra.

54. Constitutional rights may be waived in certain circumstances. There is a strong presumption against such waiver, however, and instances of waiver are subjected to strict scrutiny. Johnson v. Zerbst, 304 U.S. 458 (1938). Waiver must be effected knowingly, without coercion, and with knowledge of all relevant circumstances and likely consequences. E.g., Brady v. United States, 397 U.S. 742 (1970). In Fourth Amendment cases, consent to search has been held to have been viti ated by a showing of deception, Gouled v. United States, 255 U.S. 298 (1921), coercion, Bumper v. North Carolina, 391 U.S. 543 (1968), or failure to realize the full implications of consent, United States v. Evans, 194 F. Supp. 90 (D.D.C. 1961).


ing retained the right to enter the rooms, has delegated that right to the campus police.

This practice, although widespread, is of questionable legality. Because a student's consent to enter involves some degree of forfeiture of his or her Fourth Amendment rights, such consent must be narrowly construed and its transference to governmental agents closely watched.57 In similar circumstances, a landlord who exacts a contractual right to enter his tenants' premises may not delegate this right to the police.58 The same result is reached where a hotel desk clerk, with implied consent to enter the guests' rooms for certain purposes, may not transfer this right to the police without the guest's permission.59

Consent has been narrowly construed not only with respect to the searcher, but with respect to the object of the search as well.60 In particular, when a consent clause is couched in terms of health and safety inspections, consent to enter rooms for such inspections should not be construed as conferring consent to enter for other reasons, such as to investigate reports of illicit activity.

A recent New York case, People v. Cohen,61 illustrates the increased willingness of courts to reject attempts to delegate search rights.62 Declaring that a university "cannot fragmentize, share, or delegate" its consent to enter students' rooms to the police, the court ruled a police search of a student's quarters illegal and barred evidence seized from admission in court. With respect to the informed nature of the consent, the court said, "It offends reason and logic to suppose that a student will consent to an entry . . . designed to establish grounds upon which to arrest him."63

To be sure, the cases are not entirely uniform on this point, and at least two significant opinions can be read to stand for the proposition that a school administrator may empower agents of the police to search a student's personal area. In People v. Overton,64 a case in-

62. Id. at 369, 292 N.Y.S.2d at 709.
63. Id.
volving a search of a student's locker by police at the invitation of a junior high school principal, the court held that the administrator had the right to give consent to search. Although the opinion stated that the search was justified by the principal's need to exercise supervision over the students in his school,65 the analysis also proceeded on the theory that the student whose locker was searched did not have exclusive possession of it.66 The court observed:

It appears understood that the lock and the combination are provided in order that each student may have exclusive possession of the locker vis-a-vis other students, but the student does not have such exclusivity over the locker as against the school authorities.

... When [the school principal] learned of the detectives' suspicion [that something illegal was secreted in the defendant's locker], he was obligated to inspect the locker. This interest, together with the nonexclusive nature of the locker, empowered him to consent to the search by the officers.67

Although this case has been cited for the principle that school authorities may permit police to search student-used premises,68 this formulation is undoubtedly too broad, particularly if sought to be applied to searches of the rooms and apartments of university students. First, dormitory residents are more nearly the exclusive users of their rooms than locker users are of their lockers. Schools extend locker privileges for the convenience of the students in storing books and school materials. Assignment is informal, and the student may be required to vacate his locker or share it with another student at any time. Locker use is ordinarily noncontractual and does not involve payment of a fee. Dormitory residence, on the other hand, is contractual and requires consideration. The space assigned does not ordinarily change during the year,69 and students may not be compelled to share their rooms with occupants beyond the number specified in the housing contract.70

65. Id. at 362, 229 N.E.2d at 597, 283 N.Y.S.2d at 24.
66. Id. at 363, 229 N.E.2d at 598, 283 N.Y.S.2d at 25.
67. Id.
69. At the University of California in Berkeley, for example, students are occasionally asked to move from one room to another in the same unit, for administrative reasons or for ease of maintenance. This happens relatively rarely, however, and is seldom protested by the students involved. Students cannot be required to move from their room to a room in another unit. Students asked to relocate must be given reasonable advance notice. Interview with Mrs. Margaret Dewell, Supervisor, Housing Office, University of California, in Berkeley, California, Mar. 25, 1974.
70. A dormitory resident at Berkeley, for example, cannot be compelled to accept additional roommates beyond the number specified in his or her contract. If a vacancy occurs in a double-occupancy room, the remaining resident can be required to
Moreover, the expectation of privacy in dormitory rooms is considerably higher than in the case of lockers. Lockers are generally located in public areas such as hallways where their contents are exposed to the view of passersby whenever the user opens the door. Lockers are intended to serve as receptacles for books, supplies, and other impersonal items, whereas dormitory rooms provide an area of repose and privacy where students may rest, sleep, undress, and converse. The rationale of locker search cases may thus be inapplicable to searches of dormitory rooms.

A second decision calling into question the availability of Fourth Amendment protections in connection with student dormitory rooms is People v. Kelly. This case involved a warrantless, nonconsensual search of a student's quarters by the police and the dormitory master. Holding that the search was valid, the California appellate court relied on a theory of apparent authority or reasonable belief: because the police reasonably believed that the dormitory master had the right to permit them to enter the student's room, the search was reasonable. The holding of the case is obscured, however, because the search was conducted incident to a lawful arrest, and also because the searching parties incorrectly believed that any crime constituted an emergency which in turn justified suspension of the warrant requirement. Moreover, since Kelly was decided, the "reasonable belief" justification for police searches has been cut back so severely by the Supreme Court that Kelly today may be said to have at best a very limited vitality.

