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William W. Van Alstyne

William & Mary Law School

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A SUGGESTED SEMINAR IN STUDENT RIGHTS

WILLIAM W. VAN ALSTYNE *

The decade now passing away from us has bubbled with significant change in law school curricula, especially from the heat of recent developments in constitutional law. We have, for instance, shaped new courses in criminal procedure, the law of poverty, rights of privacy, race relations, church-state relations, and reapportionment. As the decade draws to a close, still another social development has begun so significantly to modify an area of the law that it, too, may warrant renewed attention in some of our law schools. This particular development affects many of us more directly than others. It embraces the mini-revolts by students whose seemingly contradictory demands for more independence and greater participation and whose rambunctious political action have placed unbearable strains on the tidy body of law which traditionally mediated occasional disputes between students and their colleges. Whether the trend is welcome or not, increasing numbers among the millions of college students are testing and battering legal models once used so steadfastly against them to discourage their claims.

A few decades ago, Columbia University could expel a student merely for peaceful participation in an off-campus political rally wholly unconnected with the university itself, and then be complimented by a state court for its exercise of patriotic paternalism.1 More recently, on the other hand, even highly volatile on-campus political demonstrations have received some judicial protection,2 student editors have been secured in their right to publish criticism of their own college presidents,3 and campus speaker bans have fallen in California, New York, North Carolina, Louisiana, Mississippi,4 Alabama, Illinois.

Earlier, students were expelled on the strength of casual fatherly interviews regarding their alleged indiscretions and the courts sided with the college as alma mater, acting in loco parentis.5 More recently, courts as widely separat-

* Professor of Law, Duke University


5 North v. Board of Trustees, 137 Ill. 296, 27 N.E. 54 (1891); Gott v. Berea College, 161 S.W. 205 (1913); Stetson University v. Hunt, 102 So. 635 (1925); Anthony v. Syracuse University, 231 N.Y.S. 435 (App.Div.1928).
ed as California and Alabama have explicitly repudiated family and contract models in the adjudication of student claims, moving toward requirements of procedural regularity nearly as formal as those observed by federal regulatory agencies in adjudicative proceedings. Indeed, the pace of judicial response has quickened to such an extent that university presidents are sounding the alarm against alleged judicial intrusions on the autonomy of academic institutions.

It seems certain, moreover, that as the courts' more favorable disposition toward student claims becomes better broadcast among the students themselves, we can expect even more challenges to be made. Especially may this be so in view of two phenomena which are well calculated to occupy colleges in court for some time. The first derives from the fact that the law of student-college relations was inert for so very long that it is a natural target for judicial reform. The situation is, in this respect, not unlike the status of criminal law just a few years ago when renewed professional interest, stimulated by constitutional innovation, suddenly reopened the field. The second phenomenon is the activism of the students themselves, pushing against the walls, belligerently challenging practically everything (or seeming to do so), demanding an ever-expanding freedom, and pressing into extramural social change as well.

The legal turmoil, like the campus turmoil it mirrors, will probably be fairly short-lived. After some new rounds of litigation, the subject will almost surely settle itself once again even if the settlement scarcely resembles the older arrangements which were accurate even five years ago, but which already are clearly out of date. In the meantime, however, there may be room in certain law schools for professional consideration of this subject in a seminar fashion. At least it may be said that there currently exists a substantial demand for some consideration of the subject as attested by the several dozen conferences within the past year and a half, each sponsored by administrative associations, house counsel associations, student organizations, or individual colleges simply wanting to review the shape of the law. More than a dozen major studies have appeared within the past twelve months representing lengthy reviews by joint university committees, researching and redoing their own institutional arrangements. Several dozen cases have been matched by at least an equal number of law review articles, all in all providing an ample basis of departure for a respectable treatment of the subject.

On the chance that some may wish to try their hand with materials which have not as yet been put together or even referenced in one place, one version of a course outline and bibliography is offered here. The organization should be virtually self-explanatory, but I would be pleased to correspond with anyone wishing to follow through. (It may well be, of course, that a seminar of this sort has already been offered elsewhere—in which case I would be grate-


ful for impressions of its strengths and weaknesses.) The outline and bibliography were organized for a seminar offered at The University of Mississippi Law School this past summer, with support provided by The Ford Foundation.

