Cleveland State Law Review

Volume 22
Issue 1 *Symposium: Kent State 1970 - Legal Background and Implications*

Article

1973

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THE LAW RELATING TO UNIVERSITY STUDENTS in their relationships with their schools has been undergoing rapid change as students have sought judicial relief when subjected to disciplinary action by universities. The courts have, in recent years, applied constitutional standards in reviewing the action of university officials with respect to the form of student conduct regulations, student expression, and disciplinary proceedings in the tax-supported university.

Judicial abstention was once the rule, historically based upon a number of varying theories. Attendance at a university was once regarded as a "privilege,"[1] and regulation of student action has been upheld on this theory as well as those of "in loco parentis"[2] and "contract."[3] An administrator's actions can no longer be defended on the basis that he stands in the place of a parent, or that school attendance is a mere "privilege" which can be revoked at will.

Procedural Due Process

The earlier theories, which did not provide any constitutional guarantee of notice or hearing to the university student in an expulsion case, were repudiated in the fountainhead case of *Dixon v. Alabama State Bd. of Educ.*[4] The procedural due process requirements for students in a tax-supported college, which the *Dixon* court laid down, include the following: (1) a notice of the statement of charges must be given to the student; (2) a right to a hearing must be provided; (3) the student must be given the right to present testimony to the hearing body; (4) the right to inspect the record and the findings of the hearing body must be provided the student.

Dixon did not answer all the questions concerning the hearing process. Subsequent judicial decisions, some of them conflicting, have laid down rules which provide, variously, that the student *is* entitled to have counsel at the hearing,[5] that the right to counsel may *depend*

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[1] Hamilton v. Regents of the Univ. of Cal., 293 U.S. 245 (1934); Bd. of Trustees v. Waugh, 105 Miss. 623, 62 So. 827 (1913), *aff'd.* 237 U.S. 589 (1915).

[2] Stetson Univ. v. Hunt, 88 Fla. 413, 102 So. 637 (1924); Gott v. Berea College, 156 Ky. 376, 161 S. W. 204 (1913).

[3] This concept was generally limited to private schools. *See e. g.,* University of Miami v. Militana, 184 So. 2d 701 (Fla. Dist. Ct. App. 1966); Booker v. Grand Rapids Medical College, 156 Mich. 95, 120 N. W. 589 (1909); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N. Y. S. 435 (1928).

[4] Dixon v. Alabama State Bd. of Educ., 294 F. 2d 150 (5th Cir. 1961). Professor Charles Alan Wright, of the University of Texas, has written of the opinion in *Dixon:* "The opinion by Judge Rivers had the force of an idea whose time had come and it has swept the field." Wright, *The Constitution on the Campus,* 22 VAND. L. REV. 1027, 1032 (1969).

[5] Esteban v. Central Mo. State College, 290 F. Supp. 622 (W. D. Mo. 1968), *aff'd,* 415 F. 2d 1077 (8th Cir. 1969); Goldwyn v. Allen, 54 Misc. 2d 94, 281 N.Y.S. 2d 899 (Sup. Ct. 1967).

on whether the administration has counsel at the hearing,[6] and that the student is *not* entitled to counsel.[7]

Because the number of student disciplinary actions in tax-supported educational institutions has been increasing, the United States District Court for the Western District of Missouri has entered a *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline.* This order provides for three minimal procedural requirements, growing out of conceptions of fundamental fairness, in cases of severe discipline.[8]

> First, the student should be given adequate notice in writing of the specific ground or grounds and the nature of the evidence on which the disciplinary proceedings are based. Second, the student should be given an opportunity for a hearing in which the disciplinary authority provides a fair opportunity for hearing of the student's position, explanations and evidence. The third requirement is that no disciplinary action be taken on grounds which are not supported by any substantial evidence.[9]

The procedural due process requirements of *Dixon* were incorporated into a *Joint Statement on Rights and Freedoms of Students*[10]

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[6] Wasson v. Trowbridge, 382 F. 2d 807, 812 (2d Cir. 1967); French v. Bashful, 303 F. Supp. 1333 (E.D. La. 1969).