The Housing Contract as a Contract of Adhesion

Where the parties to a contract are markedly unequal in bargaining power, courts have refused to give effect to their agreement when necessary to protect the interest of the weaker party. Among such "contracts of adhesion," particularly suspect are contracts in which the

accept another roommate, subject to the university's policy of attempting to match preferences for roommates. Id.
71. Objects in "plain view" are subject to seizure by an officer who has a right to be in position to view them. Harris v. United States, 390 U.S. 234 (1968).
72. Only areas entitled to a reasonable expectation of privacy are protected by the Fourth Amendment. Katz v. United States, 389 U.S. 347 (1967).
74. Id. at 680, 16 Cal. Rptr. at 184.
75. Id. at 678, 16 Cal. Rptr. at 183.
76. Id. at 679, 16 Cal. Rptr. at 183.
77. Id. at 677, 16 Cal. Rptr. at 181-83.
superior party has a monopoly on a necessary commodity and is in
a position to dictate terms on a take-it-or-leave-it basis. Universal
employment of a standard contract by major suppliers of a commodity
can also trigger close scrutiny because a consumer who desires to ob-
tain the product must accept the terms of the contract, or do without. All these factors are present to some degree in university housing con-
tracts. Inexpensive housing is in short supply in most university com-
munities. The college, as a major supplier, is in a position of relative
power vis-a-vis the student. The clause appears in all housing con-
tracts offered by the university. There is no opportunity for arm’s-
length bargaining.

Under such circumstances courts have nullified agreements in or-
der to protect the weaker party. While the classic cases of contracts
of adhesion have arisen in commercial contexts, it is reasonable to ex-
pect that courts will protect the student’s interest, a basic constitutional
liberty, with at least the same solicitude with which they have pro-
tected the interests of consumers in the well-known cases of auto-
mobile warranties and insurance contracts.

80. Id.
81. Rawls, supra note 44.
82. Id.
83. Id.
84. See note 79 & accompanying text supra.
85. Indeed, given the significance of the right at stake, the disparity between the
power of the contracting student and that of the state-supported university may attain
costitutional dimensions. Under the doctrine of unconstitutional conditions, the
state may not, absent compelling justification, extend public benefits on condition that the
recipient agree to forfeit a constitutionally protected interest. See, e.g., Spevak v. Klein, 385 U.S. 511 (1967). See generally O’Neil, Unconstitutional Conditions, 54 CALIF. L. REV. 443 (1966). While the doctrine has been applied most frequently in connection with welfare, e.g., Shapiro v. Thompson, 394 U.S. 618 (1969), and employment, e.g., Keyishian v. Board of Regents, 385 U.S. 589 (1967), problems, lower courts have on occasion invoked it in dealing with school-related cases, e.g., West Virginia Bd. of Educ. v. Bartette, 319 U.S. 624, 641 (1943); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 156-58 (5th Cir.) cert. denied, 368 U.S. 930 (1961). If, as has been urged, dormitory residence is an integral part of a college education, Fatzer v. Board of Regents of State of Kansas, 167 Kan. 587, 207 P.2d 373 (1949), the school may not utilize its power to dispense this benefit in such a way as to deprive students of their right to be free from unauthorized searches. Particularly in view of the rapid growth of public housing, see Franklin, Federal Power and Subsidized Housing, 3 J. URBAN L. 61 (1971), which opens up large areas in which coercive contracts could be used to negate constitutional guarantees, courts are likely to be reluctant to set prece-
dent permitting such contracts.

Moreover, in drawing a line between students who live in dormitories and suffer reduced Fourth Amendment protection and students who live off campus and receive
The Status of the Searcher: College Administrators, College Students, and the Fourth Amendment

As justifications for police searches, each of the theories considered in the preceding section suffered from serious defects. As a result it might appear that student residents stand on a par with citizens generally with respect to search and seizure law and that all its protective features, including the right to exclude illegally seized evidence, are available to students as well. Although the law seems to be moving in this direction, a recent, influential, and somewhat anomalous line of cases from the Alabama federal courts have made it evident that this is not yet the case.

Moore v. Student Affairs Committee of Troy State University\(^6\) involved a warrantless search by university officials and police of defendant Moore's room. Contraband was found, and the student was expelled. In rejecting the student's application for relief and upholding the search, the federal district court cited a number of cases involving the national security in which searches by a superior were held in full protection, university housing practices may result in a distinction so artificial as to invite attack on orthodox equal protection grounds. Particularly where—as at Berkeley and other metropolitan universities—dormitories and private dwellings exist side-by-side in the same neighborhoods, there is little justification for permitting students in one building to enjoy full Fourth Amendment rights while students in a virtually identical highrise complex next door receive only limited protection. The constitutionality of such a practice becomes even more suspect when it is realized that often the factor that determines whether a student resides in a dormitory or private quarters is financial. Generally, dormitory living is cheap and convenient. Minority students are accepted without question. As a result, dormitories attract many students who are poor, of minority races, on scholarships, or self-supporting. Students who live in more expensive apartments, on the other hand, tend to come from more affluent families. Rawls, \textit{supra} note 44. Wealth thus emerges as the decisive criterion; wealthy students have greater freedom from warrantless searches than students with a more restricted income.