Course Outline—The Emerging Law of Student Rights

I. Traditional Legal Conceptions of Student-College Relationships
   (A review of the relationship as one of private contract heavily influenced in its interpretation by the authority of the college to act *in loco parentis.*)
   People *ex rel.* Pratt v. Wheaton College, 40 Ill. 186 (1866).
   North v. Board of Trustees, 137 Ill. 296, 27 N.E. 54 (1891).
   Stetson University v. Hunt, 102 So. 635 (1925).

II. Critical Analysis and Modern Trends Respecting the Relationship as Contractual or Familial.
   (A review in two parts, beginning with conventional contract issues, *e.g.*, contractual capacity, acceptance, mutuality, consideration, interpretation, illusory promises, forfeitures, burden of proof respecting conditions precedent and subsequent, moving through recent contract trends, *e.g.*, contracts of adhesion, unconscionable bargains, unconscionable provisions, to a re-examination of the relationship itself.)
   Campbell Soup Co. v. Wentz, 172 F.2d 80 (3rd Cir. 1948).
III. Related Theories and Problems.

(A brief review of other theories applicable to private colleges, e.g., fiduciary, administrative status, and of ordinary problems of administrative decisions which may be ultra vires.)

IV. The Determination of Whether a University Is Subject to the Bill of Rights or the Fourteenth Amendment.

(A review of factors or connections which may subordinate college authority to constitutional norms protecting personal liberty; the so-called "state action" problem.)

A. Selected background decisions:

B. Recent College State Action Cases:
Powe v. Miles, 407 F.2d 73 (2d Cir. 1968).
University of Miami v. Militana, 184 So.2d 701 (D.C.A.Fla.1966).

C. Periodical Literature References:
Miller, Racial Discrimination and Private Education (1957).

V. Procedural Due Process and Student Discipline
(Consideration of the general availability of procedural guarantees in non-criminal, adjudicative proceedings; problems concerning the status of the student as a "right" or as a "privilege;" consideration of procedural due process as a graduated phenomenon; a specific assessment of the extent to which particular features of procedural due process may or may not apply in student disciplinary adjudications.)

A. The General Availability of Procedural Due Process in Non-Criminal Adjudications:
In re Gault, 387 U.S. 1 (1967).
Local 473, Cafeteria Workers v. McElroy, 367 U.S. 886, rehearing

plus selected readings in administrative due process from K. C.
Davis, Jaffe, Gellhorn and Byse.

B. Whether It Makes Any Difference That There is No Duty To Pro-
vide Publicly-Supported Opportunities in Higher Education:
MacAuliffe v. Mayor of New Bedford, 155 Mass. 216, 29 N.E. 517
(1892).
Frost & Frost Trucking Co. v. R. R. Comm'n, 271 U.S. 583
(1926).
Tinker v. Des Moines Independent Community School Dist., 393
Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.),
Moore v. Student Affairs Committee of Troy State Univ., 284 F.
Supp. 725 (M.D.Ala.1968).

plus selected readings from periodical literature
Linde, Constitutional Rights in the Public Sector: Justice Douglas
O’Neil, Unconstitutional Conditions: Welfare Benefits with Strings
Van Alstyne, The Demise of the Right-Privilege Distinction in Con-
stitutional Law, 81 Harv.L.Rev. 1439 (1968).

C. Particular Procedural Rights in the Adjudication of Student In-
fractions.

1. Requirements Respecting Specificity and Notice of Rules and
   Charges—
   a. Selected Background Decisions
   Keyishian v. Bd. of Regents (and cases cited therein), 385
   U.S. 589 (1967).

plus selected readings from periodical literature


b. College Cases

Snyder v. Board of Trustees of Univ. of Illinois, 286 F. Supp. 927 (N.D.Ill.1968).
Dunmar v. Ailes, 348 F.2d 51 (D.C.Cir.1965).