[7] Barker v. Hardway, 283 F. Supp. 228, 237 (S. D. W. Va.), *aff'd*, 399 F. 2d 638 (4th Cir. 1968, *cert. denied*, 394 U.S. 905 (1969); Due v. Florida A. & M. Univ., 233 F. Supp. 396, 403 (N.D. Fla. 1963).

[8] 45 F.R.D. 133, 147 (W.D. Mo. 1968).

[9] *Id.*

[10] 54 AMERICAN ASS'N OF UNIV. PROFESSORS BULL. 261 (1968). The following were the recommended hearing procedures:

> When the misconduct may result in serious penalties and if the student questions the fairness of disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of procedural due process in situations requiring a high degree of formality.
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> 1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.
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> 2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularly *(sic)*, and in sufficient time, to insure opportunity to prepare for the hearing.
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> 3. The student appearing before the hearing committee should have the right to be assisted in his defense by an advisor of his choice.
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> 4. The burden of proof should rest upon the officials bringing the charge.
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> 5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

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by a committee of representatives of the American Association of University Professors, the Association of American Colleges, the U. S. National Student Association, and the National Association of Student Personnel Administrators. This statement represents policy and procedure above the minimum requirements of federal law, which will help ensure the confidence necessary to the operation of a student discipline system.[11]

The following ominous and now-classic statement made in 1957 by Professor Warren Seavey is, fortunately, no longer true:

> Our sense of justice should be outraged by denial to students of the normal safeguards. It is shocking that the officials of a state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play. It is equally shocking to find that a court supports them in denying to a student the protection given to a pickpocket.[12]

Dixon has now provided the "rudiments of an adversary proceeding"[13] and has provided many procedures similar to those in a criminal trial. When a tax-supported university, which is considered a state governmental body, suspends or expels a student, the suspension or expulsion is such an injury that the "Constitution requires the act to be consonant with due process of law."[14]

One of the most significant cases since *Dixon* is *Jones v. State Bd. of Educ.*[15] The Sixth Circut court in *Jones* held that the students were not deprived of their due process rights where the procedures provided the students were fair and reasonable. The court found that only the most informal administrative procedures are necessary where the potential sanctions for misconduct do not include expulsion or suspension[16] and that the hearing must provide the rudiments of an adversary proceeding.[17]

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

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

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

[11] *Id.*

[12] Seavey, *Dismissal of Students: "Due Process,"* 70 HARV. L. REV. 1406 (1959).

[13] Dixon v. Alabama State Bd. of Educ., 294 F. 2d 150, 159 (5th Cir. 1961).

[14] *Id.* at 155.

[15] Jones v. State Bd. of Educ., 279 F. Supp. 190 (M.D. Tenn. 1968), *aff'd*, 407 F. 2d 834 (6th Cir. 1969), *cert. denied*, 397 U.S. 31 (1970).

[16] *Id.* at 198.

[17] *Id.*

A substantial number of articles and commentators have enumerated and explained the procedural due process rights that are required or recommended in disciplinary hearings.[18] Now that many of the procedural guarantees necessary for due process are being implemented by universities, other problems relating to the substance of the rules and regulations prescribing specific conduct, which rules give rise to the disciplinary hearings in the first place, must be examined in light of the constitutional doctrines of *vagueness* and *overbreadth.*

Substantive Limitations

While "the history of liberty has largely been the history of observance of procedural safeguards,"[19] as noted by the late Justice Frankfurter, substantive due process is of at least equal importance. There is little doubt that the imposition of penalties has a significant impact on a student's reputation and career. The university's rules of conduct constitute the criminal law of the campus.[20] With the recent increase in student activism, attacks on the constitutionality of campus regulations as they affect the rights of expression and association have raised the issue of whether regulations need to be definite and reasonably narrow.[21]