Wealth appears to be receiving greater attention in recent years as a possible suspect classification. \textit{See generally, Note, Developments in the Law—Equal Protection, 82 HARV. L. REV. 1065, 1121-32 (1969).} Regulations imposing wealth-based burdens have been struck down in a variety of contexts, including the right to vote, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); to appeal, Griffin v. Illinois, 351 U.S. 12 (1956); and to receive equal treatment in the criminal justice system, Tate v. Short, 401 U.S. 395 (1971). Although there is some question whether wealth alone, absent a fundamental interest, suffices to trigger strict judicial scrutiny, San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 29 (1973), there is little doubt that freedom from unreasonable searches and seizures is a fundamental interest. In view of these developments it would be consistent with current trends for courts to strike down regulations at state-supported universities that afforded protection from unreasonable searches to some, but not all students.

reasonable. After weighing the needs of the university to govern effectively against the student's right to privacy, the court concluded that the university had an inherent right of reasonable inspection as part of its responsibility to preserve order and discipline on campus. A school regulation or practice permitting campus officials to search student rooms upon "reasonable cause" was thus a legitimate exercise of their authority. The standard to be employed in such searches—reasonable cause—is somewhat lower than that of probable cause, and a search warrant is evidently not necessary.

The court in Moore did not consider the extent to which university officials might delegate or transfer their right to search to the police. This question was resolved a short time later in Piazzola v. Watkins. Here, the same federal court that decided Moore was confronted with a case in which the state university had reserved a right to enter dormitory rooms for inspection purposes as a condition of rental. Without probable cause, consent, or a warrant, the local police raided a student's dormitory room and discovered a quantity of marijuana. Even though the police had searched on the express invitation of university authorities, the court held the search unconstitutional and barred introduction of the marijuana in court. The court said that while universities may have a right to conduct searches for institutional, college-related reasons, this right does not extend to searches conducted in order to seize criminal evidence. With regard to the delegation issue left open by Moore, the court held that "the fact that the college has this right [to search]—for a restricted purpose—does not mean that the college may exercise the right by admitting a third party."

88. 284 F. Supp. at 730.
89. Id.
90. Id.
91. Despite the failure of university authorities to obtain a search warrant in advance of the search, id. at 728, the search was upheld. Id. at 730.
93. Id. at 628.
94. The right to search "cannot be expanded and used for purposes other than those pertaining to the special relationship." Id. Interpretation of these purposes is to be made in terms of the institution's need "to operate the school as an educational institution." Id., citing Moore v. Student Affairs Comm., 284 F. Supp. 725 (M.D. Ala. 1968).
95. Id. at 628.
In arriving at this result, the court in *Piazzola* cited with approval the opinion in *United States v. Blok*, another federal court case, which concerned a police search of a government employee’s desk with the consent of her supervisor. In *Blok*, the supervisor had an uncontested right to search the employee’s desk for administrative reasons similar to those cited in *Moore*. Nevertheless, the court held that consent by the superior did not render the police search constitutional because “[o]peration of [the agency] and enforcement of the criminal law do not amalgamate to give a right of search beyond the scope of either.” The court also found that

[i]n the absence of a valid regulation to the contrary appellee was entitled to, and did, keep private property of a personal sort in her desk. Her superiors could not reasonably search her desk [for items having] no connection with the work of the office. Their consent did not make such a search by the police reasonable.

Accordingly, even after *Moore* and *Piazzola*, a university’s right to conduct searches is not unlimited. Administrative searches of student quarters must be conducted by campus officials, who cannot delegate their authority to the police. Warrantless searches based on the reduced standard of reasonable cause must be made only for institutional reasons and not for the furtherance of enforcement generally.

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96. 188 F.2d 1019 (D.C. Cir. 1951).
97. *Id.* at 1021.
98. *Id.*
99. *Id.*
100. A variation of this problem would arise if a university were to appoint a campus police officer to an administrative position, such as dean, in the university. Such a figure would in a sense “wear two hats.” If the school were to dispatch this person to investigate reports of suspicious activity in a student’s room, what standard of search would be applicable? Although there appear to be no cases on record, it seems likely that the standard would depend on the event that gave rise to the search and the motives of the university in carrying out the search. See *Contreras v. United States*, 291 F.2d 63 (9th Cir. 1961) (immigration officer who evidently also acted as an agent of the Bureau of Customs could not use administrative standards appropriate to customs searches to inspect personal effects of alien stopped 72 miles within border on suspicion of illegal entry); *Valenzuela-Garcia v. United States*, 425 F.2d 1170 (9th Cir. 1970) (immigration official barred from introducing evidence obtained from six-inch recess in automobile, since no illegal alien could reasonably have been suspected to be hiding in recess of this size); *Comment, In Search of the Border: Searches Conducted by Federal Customs and Immigration Officers*, 5 N.Y.U.J. INT’L L. & POL. 93, 104-05 (1972).
College Law Versus the Fourth Amendment: A New Variety of Administrative Search?

