STUDENT
DISCIPLINE IN
HIGHER
EDUCATION

Edited by:
Thomas A. Brady
and
Leverne F. Snodell

American College Personnel Association
A Division of
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Student Personnel Series
No. 5
STUDENT DISCIPLINE IN HIGHER EDUCATION

by

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INTRODUCTION

Members of the ACPA Monograph Commission decided at the APGA Convention in 1964 to publish a monograph on student discipline in higher education. At the time of this decision, T. A. Brady, Dean of Extradivisional Administration of the University of Missouri, was preparing a manuscript analyzing university interests in student discipline and setting forth the rationale for handling student discipline within the context of certain educational procedures. Members of the Commission believed that his stimulating and provocative point of view should be incorporated in the proposed monograph. In addition, the committee members believed that the question of “due process” in the handling of individual student discipline cases ought to be examined in the light of both historical and recent developments in the evolving rights of students in colleges and universities. Dr. L. F. Snodell, Director of the Disciplinary Counseling Office, University of Minnesota, agreed to summarize the developments relating to institutional due process. I agreed to coordinate and monitor the monograph.

Dr. Brady died in the summer, 1964, before his manuscript could be edited and returned to him for comment. During the illness that preceded his death, Dean Brady authorized Dr. Robert Callis to develop his manuscript for publication. It is my belief, as well as the belief of other commission members, that Dean Brady’s manuscript, like Schubert’s “Unfinished Symphony,” should not now be edited and finished but instead be published as he left it.

The reader will easily recognize some contradictions, duplications, and disjointedness between the two parts in the monograph. In Part I, Dean Brady emphasizes student discipline as a means of stimulating a student to achieve maturity and motivation for learning on the college level. He perceives discipline as an integral part of the educational process. His stress on discipline as a necessary part of character development led him to conclude that a university’s discipline policies and procedures are essentially teaching functions and as such are quite incompatible with legal perceptions of “due process.” In fact, he argues that the imposition of legal procedures would handicap a university in carrying out its proper functions. He is also convinced that a confidential relationship between students and university officials is necessary for a proper and efficient administration of an institution of higher education.

In Part II, Dr. Snodell draws attention to the sources of authority and jurisdiction over student behavior and the institutional practices that have evolved in the handling of complaints against students. He takes the position that a university may exercise its educational role of assisting in the building of character and of maintaining certain minimum institutional standards of student conduct, even within the procedures of fair, properly established, and legally acceptable due process. He perceives of a university managing its internal problems of student misconduct within the framework of a rehabilitation philosophy. To be sure, an emphasis on rehabilitation requires a confidential relationship between a student and those individuals and agencies authorized to act about complaints. He also emphasizes the need to maintain a student discipline program within the context of an educational setting rather than to resemble even a modified civil or criminal court procedures environment. However, he believes that university discipline practices should express the democratic tradition of fair play and that some recent court decisions have helped to clarify what constitutes fair play within the context of an institution of higher education. He reviews the suggested guidelines for discipline procedures that have been drawn in significant court decisions.
A reader will readily recognize in studying the two parts of the monograph the multiplicity and complexity of problems (many still unsolved) relating to student discipline. Hopefully, he may be challenged to direct his inquiring mind to those difficult and often delicate issues of discipline that often overlap the interests of several institutions — higher education, the family, the wider university community, the alumni, and various units of government such as the police, the courts, and the city council as well as involving the student and his emerging character molding.

E. G. Williamson
PART I

A University and Student Discipline

by

Thomas A. Brady
Chapter 1

The Crises Regarding Student Discipline

The collegiate records of the eighteenth and nineteenth centuries usually show the president of the institution as the dispenser of student disciplinary actions. Schools were small and, as chairman of the faculty, the president called in students, inquired into their conduct, and made decisions concerning them. In some cases, few, if any, official records were made of these decisions although the proper way, clearly, was to enter the matter on the student's record. In many cases, these entries remained and are there today.

As the president became unable to carry on this work because of other duties, faculty committees came into use. In some of these cases, there was a tendency for one member, who clearly enjoyed the work, to carry out most of the functions without reference to the rest of the committee. Such things as this varied widely depending on local conditions but few, if any, exceptions may be found to the practice that the faculty was responsible for the conduct of students. It seems to be a fixed principle in American higher education, and in Europe as well, that the control over the people who attend colleges is always a faculty function just as it is their business to control the courses and the curricula.