Typically overly-broad university regulations are usually included in a handbook or catalogue given to the new student. An example of this kind of rule is the following:

> It is taken for granted that each student . . . will adhere to acceptable standards of personal conduct; and that all students . . . will set and observe among themselves proper standards of conduct and good taste . . . This presumption in favor of the students . . . continues until, by misconduct, it is reversed, in which case the University authorities will take such action as the particular occurrence judged in the light of the attendant circumstances, may seem to require . . .[22]

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[18] Heyman, *Some Thoughts on University Disciplinary Proceedings,* 54 CALIF. L. REV. 73 (1966); Johnson, *The Constitutional Rights of College Students,* 42 TEX. L. REV. 344 (1964); Monypenney, *University Purpose, Discipline, and Due Process,* 43 N.D.L. REV. 739 (1967); Pettigrew and Howard, *Due Process and Student Discipline in Ohio Higher Education,* 44 OHIO BAR 129 (1971); Van Alstyne, *Procedural Due Process and State University Students,* 10 U.C.L.A. L. REV. 368 (1963); Van Alstyne, *The Student as a University Resident,* 45 DENVER L. J. 582 (1968).

[19] McNabb v. United States, 318 U.S. 322, 347 (1943).

[20] Comment, *Private Government on the Campus — Judicial Review of University Expulsions,* 72 YALE L. J. 1362, 1364 (1963).

[21] Narrow and definite conduct regulations are listed by Professor Van Alstyne as requirements among the "essential elements of fair procedure." Van Alstyne, *The Judicial Trend Toward Student Academic Freedom,* 20 U. FLA. L. REV. 290, 295 (1968).

[22] GENERAL CATALOG OF THE UNIVERSITY OF CALIFORNIA AT BERKELEY, as set forth in Goldberg v. Regents of University of California, 248 Cal. App. 2d 867, 870, 57 Cal. Rptr. 463, 466 n. 2 (1967).

The twin ideas of vagueness and overbreadth are possible deficiencies which immediately enter the lawyer's mind when he reads this rule.[23] These bases of constitutional infirmity must be individually examined as each is applied to university regulations.

The due process clause protects against the enforcement of any statute which "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application . . ."[24] Terms must provide "an ascertainable standard of conduct"[25] and be "susceptible of objective measurement."[26]

The principle against vague regulations is based on concepts of fair play,[27] and a part of this concept is the need for notice. A regulation must contain ascertainable standards of conduct[28] and warn that certain conduct will result in certain sanctions.[29]

Vagueness questions require a delicate due process balancing which considers the severity [30] and the means of execution of the sanction[31] as variables to the permissible vagueness. Those matters considered *malum in se* (inherently wrong) require less definiteness than those considered *malum prohibitum* (wrong because the statute says it is wrong).[32]

Legislation or regulations must not infringe upon protected liberties by being broadly drawn.[33] Laws must be narrowly drawn to protect only against prohibitable conduct, not with "means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."[34] Overbreadth refers to the inhibition of the first amendment freedoms of speech, peaceable assembly, press, and religion.[35] Where institutional regulations have limited individual

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[23] *See generally,* Collings, *Unconstitutional Uncertainty — An Appraisal,* 40 CORNELL L. Q. 195 (1955); Scott, *Constitutional Limitations on Substantive Criminal Law,* 29 ROCKY MT. L. REV. 275, 287 (1957); Note, *Uncertainty in College Disciplinary Regulations,* 29 OHIO ST. L. J. 1023 (1968).

[24] Connally v. General Constr. Co., 269 U.S. 385, 391 (1926).

[25] Baggett v. Bullitt, 377 U.S. 360, 372 (1964).

[26] Cramp v. Bd. of Public Instruction of Orange County, 368 U.S. 278, 286 (1961).

[27] Note, *Uncertainty in College Disciplinary Regulations,* 29 OHIO ST. L. J. 1023, 1026 (1968).