Earlier, a number of theories were considered that purported to justify searches of student quarters without regard to normal Fourth Amendment standards. Each of these theories effected a waiver of the searched person's Fourth Amendment rights based on that person's status. In each theory, students were viewed as having waived to some extent their Fourth Amendment rights as a result of some aspect of their relationship with school administrators. As was seen, none of these theories provided a satisfactory basis for searches conducted without a warrant or consent. Next, a rationale based on the status of the searcher was analyzed. This approach, exemplified by the solution propounded in Moore and Piazzola, essentially results in an administrative search, like those approved by the Supreme Court in Camara v. Municipal Court and See v. City of Seattle. In Camara and See, administrative officers were permitted to enter homes or businesses by satisfying a reduced standard of probable cause. In arriving at this result, the Court employed a process of balancing in which the public interest favoring the search was weighed against the victim's interest in privacy. Because the inspector's objective is the enforcement of an administrative regulation rather than the criminal law, and because his entry is only minimally intrusive, limited in scope, and relatively nonthreatening, it was appropriate for him to enter premises under more permissive procedures than those used by police officers conducting searches for criminal evidence. In these cases and those that followed there appears to be an inverse relationship between the innocuousness of the search and the readiness

102. The theories reviewed were in loco parentis, student status as an exempt class, the landlord-tenant relationship, transience, and the housing contract. See notes 11-85 & accompanying text supra.

103. See text accompanying notes 11-85 supra.

104. See notes 86-101 and accompanying text supra.

105. E.g., Bible, The College Dormitory Student and the Fourth Amendment—A Sham or a Safeguard, 4 U.S.F.L. REV. 49, 54-63 (1969), which criticizes the Moore decision for creating a new variety of administrative exception lacking the safeguards, especially the requirement of a search warrant, laid down by the Supreme Court in Camara v. Municipal Court, 387 U.S. 523 (1967), and See v. City of Seattle, 387 U.S. 541 (1967).


109. Id. at 537. See generally Greenberg, The Balance of Interest Theory and the Fourth Amendment: A Selective Analysis of Supreme Court Action Since Camara and See, 61 CALIF. L. REV. 1011, 1011-12 (1973) [hereinafter cited as Greenberg].
of courts to sanction a partial waiver, or lowering, of the victim's Fourth Amendment protections.\(^{110}\) The more "administrative" the search, the lower the waiver threshold; conversely, the more police-like the search, the more rigorously Fourth Amendments standards are applied.\(^{111}\) This relationship becomes especially significant in college searches because, as will be seen in the next section, supervision of student conduct at many universities is carried out by an elaborate hierarchy of authorities, ranging from student dormitory assistants to college deans and the campus police. A case study will examine in detail the functioning of the various levels of enforcement personnel at an illustrative university, the University of California at Berkeley. It will be seen that each type of administrator occupies a distinctive position in a spectrum of potential searchers which is bounded by pure law enforcement operatives at one end and by exclusively administrative functionaries at the other. This part concludes by discussing two recurring strategies by which some university authorities have sought to exploit the advantages of Moore-Piazzola administrative searches to facilitate the objective of criminal enforcement.

Case Study of a Campus Disciplinary Hierarchy: The University of California

Campus Police

At Berkeley, as at most universities, the campus police have the full status of peace officers under state law.\(^{112}\) Their powers are identical with those of the police in the California cities of Oakland, Berkeley, and Albany with whom they share partially overlapping geographical jurisdictions.\(^{113}\) The campus police make arrests, issue citations, serve warrants, and carry arms just as municipal police do.\(^{114}\) Unlike officers of city police forces, however, the campus police are employed not by a political subdivision of the state but by the Regents of the

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110. Greenberg, supra note 109, at 1016.
111. Id.
114. Id.
University.115 Their territorial jurisdiction includes the campus, certain grounds and properties located outside the campus proper, and territory located within a radius of one mile of the campus.116 In Berkeley, Albany, and Oakland, primary jurisdiction over certain areas is governed by agreements between the campus police and the police of these municipalities.117 Telegraph Avenue,118 for example, is under the concurrent jurisdiction of the Berkeley city police and the campus police, while Albany Village, a large tract of married student housing located three miles northwest of the university, is under the jurisdiction of the Albany police.119

The campus police at Berkeley make approximately 500 arrests per year,120 most of them for possessing or selling drugs, disturbing the peace, and shoplifting.121 Although only a small fraction of these arrests result from searches of student dormitory rooms or apartments,122 searches of these areas yield a high rate of arrest and conviction.123 Despite this high success rate, the campus police express reluctance to conduct such searches unless absolutely necessary.124 They feel such searches interfere with the "service" image they strive to project.125 Accordingly, dormitory residents are encouraged to "police themselves" so as to minimize the need for police intrusions,126 and the police "work with" key dormitory personnel in developing means for coping with antisocial activity or petty crime through counseling and peer pressure.127