2. Requirements Respecting A Hearing (e.g., appearance, representation by counsel, confrontation, cross-examination, witnesses, exclusion of certain evidence, selection of panel, public hearing, transcript, burden of proof.)
(Dixon, Knight, Esteban, Goldberg, Dunmar, Butny, Barker, supra).

rev'd, 386 F.2d 778 (2d Cir. 1967).
People v. Overton, 273 N.Y.S.2d 143 (1967), rev'd, 20 N.Y.
2d 360, judgment vacated, 37 U.S.L.Week 3157 (1968).
Moore v. Student Affairs Committee, 284 F.Supp. 725 (M.D. 
Ala.1968).
Woods v. Wright, 334 F.2d 369 (5th Cir.1964).
Wright v. Texas Southern Univ., 277 F.Supp. 110 (S.D.Texas, 
1967) aff'd, 392 F.2d 728 (5th Cir. 1968).
1963).
Connelly v. Univ. of Vermont, 244 F.Supp. 156 (D.Vt. 
1965).
1968).
1968).
Stricklen v. Regents of Univ. of Wisconsin, 297 F.Supp. 416 
(W.D.Wis.1969).

Selected Readings from Periodical Literature
Developmental Note, Academic Freedom, 81 Harv.L.Rev. 1045, 
1128 (1968).
Blackwell, Can a Student Be Expelled Without Due Process? 
College and Univ. 31 (1961).
Byse, Procedures in Student Dismissal Proceedings: Law and 
Policy, Proceedings 170–87, 44th Anniv. Conf. Nat'l Ass'n of 
Student Personnel Administrators (1962).
Jacobsen, The Expulsion of Students and Due Process of Law, 
Johnson, The Constitutional Rights of College Students, 42 
Texas L.Rev. 344 (1964).
Monypenny, University Purpose, Discipline and Due Process, 
43 N.D.L.Rev. 739 (1967).
Murphy, Educational Freedom in the Courts, 49 A.A.U.P. 
Van Alstyne, Procedural Due Process and State University 
Williamson, Do Students Have Academic Freedom? College 
and Univ. 466 (1964).


*Due Process and Dismissal of Students at State-Supported Colleges and Universities*, 10 St. Louis L.J. 542 (1966).


*Degree of Discretionary Authority Possessed by University Officials in Student Disciplinary Matters—The Availability of Mandamus*, 21 S.W.L.J. 664 (1967).


VI. Emerging Limitations on the Scope and Content of University Regulations

A. Rights of Students in Free Speech and Political Action

   1. General Background Decisions
      Lamont v. Postmaster General, 381 U.S. 301 (1965).

Selected Periodical Literature

2. College Cases
Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).
In re Bacon, 49 Cal.Rptr. 322 (Cal.App.1966).

3. Periodical Literature References
Comment, Mississippi's Campus Speaker Ban: Constitutional Considerations and the Academic Freedom of Students, 38 Miss.L.Rev. 488 (1967).
Legislative Note, State's Right to Abrogate First Amendment Guarantees in Regulation of State University Speaker Programs, 42 Tulane L.Rev. 394 (1968).

B. Rights of Students in Personality and Social Freedom.
1. General Background Decisions
Waugh v. Board of Trustees, 237 U.S. 589 (1915).
2. College Cases (or related school cases)
Moore v. Student Affairs Committee of Troy State University, 284 F.Supp. 725 (M.D.Ala.1968).

3. Selected Periodical Literature

Note, Public School Authorities Regulating the Style of Student's Hair, 47 N.Car.L.Rev. 171 (1968).


Comment, The Dormitory Student's Fourth Amendment Right to Privacy: Fact or Fiction?, 9 Santa Clara Law. 143 (1968).

VII. Possible New Dimensions of Student Rights

(A brief consideration of overlapping town-gown jurisdiction and double jeopardy, new ways of considering equal protection, privacy, additional procedural safeguards, based on projections of recent constitutional developments in related areas.)

VIII. Nonlegal Aspects of Student Power

(As time permits, an examination of student demands to participate in institutional decisions and of their interest to utilize educational institutions for purposes of social impact; a review of ways and means in the assessment of campus disorder and the accommodation of new interests on campus.)

University and Association Reports of General Interest


Report of the Committee on Academic Freedom to the Berkeley Div. of the Univ. of Calif., Academic Senate (Jan. 5, 1965).


Critique of a College, pp. 399-427 (Report of the Special Committee on Student Life), Swarthmore College, Nov. 1967.

Report of Ad Hoc Committee on The Role of Students in the Government of the University (Univ. of Wisconsin, Feb. 6, 1968).

Report and Recommendations of the Senate Advisory Committee on Student Affairs (Univ. of Ky., Dec. 9, 1966).

Proposed Codes with Commentary on Student Conduct and Discipline Proceedings in a University Setting (N.Y. Univ., May 31, 1968).