[28] Cramp v. Bd. of Public Instruction of Orange County, 368 U.S. 278 (1961).

[29] Niemotko v. Maryland, 340 U.S. 268 (1951).

[30] Winters v. New York, 333 U.S. 507, 515 (1948).

[31] *See* Comment, *Legislation — Requirement of Definiteness in Statutory Standards,* 53 MICH. L. REV. 264, 270-75 (1954).

[32] United States V. Ragen, 314 U.S. 513 (1942); *See* Note, *Uncertainty in College Disciplinary Regulations,* 29 OHIO STATE L. J. 1023, 1028 (1968).

[33] Dombrowski v. Pfister, 380 U.S. 479 (1965); Thornhill v. Alabama, 310 U.S. 88 (1940).

[34] Elfbrandt v. Russell, 384 U.S. 11, 18 (1966).

[35] *See* Stickgold, *Variations on the Theme of Dombrowski v. Pfister . . .,* 1968 WIS. L. REV. 369 (1968).

freedoms, they have undergone close scrutiny because of our guaranteed first amendment rights.[36]

In the academic environment, first amendment rights were recognized by the Supreme Court in 1923, when it held that the due process clause prevents states from prohibiting the teaching of foreign languages to students.[37] Students first sought judicial relief when subjected to adverse regulations in *West Virginia State Bd. of Educ. v. Barnette*.[38] Here in 1943 the Court held that, under the first amendment, students in public schools could not be compelled to salute the flag nor be suspended for failure to do so. The Supreme Court held in *Tinker v. Des Moines Independent Community School District* that first amendment rights do apply to minor students, but are limited "in light of the special characteristics of the school environment."[39] In *Tinker* the school officials punished students for purely "silent, passive expression of opinion, unaccompanied by any disorder or disturbance . . ."[40] Where school discipline is being substantially disrupted, school officials may reasonably regulate in order to carry out the purposes of the educational institution.[41] The *fear* of a disturbance was not enough to make the regulations in *Tinker* reasonable.

Tinker was concerned with the symbolic expression of the anti-Vietnam War position as a part of the freedom of expression. The Court in *Tinker* distinguished between expression and action, which distinction has been increasingly recognized by the Supreme Court.[42] Professor Thomas I. Emerson has analyzed those values the first amendment seeks to protect, and has developed the following test:

> The essence of a system of freedom of expression lies in the distinction between expression and action. The whole theory rests upon the general proposition that expression must be free and unrestrained, that the state may not seek to achieve other social objectives through control of expression, and that the attainment of such objectives can and must be secured through regulation of action.[43]

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[36] *See e.g.*, Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969). A high school board regulation which prohibited the wearing of black armbands worn to protest the Vietnam War was held to violate the first amendment in absence of evidence that it was necessary to avoid substantial interference with school discipline or the rights of others.

[37] Bartels v. Iowa, 262 U.S. 404 (1923); Meyer v. Nebraska, 262 U.S. 390 (1923).

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

[39] Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969).

[40] *Id.* at 508.

[41] *Id.* at 513. The Court relied on Blackwell v. Issaguena County Bd. of Educ., 363 F. 2d 749 (5th Cir. 1966), where evidence showed the wearing of "freedom buttons" in the school caused disturbance where buttons were pinned on other students, thus interfering with the rights of others. This was contrasted with Burnside v. Byars, 363 F. 2d 744 (5th Cir. 1966), where students were held to have a right to wear "freedom buttons" in school as long as it did not cause disorder or interfere with the rights of others.

[42] Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 508 (1969); United States v. O'Brien, 391 U.S. 367, 376 (1968); Cox v. Louisiana, 379 U.S. 536, 555 (1965).

[43] T. EMERSON, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT 115 (1966).