115. Id.
117. California Monthly, supra note 112, at 6, col. 1. This is evidently a fairly common practice. Campus police often work in collaboration with local municipal police. Goodman & Neiderhoffer, supra note 2, at 7.
118. Telegraph Avenue, scene of many of Berkeley's well-known demonstrations, is today the home of large numbers of drug peddlers, "street people," and runaway youths. Berkeley city and campus police consider it a high-crime area and keep it under constant surveillance. Anderson, supra note 113.
119. Id.
120. California Monthly, supra note 112, at 6, col. 2.
122. Id.
123. For example, in the first quarter of the current year there were five such searches; each resulted in a lawful arrest. Id.
124. For a study of the ambivalent quality of campus-police relationships, see Goodman & Neiderhoffer, supra note 2, at 5-8.
126. Id.
127. Anderson, supra note 113. Evidently, many universities desire to minimize the visibility of any police presence on campus. Cf. Berman, Law and Order on
The reluctance of the campus police to enter and search student areas runs counter to a recent movement to abolish the "double standard" of treatment. Until fairly recently, a student apprehended by the police for a minor offense could expect to be referred to the dean for a lecture, while nonstudents arrested for the same offense were dealt with through the criminal justice system. Today, however, the campus police attempt to treat all offenders—students and nonstudents—alike. Since police ordinarily display little reluctance about entering the quarters of the average criminal suspect in search of evidence of crime, the disinclination on the part of campus police to enter student rooms is somewhat surprising. Their reluctance may well be a product of economic pressures. In recent years, the university has had difficulty in keeping the residence halls filled to capacity. Institutional living is evidently unattractive to many of today's independent-minded students, with the result that the demand is often insufficient to fill the halls. Vacancies cause a loss of income that must be made up from the general university budget. As a result, university authorities have an interest in avoiding actions that could make students more reluctant to choose to live in the residence halls. "If we hassle the kids," one housing officer reported, "they won't want to live in the dormitories any more."

**Housing Office Personnel**

Residence halls at Berkeley have a standard staffing pattern of four student workers, called Residents, per hall. Each Resident receives free room and board at the dormitory and, in some cases, a small salary in return for overseeing the physical plant, providing supervision of the students, and administering health and safety requirements. Announced fire and safety inspections of students' rooms

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128. California Monthly, supra note 112, at 6, col. 2. For a discussion of the double standard of treatment, see Van Alstyne, supra note 16.
129. Van Alstyne, supra note 16. This change in attitude has been observed at a number of American universities. Goodman & Neiderhoffer, supra note 2, at 10.
130. Interview with Mrs. L. Rawls, Housing Office, University of California, in Berkeley, California, Mar. 14, 1973 [hereinafter cited as Rawls II].
131. Id. See also the discussion of the effect of economic class on student housing patterns in note 85 supra.
132. Rawls II, supra note 130.
134. Id.
are carried out at stated intervals.\textsuperscript{135} Unannounced entries are evidently left to the discretion of the individual Resident.\textsuperscript{136} One housing officer reported that the Residents have keys to students’ rooms and are authorized to enter when there is a disturbance or a report of criminal activity.\textsuperscript{137} She estimated that such unannounced, warrantless searches occur at a rate of about one per week.\textsuperscript{138} Another housing official stated that Residents try to minimize the frequency with which they enter students’ rooms.\textsuperscript{139} The primary emphasis, she said, is on counseling potential offenders; entries are made only when this process fails to secure compliance.\textsuperscript{140} An informant who serves as a Senior Resident Assistant at a dormitory for women confirmed that a wide variation exists among the Residents regarding searches of students’ rooms.\textsuperscript{141} When a report of minor criminal conduct is received, some Residents promptly enter the room and investigate, while others resort to admonition and counseling.\textsuperscript{142} Most Residents, she said, would call the police only in an emergency or if all other measures had failed.\textsuperscript{143}

Significantly, married student housing is more frequently subjected to warrantless entries by university officers and police.\textsuperscript{144} Although some of these entries are apparently only routine “baby-checks,” it appears that married student apartments are entered and searched more frequently for other purposes as well.\textsuperscript{145} Unlike dormitory housing, married student apartments are in great demand;\textsuperscript{146} thus the university may not feel much economic pressure to extend the permissive policy it applies to dormitory rooms to married students quarters.

In general, however, searches of student quarters at Berkeley seem to be a politically and economically sensitive function that no one in the university hierarchy is especially anxious to assume. Al-

\textsuperscript{135} Interview with Faye Harris, Housing Office, University of California, in Berkeley, California, Mar. 14, 1973.
\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} Rawls II, supra note 130.
\textsuperscript{140} Id.
\textsuperscript{141} Interview with Miss Jennifer Gee, Senior Hall Advisor, in Berkeley, California, Apr. 3, 1973.
\textsuperscript{142} Id.
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
though rooms are searched and students arrested, there appears to be a generalized wish that this were not necessary, a reluctance to confront the necessity squarely, and a tendency to place the responsibility for doing so upon someone else. The net effect is that investigative functions at the university are carried out, often reluctantly, by many levels of personnel who are not police. Students live in an amorphous situation in which virtually every university representative with whom they come in contact is part of a large, ill-defined group charged with policing their behavior. The nature of a student's right to be free from unreasonable searches and seizures in such an environment presents Fourth Amendment issues that are both novel and important.

Searches by Friends of the Police: The Agency Doctrine

The most significant deterrent of illegal searches and seizures is the exclusionary rule, which bars introduction of illegally seized evidence in criminal and certain administrative proceedings. The rule was designed primarily as a means of discouraging illegal police searches; it does not, however, bar evidence seized by civilians and voluntarily surrendered to the police. This limitation was first articulated in Burdeau v. McDowell, a Supreme Court case in which private books and papers had been confiscated by agents of a corporation and submitted to federal prosecutors. Because the seizure had taken place without the participation or knowledge of the authorities and because the Fourth Amendment was only applicable to "the sovereign," the defendant's request for suppression was denied.