The newer counseling techniques developed by departments of psychology and schools of education made their influence felt in the twentieth century. This development came at different times in different institutions but by the 1920's the process was well along and, in the next decade, officials with this point of view were in control in many of the institutions. Many of the points of view and practices developed in these areas are indispensable in college personnel work today.

One significant and common point of view prevalent during this period, however, is now being generally abandoned. This view held that the trained people engaged in college personnel work must, in all their operations, be the friend, counselor, and adviser of the student. They must be ready to listen to his troubles and difficulties and, on all occasions, they must be on his side as he struggled against the confining regulations laid upon him by society and the institution. One wonders where these people ever got the prototype of this adviser. Certainly not from the parent because the parent is engaged quite as much in the exercise of authority as he is in the role of confidant and counselor. Since it rested on no parental pattern, for this reason alone its value should have been regarded, at the outset, as quite dubious.

Some institutions during this period subscribed, apparently, to this theory. The dogma might have been useful for some types of voluntary remedial or recreational organizations but it is hard to see how it could ever have been adequate for a school. For the essence of the position was that the official concerned, frequently the top personnel officer of the institution, must have no concern with discipline. Student discipline was something that defiled, if it touched, the student personnel staff. They would admit, grudgingly, that sometimes someone had to exercise a bit of discipline. But this should be done by teachers or administrators who had not been trained for personnel work. It was crude and unsanitary, and many of these people would have liked to believe that it did not or need not exist at all. Certainly the most valiant among some of these professionals attempted, when they could escape detection, to thwart the actions and decisions of the disciplinary agencies which, of course, had to continue to exist and operate.

All traces of this point of view condemned above have not been removed from the educational scene. But the hollowness and inadequacy of the position have been exposed many times, and few faculty members today would support such a position. It is not uncommon, of course, for persons new in personnel work, especially the younger persons, to shudder at the mention of discipline and the exercise of authority over people. But this goes back to built-in human traits rather than to any extensive theoretical indoctrination. Professional educators at all levels, especially those working in the elementary and secondary fields, never had or showed much sympathy with this point of view.

This passing phase in disciplinary work with college students is important in several ways. It achieved nothing because its approach was negative and it kept some very able and well-trained people from operating in the disciplinary area. But in its attempt to stigmatize disciplinary work as unclean, degrading, unprofessional, and basically unnecessary, it created an impression that
lingers on in too many places today. This effect on those engaged in higher education has not been serious since most of them were able to examine and discard the theory at the time it was advanced. But the general effect has been bad, so far as discipline work is concerned in the mind of the general public and especially in the viewpoint of certain professional classes who have, in their professional areas, significant influence upon the work that educational institutions are trying to do.

Admittedly, the distaste for administration of discipline is not due, basically, to any dogma or psychological theory. The human being simply does not like to administer or receive disciplinary and corrective measures. That is why this theory was so indefensible—it sought to bolster on theoretical grounds a natural tendency that we all know we must fight against and overcome.

In the field of college educational activity, the worst effect of the theory was to make the administration of discipline a sort of untouchable subject for those being trained for personnel work—the very people who by training and interest could have done the research and stimulated the interest of educators in the subject. The result of this has been that we have today only a meager body of educational research on student discipline, we have few books or manuals, and our professional organizations rarely devote to it any sessions for discussion and consideration of improved and more uniform techniques and practices. Rarely does one find an article in a professional journal that deals with this important subject. It is unknown to the present writer whether teachers ever refer to the subject in their training of students whom they know are going to be teachers and members of faculties. Here is an academic wasteland so far as study and research are concerned.

The attempt will be made, in the following pages, to show that administration of student discipline is not only an important aspect of the educational process but that it relates closely to the teaching program and has important bearing on success in educating many of the students who come to us. In a college community, so closely knit and tightly packed, administration of discipline has an important effect on students that never, themselves, appear in the disciplinary process. There is hardly a student in a college population who has not been associated with some other student who has, sometime in his college career, come into contact with disciplinary procedures. The total number of disciplinary actions taken in a year's time in a large university is very small so far as percentages are concerned. One known case shows 500 discipline cases in a year in a university student population of 10,000 students. It must be remembered that the importance of these figures does not lie in the fact that a large number of cases involved serious infractions. Most of our students are saved, as students, by the judicious use of the lighter penalties at a time when correction is still possible. Every student, moreover, who is on the wrong track is a potential source of influence upon other students. The college-student age is an impressionable age at which example and leadership by friends and associates are strong influences.