This test is not always an easy one to apply, since "all speech is necessarily speech plus. If it is oral, it is noise and may interrupt someone else; if it is written, it may be litter."[44]

Charles Alan Wright has qualified the application of the first amendment to the campus as follows: "I do not read the first amendment as granting rights in a vacuum, but rather as granting rights that exist at a particular time and place."[45] It is clear that expression must be subject to nondiscriminatory and reasonable regulations as to place and time. Where that expression takes the form of action, it may be prohibited where it invades the rights of others.

The doctrine of unconstitutional conditions provides the student with an area of freedom which may not be invaded by the university. The university may not condition attendance on a student's acceptance of the school's ability to limit his or her constitutionally protected rights, because benefits and privileges provided by government may *not* be conditioned except where justified by an overriding public interest.[46] Thus, where students are prohibited by university regulations from attending an orderly off-campus political rally, the doctrine would be violated because it would require the relinquishment of first amendment protections of association and speech in order to attend the university.[47] In *Dickey v. Alabama State Bd. of Educ.*,[48] the court ordered the reinstatment of a college student because the state could not condition attendance at a state-supported institution upon a student's forfeiture of his freedom of speech. In *Dickey* a student editor had been suspended for attempting to publish an editorial offensive to the faculty advisor, and for insubordination. The only rule violated was one that prohibited editorial criticism of officers of the state.

A university ban on all "parades, celebrations and demonstrations" without prior approval of the college's administrative officials is clearly unconstitutional and unreasonable.[49] Where advance permission for a demonstration is required, and no standards for granting or denying permission are provided in the regulation, the requirement itself has been held to be invalid.[50] Advance approval can be required[51] where there are "narrow, objective, and definite standards

[44] Kalven, *The Concept of the Public Forum: Cox v. Louisiana*, SUP. CT. REV. 1, 23 (1965).

[45] Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027, 1042 (1969). *See also*, Cox v. Louisiana, 379 U.S. 536 (1965), which states (at 554): "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."

[46] Keyishian v. Bd. of Regents, 385 U.S. 589 (1967); Dickey v. Alabama State Bd. of Educ., 273 F. Supp. 613 (M.D. Ala. 1967); Hammond v. South Carolina State College, 272 F. Supp. 947 (D.S.C. 1967).

[47] Edward v. South Carolina, 372 U.S. 229 (1963).

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

[49] Hammond v. South Carolina State College, 272 F. Supp. 947 (D.S.C. 1967).

[50] *Id.*

[51] Note, *Regulation of Demonstrations*, 80 HARV. L. REV. 1773, 1784-85 (1967).

to guide the licensing authority."[52] Advance notice of demonstrations can be required, but the notice rule ought to be flexible enough to permit certain types of spontaneous demonstrations.[53] Demonstrations can be subject to reasonable and nondiscriminatory regulations of place and time, but for a regulation to be reasonable, consideration must be given to "all of the nuances of the time, place and manner.[54]

The courts have followed the advice of Justice Fortas in denying constitutional protection for violent demonstrations.[55] Justice Fortas has said: ". . . the toleration of violence involves, I think, even greater risks, not only of present damage and injury but of erosion of the base of an ordered society."[56]

While a demonstration can be the subject of nondiscriminatory and reasonable regulations of time, place, and manner, does the Constitution require that university rules be specific, rather than be administered on the basis of vague and imprecise rules? This writer would agree with Professor Charles Alan Wright that:

> It will do a student very little good to be given every protection of procedural due process ever thought of anywhere if, in the end, he may be expelled because the tribunal is free to apply a subjective judgment about what is acceptable conduct. This would be neither fair nor reasonable.[57]

The restriction of speech and association requires judicial scrutiny of often previously-unchallenged systems of college regulations. Professor Wright has stated that "the single most important principle in applying the Constitution on the campus should be that discipline cannot be administered on the basis of vague and imprecise rules."[58]

The courts will not require more of university rules than of criminal statutes in the area of vagueness, and they should not require less. The Supreme Court has praised as "narrowly drawn" a statute which barred picketing "near" a court house,[59] and has sustained a criminal statute which prohibited "picketing in such a manner as to obstruct or unreasonably interfere with free ingress to or from any county courthouse."[60]

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[52] Shuttlesworth v. Birmingham, 394 U.S. 147, 151 (1969).