148. See Knoll Associates, Inc. v. FTC, 397 F.2d 530 (7th Cir. 1968); Comment, 17 U. KANS. L. REV. 512, 528 (1969). For the view that the exclusionary rule should be in effect in all proceedings wherein the government seeks to put in evidence material illegally seized by a governmental official, see Sutherland, Use of Illegally Seized Evidence in Non-Criminal Proceedings, 4 CRIM. L. BULL. 215 (1966). A 1962 survey disclosed that almost one-half of all universities permitted use of improperly acquired evidence in disciplinary hearings. Van Alstyne, Procedural Due Process and State University Students, 10 U.C.L.A. L. REV. 368, 369 (1962).
149. See note 32 supra.
150. This is the traditional view, which has recently begun to draw fire from commentators. See, e.g., Sutherland, Use of Illegally Seized Evidence in Non-Criminal Proceedings, 4 CRIM. L. BULL. 215, 229 (1968), which argues that since the Fourth Amendment is not directed so much negatively as a limitation on governmental initiative as affirmatively as a protection of the individual's right of privacy, the exclusionary rule should be applied to any illegal invasion, whether at the hands of governmental figures or private trespassers. At present, however, the only remedy for an improper search by a civilian acting independently is a tort action for trespass or invasion of privacy.
151. 256 U.S. 465, 475 (1921).
152. Id. at 476.
At the time *Burdeau* was decided, "the sovereign" was understood to refer only to the federal government. This limitation permitted a practice that came to be known as the "silver platter" doctrine, in which state authorities were permitted to perform illegal searches and to turn over to federal prosecutors any evidence discovered. *Elkins v. United States* overturned this practice, and *Mapp v. Ohio* extended the exclusionary rule to the states. Thus, by the early 1960's the rule had developed that neither state nor federal police could profit from the fruits of their illegal searches or entries, but they could profit from the fruits of such searches when these were conducted by civilians.

When a citizen has conducted a search independently of governmental agents, the courts have generally allowed law enforcement officers to use evidence found in such searches even though the citizen stood in a custodial or quasi-enforcement capacity with respect to the person searched. In *Barnes v. United States* for example, a motel operator, in searching the room of a guest, found forged checks which he gave to the police. The court upheld admission of the forged checks on the civilian-search theory. Again, in *People v. Randazzo*, a store detective, peering into the women's dressing room, spied the defendant concealing shoplifted goods. Although the dressing room probably qualified as an area in which the woman had a reasonable expectation of privacy, the court refused to suppress the evidence, holding that the acts of the privately employed detective did not fall within the scope of the exclusionary rule.

Such a rule exempting searches by persons other than governmental agents has an obvious potential for abuse; this limitation can create, in effect, a new silver platter doctrine in which citizens sym-

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156. For the view that the foundations of *Burdeau* have been eroded by *Elkins* and *Mapp v. Ohio*, see Sutherland, *Use of Illegally Seized Evidence in Non-Criminal Proceedings*, 4 CRIM. L. BULL. 215, 215-22 (1968).
157. But see *State v. Brecht*, 157 Mont. 264, 485 P.2d 47 (1971) which held that the admission of evidence seized by a private citizen in violation of defendant's right of privacy was improper.
158. 373 F.2d 517 (5th Cir. 1967).
159. Id. at 518.
163. For examples of criticisms that have been levelled at the private-citizen exception, see notes 150 & 156 supra.
pathetic to law enforcement perform constitutionally suspect searches for the benefit of the police. In response to this danger, court decisions have developed the principle that when a civilian acts on behalf of the police, an agency relationship is created and the search falls within the exclusionary rule.

In *Stapelton v. Superior Court*, the defendant was wanted for credit card fraud. An agent of the credit card company accompanied police to the defendant's home, where he was arrested. While the police were occupied inside the home, the company's agent went outside to the defendant's car and searched it, finding contraband. The California Supreme Court held that the involvement of the civilian in planning and executing the operation was so substantial as to render it a joint affair. The civilian's search of the car was thus tainted by official involvement and, because the raid was found to be constitutionally deficient, the evidence obtained in the search of the car was suppressed. In dictum, the court in *Stapleton* warned that searches by private police and investigators could present serious problems. Such searches constitute a growing threat to privacy, and when they are performed with a view to assisting the government to enforce the criminal law, they should be subject to ordinary Fourth Amendment strictures.

To illustrate the "minimal" level of governmental participation required to bring cooperative action within the purview of the Constitution, the court cited *United States v. Price* a southern lynching case in which the presence of a single federal marshal in a lynch mob was enough to establish the requisite "state action" and to allow the application of constitutional remedies. The California court also approved the decision in a state court case in which official involvement had been found when a policeman "silently stood by" while a civilian performed a search, thereby becoming a "willing but silent beneficiary" of the search. Other cases have suggested that mere knowledge on the part of the police that an illegal search was being conducted for their benefit will result in application of the exclusionary rule.

164. 70 Cal. 2d 97, 447 P.2d 967, 73 Cal. Rptr. 575 (1968).
165. Id. at 102, 447 P.2d at 970, 73 Cal. Rptr. at 578.
166. Id.
167. Id. at 100-01 n.3, 447 P.2d at 969 n.3, 73 Cal. Rptr. at 577 n.3.
168. Id. at 101, 447 P.2d at 970, 73 Cal. Rptr. at 578.
In determining the degree of police involvement in a civilian search, courts have assigned considerable weight to the motivation of the person conducting the search. In *Gold v. United States*, for example, a federal district court considered a case in which police had advised an airline manager of their belief that a certain package contained contraband. The police, however, had avoided asking the manager to open the package. Later, he opened the package, discovered that it contained illegal material and called the police. In upholding the search the court emphasized that the manager’s inspection had been carried out some time after the consultation with the police and had been spurred by “reasons of his own,” i.e., the manager’s interest in detecting mislabelling of the package, which would have affected the freight charge. Because the manager had searched for his own reasons rather than from a desire to help the police, the search fell under the category of civil searches and the exclusionary rule was held inapplicable. By contrast, in *Corngold v. United States*, airline authorities had searched a parcel at the direct request of government agents. Even though a clause in the shipping contract gave the airline the right to search any package, the court held that instigation of the search by the police removed it from the classification of civil searches, and the evidence was excluded.

Applying the principles of these cases to the various levels of university personnel who conduct searches of student rooms, a number of conclusions begin to emerge. First, the campus police clearly fall within the range of the Fourth Amendment and the exclusionary rule. Even at campuses where the police are not designated as peace officers under state law, their objectives and methods of operation are so similar to those of conventional police as to bring them within ordinary Fourth Amendment strictures. The common practice of dividing territories and sharing responsibility for certain areas with local municipal police forces would also tend to bring campus police under the agency rule.

With respect to housing officials and university deans, a similar finding seems indicated. At universities such as Berkeley, where ad-

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172. 378 F.2d 588 (9th Cir. 1967).
173. *Id.* at 591.
174. *Id.* at 591, 594.
175. 367 F.2d 1 (9th Cir. 1966).
176. *Id.* at 5.
177. See text accompanying note 112 *supra*.
178. See text accompanying notes 113-14 *supra*.
179. See text accompanying notes 113 & 117-18 *supra*.
ministrators carry out preliminary investigations and summon the police only when hard evidence of criminal activity is discovered\textsuperscript{180} and where the police encourage this type of action,\textsuperscript{181} full Fourth Amendment standards seem appropriate. Except in cases where the university can demonstrate independent, school-related "reasons of its own" for such searches,\textsuperscript{182} courts would be expected to find an agency relationship.

With regard to searches conducted by student Residents, the conclusion is not so clear. The agency principle was formulated in order to deny any benefit to the prosecution from evidence obtained by civilian confederates.\textsuperscript{183} From one point of view that is what the student Residents are, and their desire to deal with problems themselves, at least in the early stages, tends to support this conclusion.\textsuperscript{184} Many student Residents are anti-police in their attitudes,\textsuperscript{185} however, and perform police-like duties out of a desire to minimize police presence in the areas in which they live.\textsuperscript{186} Arguably, when student Residents assume police responsibilities in the hope of avoiding police intervention, they are functioning like private detectives who search for reasons of their own.\textsuperscript{187}

For most levels of university personnel, however, the creation of a nebulous, university-wide family of police-like operatives provides no short-cut for searches that do not comport with Fourth Amendment standards. When police work is carried out by persons who are not police, courts have been quick to expand the area of constitutional protection by means of agency principles to take account of each new level of operation.\textsuperscript{188}

Apart from its questionable legal effect, delegating authority to search student quarters to civilian campus personnel may be poor policy. Inexperienced personnel lacking even the beginning patrolman's

\textsuperscript{180} See text accompanying notes 126, 130-32 & 140-44 supra. These attitudes on the part of administrators are evidently not uncommon, cf. Goodman & Neiderhoffer, supra note 2, at 9-10.
\textsuperscript{181} See text accompany notes 126-27 supra.
\textsuperscript{182} See text accompanying notes 173-75 supra.
\textsuperscript{183} See text accompanying notes 167-71 supra.
\textsuperscript{184} See text accompanying notes 139-43 supra.
\textsuperscript{185} Interview with Miss Jennifer Gee, Senior Hall Advisor, in Berkeley, California, Apr. 3, 1973.
\textsuperscript{186} Id.
\textsuperscript{187} See notes 172-76 & accompanying text supra.
\textsuperscript{188} See text accompanying notes 156-76 supra.
rudimentary knowledge of the rights of criminal defendants\footnote{See generally Vandall, Training to Meet the Police Function, 1971 Wisc. L. Rev. 547.} may expose the university to suit for invasion of privacy and false arrest. On balance, universities may find that their best interest is not served by encouraging peculiarly police-like functions to be carried out by persons who are not police.

**Maximizing Police Access by Attempted Delegation of the Right to Search**

Not all universities are anxious to minimize police presence on campus. Some, such as the state university in *Piazzola*,\footnote{See notes 92-93 & accompanying text supra.} may at times actively desire to have municipal police come onto the campus in response to some perceived threat. Indeed, they may wish to facilitate the effectiveness of the police while they are on the campus.\footnote{Schools having this attitude toward police presence are discussed in Goodman & Neiderhoffer, supra note 2, at 9-10.} Some officers, like the administrator in *Piazzola* who accompanied police during a raid of students' rooms, may be under the impression that by inviting the police to carry out searches, they can delegate to the police the right to search student rooms without a search warrant and with a showing of mere reasonable cause.\footnote{See text accompanying notes 86-88 supra. This is the lower standard approved in Moore.} This approach, however, was rejected by the court in *Piazzola*,\footnote{See text accompanying notes 95-99 supra.} which held that colleges are permitted to perform administrative searches only because of the less threatening, narrower, and less intrusive nature of the search.\footnote{See notes 95-99 & accompanying text supra. See generally notes 106-09 & accompanying text supra.} Attempts to share this power with others whose purpose is less benign frustrate the end for which the doctrine was designed. Consequently, *Piazzola* held, the right to search without a warrant may not be shared with the police,\footnote{See text accompanying notes 95 & 99 supra.} and college searches may be conducted only for institutional purposes.\footnote{See notes 94 & 97 & accompanying text supra. See generally notes 106-11 & accompanying text supra.}
violating both a criminal statute and a campus rule? Although airline\textsuperscript{197} and store detective cases\textsuperscript{198} can provide helpful principles for distinguishing between institutional searches and those contaminated by law enforcement motives, there exists relatively little case law about college searches that is squarely on point. A leading commentator, however, has advanced a set of guidelines in another context that may prove helpful.