[53] Powe v. Miles, 407 F. 2d 73, 84 (2d Cir. 1968).

[54] Davis v. Francois, 395 F. 2d 730, 736 (5th Cir. 1968).

[55] *See* Evers v. Birdsong, 287 F. Supp. 900 (S.D. Miss., 1968).

[56] A. FORTAS, CONCERNING DISSENT AND CIVIL DISOBEDIENCE 93 (1968).

[57] Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027, 1064 (1969).

[58] *Id.* at 1065.

[59] Cox v. Louisiana, 379 U.S. 559, 564 (1965).

[60] Cameron v. Johnson, 390 U.S. 611, 616 (1968).

The void-for-vagueness principle has been considered by the courts in a number of cases relating to campus law. One of them, *Soglin v. Kauffman,*[61] involved an attack on university regulations based on both vagueness and overbreadth. The regulation in question provided that students might, through "lawful means," support causes which did not disrupt the operations of the university. The university instituted disciplinary hearings for a violation of this regulation and for "misconduct" when students obstructed doorways, halls, and entrances in order to block student interviews with Dow Chemical Company's placement representatives. The court held that the standards of vagueness and overbreadth apply to university regulations, and followed the guidelines of the American Association of University Professors that student codes should be phrased in definite terms, published, and made available to students.[62] The regulation was ambiguous since it could be read to prohibit even lawful means to support *causes* which disrupted, or unlawful *means* which disrupted operations, and no requirement of substantiality, proximity or intention was necessary. The court left open whether the doctrines of vagueness and overbreadth would apply to "proceedings in which the range of possible sanctions is mild, such as the denial of social privileges or a minor loss of academic credits or perhaps expulsion from a specific course, or perhaps a brief suspension."[63] The students in *Soglin* were not in fact exercising constitutionally protected rights, but the court applied a doctrine of constitutional law that one may challenge an overly broad prohibition even though the challengers' conduct would not be protected.[64] The Seventh Circuit in affirming the case relied on *Dombrowski v. Pfister* [65] by holding that the regulations in *Soglin* were overbroad and swept into the arena of first amendment freedoms. Moreover, the court sustained the trial court on the standing issue by ruling that plaintiffs could challenge the regulation.

The university argued that it had the inherent power to discipline students without the need for a rule. This judicial attitude that a university has inherent power to discipline a student without regard to the existence of an explicit rule is reflected in the old holding of *Koblitz v. Western Reserve University*[66] and in the rationale of *Gold-*

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[61] Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wis. 1968), *aff'd,* 418 F. 2d. 163 (7th Cir. 1969).

[62] 51 AAUP BULL. 447, 449 (1965).

[63] Soglin v. Kauffman, 295 F. Supp. 978, 991 (W.D. Wis. 1968), *aff'd,* 418 F. 2d 163 (7th Cir. 1969).

[64] NAACP v. Button, 371 U.S. 415, 432 (1963); Thornhill v. Alabama, 310 U.S. 88, 97-8, (1940); see Wright, *The Constitution on the Campus,* 22 VAND. L. REV. 1027, 1066-67 (1969), where the use of vagueness in *Soglin's* holding is applauded, but disagreement with the use of the overbreadth doctrine to defend "hard-core misconduct" is expressed.

[65] Dombrowski v. Pfister, 380 U.S. 479, 486 (1965).