In a recent article, Professor Van Alstyne has suggested a two-fold test\textsuperscript{199} for determining whether an offense is sufficiently campus-related to warrant university disciplinary action in place of, or in addition to, treatment by the criminal courts. The first step is to determine whether the university has a clearly distinguishable and separate interest in penalizing the conduct, an interest that is not already served by the penal statute. If there is no interest apart from the traditional interests of deterrence, retribution, and so on that undergird the criminal law, then the only type of offense that warrants separate university discipline is one that poses a threat to the functioning of the university as an academic institution. Thus, an offense that is already adequately punishable by the criminal law and that does not threaten the well-being of the university community should not be made the object of separate campus disciplinary proceedings.

This test, designed to evaluate the need for disciplinary action, can also help determine the appropriateness of administrative search procedures, since offenses that warrant only campus discipline are probably identical to those that could be made the object of an administrative search. Thus, in the earlier example of Abigail Jones, an administrative search would not be in order, because the university has no independent reason, apart from the interest in enforcing the criminal law in general, for punishing or deterring such behavior. On the other hand, the student who steals books from the university library could be subjected to a warrantless administrative search, since his behavior poses a threat to the proper functioning of the school.

Summary and Conclusions

The evidentiary standard of the Fourth Amendment is not an unvarying, rigid one demanding the same treatment in every situation.\textsuperscript{200}
Recent Supreme Court decisions have held that it is a flexible principle, taking into account the balance of public and personal interests in each case.\textsuperscript{201} New contexts and new problems require that the rights of the individual and the rights of the institution or the state be weighed anew.

In evaluating these interests, courts must take care that persons entrusted with purely administrative functions do not arrogate to themselves a power properly entrusted only to law enforcement personnel. At the same time, however, they must not place unreasonable obstacles in the path of those who are charged with supervising the conduct of populations that are by nature young, often rebellious, and on occasion heedless of the criminal law. In seeking to strike a balance, courts will find that case law from earlier years is not a reliable guide. Much law relating to colleges and schools was formulated in an era when college education was a privilege enjoyed by only a favored few\textsuperscript{202} and the legal rights of students did not command the judicial attention they do today. Similarly, resort to isolated considerations of public policy supplies no satisfactory solution. For example, efforts to fortify the position of educational institutions by strengthening the hand of college administrators, as has been seen, can result in a chaotic picture of deputized and semi-deputized officials whose status under the law is uncertain and who in all likelihood lack the training and experience to carry out law enforcement functions effectively. In such an environment, students and educators can easily come to regard each other as adversaries, a condition scarcely conducive to good learning.

More importantly, the socialization of new generations of students for active participation in democratic society can be undermined if courts permit schools to use constitutionally questionable procedures in an attempt to circumvent important guarantees. The young may conclude that liberty may be treated lightly or analyzed away as an inconvenient formality. In light of the doubt that exists concerning the legality of such searches as those described at the outset of this article, it is incumbent on courts and universities to proceed only with the greatest caution in this sensitive area affecting strongly held beliefs and traditional personal liberties.

\textsuperscript{201} Id.; see notes 107-11 & accompanying text \textit{supra}.

Proposed Administrative Guidelines for Searches and Seizures in University-Owned Housing

1. Administrative searches of student quarters conducted by civilian campus authorities need not conform to the constitutional requirements of probable cause and search when the object of the search is compliance with campus regulations. Such searches may be made when the administration has reasonable cause to believe that conduct violative of campus rules is taking place within the student's room or apartment.

2. Any search by the campus police or other university authority conducted to discover or seize evidence of criminal activity may proceed only upon a showing of probable cause and after obtaining a search warrant describing with particularity the place to be searched and the objects to be seized.

3. When the university has good cause to believe that conduct amounting to both a criminal violation and an infraction of campus rules is taking place, either of the above procedures is appropriate.

4. Searches of student quarters may not be predicated on a contractual provision in the housing agreement nor upon an implied waiver at entrance.

5. The right to search based on the standard of guideline (1) may not be delegated or shared with non-university personnel.

6. University personnel who enter and search students' quarters should be aware that courts may consider them agents of the police for Fourth Amendment purposes. To avoid liability, such personnel should acquaint themselves with Fourth Amendment procedures, including the obtaining of search warrants. Until they have familiarized themselves with these procedures, university employees should refrain from entering students' rooms unless the occupant consents or an emergency exists.

7. Particular student groups should not be singled out for special treatment. In particular, separate policies for married versus unmarried student housing, or more expensive versus less expensive housing are not justified.