[66] Koblitz v. Western Reserve Univ., 11 Ohio C. Dec. 515 (Ct. App. 1901).

berg v. Regents of University of California.[67] In *Goldberg*, the students involved used vulgar words on signs, at assemblies, and over loudspeakers. The regulation dismissing the students required student adherence to "acceptable standards of personal conduct" and "good taste." The students argued that the regulations were unconstitutionally vague because of a defect in notice, but this contention was rejected. The court held that a university has "inherent general powers to maintain order on the campus and to exclude therefrom those who are detrimental to its well being."[68] The participants in Berkeley's "Filthy Speech Movement" went beyond those first amendment limits recognized in *Redrup v. New York*,[69] with "an assault upon individual privacy by publication in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it."[70] The *Goldberg* case provided the rationale for *Jones v. State Bd. of Educ.*,[71] wherein the court found that a university could discipline without a rule at all, and hence was not concerned with vagueness.

The Fourth Circuit Court of Appeals in *Sword v. Fox*[72] held that the "same specificity is not required in college rules as is necessary in criminal statutes,"[73] and that all that is required is language which "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice."[74] The Court found that the word "demonstration" itself is an adequately definite descriptive term.[75]

In *Soglin* the court took a definite stand against the outcome of *Esteban v. Central Missouri State College*[76] which followed *Koblitz, Goldberg, Jones,* and others in the general line of cases that held that the university has inherent power to discipline, regardless of the existence or the quality of rules.

Conclusion

As the court remarked in *Sword v. Fox,* there is a sharp divergence in opinion whether a given set of university regulations is possibly violative of due process because of vagueness and over-

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[67] Goldberg v. Regents of Univ. of Cal., 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (Dist. Ct. App. 1967).

[68] *Id.*, 57 Cal. Rptr. at 473.

[69] Redrup v. New York, 386 U.S. 767 (1967).

[70] *Id.* at 769.

[71] Jones v. State Bd. of Educ., 279 F. Supp. 190 (M.D. Tenn. 1968), *aff'd*, 407 F. 2d 834 (6th Cir. 1969), *cert. denied*, 397 U.S. 31 (1970).

[72] Sword v. Fox, 446 F. 2d 1091 (4th Cir. 1971).

[73] *Id.* at 1099, *citing also*, Jones v. Snead, 431 F. 2d 1115, 1117 (8th Cir. 1970).

[74] United States v. Petrillo, 332 U.S. 1, 8 (1947).

[75] Sword v. Fox, 446 F. 2d 1091, 1100 (4th Cir. 1971).

[76] Esteban v. Central Mo. State College, 290 F. Supp. 622 (W.D. Mo. 1968), *aff'd*, 415 F. 2d 1077 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970).

breadth.[77] The arguments against specificity and narrowness are that educational institutions are seldom equipped with a fulltime legislative service commission, and that a significant burden will, therefore, be placed upon the university. General conduct regulations also permit university administrators to discipline students based upon political pressure brought to bear upon the state universities because of their dependence upon the state legislatures and governor for funds.[78]

At the University of Oregon, penalties are to be imposed only upon the violation of pre-existing rules, and the rules must be precise enough to control discretion and provide *notice*.[79] The use of narrow and specific rules *can* operate successfully on the campus. Certainly there are costs of time and effort in adjudication, but statistics indicate that fewer than 10% of the students charged with misconduct deny the facts or take exception to the discipline administratively imposed.[80]

The Constitution has arrived on the university campus, and it is to be preferred that the universities accept this fact on their own, rather than have it forced upon them by a court. Today, freedom of expression and procedural fairness are part of campus law, and "the courts . . . are ready to vindicate claims for justice rooted in constitutional principle."[81]

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[77] Sword v. Fox, 446 F. 2d 1091, 1099 (4th Cir. 1971).

[78] *See* Note, *Uncertainty in College Disciplinary Regulations*, 29 OHIO ST. L. J. 1023, 1034 (1968).

[79] Linde, *Campus Law: Berkeley Viewed From Eugene*, 54 CALIF. L. REV. 40, 52 (1966).

[80] Van Alstyne, *Procedural Due Process and State University Students*, 10 U.C.L.A. L. REV. 371 (1963).

[81] Tigar, Book Review, 67 MICH. L. REV. 612, 613 (1969).