As educators, we have studied with considerable zeal the various influences that bear upon the educational process and upon the aptitude and motivation of students for success in college. Yet here is a whole area, existing on the campus itself, that has been completely neglected. It would be foolish to contend that administration of discipline is more important educationally than it actually is. We have done a good job without having given to it much attention on the part of our research specialists. This is due to the fact that excellent faculty members, at many institutions, have worked at it tirelessly and conscientiously.

The critical phase in student discipline work is upon us for several reasons. One of these new factors that causes the crisis is the new role of the government in detecting subversion and collecting evidence on the thoughts, ideas, and beliefs that people have. An educator does not have to offer a better example than loyalty oaths and blacklists to voice his unyielding opposition to the use of educational records to indicate or prove things that educators know these things do not prove. As is indicated below, the use of educational records is an important aspect of disciplinary work that educators ought to do something about right now.

A second new factor is the large increase in college enrollments. Under the simple procedures of a century ago, the concentration of 500 students on a campus could, at times, present problems of discipline. But, out of an enrollment of 12,000 to 30,000 students, there is certainly a good possibility that we will have some individuals who should not be there at all and a few who are positively dangerous. The use of automobiles adds tremendously to the discipline problem. Many large universities are located in small towns that are not prepared to cope with these problems. It is estimated that a large university in a small town today will find from 50 to 70 per cent of its discipline cases associated in some way with the use of cars.

The large number of students in college today is a reflection of the changing pattern in our society that makes it desirable for most of our population to have a college education. The growth of cities, tied also by cause and effect to the same factors, increases the tendency for more and more to attend these institutions. It is a fact that, due to these and other circumstances, more and more people regard attendance at college as no longer a privilege but a right. This is, in part, the reason why there is today a greater tendency than ever before to bring the disciplinary procedures of colleges before
the courts. These procedures and processes are, increasingly, going to be questioned and attacked in courts and the attempt will be made to override decisions made by faculties on the grounds of lack of legal process and invasion of civil rights. The signs are clear and unmistakable. It is also clear to many that the educational institutions are not prepared to do the best job they can of defending themselves and explaining their procedures. We must be able to show so that any reasonable man will be convinced that administration of discipline is a vital part of the educational process and that we are able to handle it in a confidential and privileged manner without interference from governmental and legal authority.

The purpose of this discourse on discipline in higher education is to sound the alarm and urge that more attention be given to the educational values and principles involved. Anyone who has spent a whole day dictating to a court stenographer to make an appeals record on this matter will realize, as the author did some years ago, that we must be able to convince courts, prosecutors, and attorneys, as well as the general public, of the nature and purpose of student discipline. The fact which, in this situation, struck the educator with the greatest impact, was the discovery that there were no articles, bulletins, books, studies, or written material that could be submitted in support of the institution's position. The whole area is, apparently, quite bare. Even some members of the faculty of the school of law did not seem to realize that what we were talking about was not law enforcement at all but an important part of the educational process. It is part of the aim of this work to appeal to the educational world to remedy this situation before it is too late.
Chapter 2

Faculty Government and Student Discipline

Since the modern university began, in the eleventh century, it has received its legal powers from some governmental agency. All medieval universities operated on the basis of charters from either one of two sources, sometimes from both. Many of them had charters granted by the Pope under the authority claimed by the Papacy to exercise the teaching function of the church. Since most of the teachers were clerics, this authority was widely recognized since there were few who assumed to dispute the claim of the church to be the sole agency for the tutelage of the youth in Christendom.

Many university charters were granted originally by rulers and, eventually, all of them received such charters, except the Papal universities which operate in Rome. In the United States, universities and colleges operate on the basis of a charter or an act of incorporation enacted by the government of some state, or, in Washington, D. C., by Congress. The charter, in all cases, or the act of incorporation is necessary to establish the college or university as a legal entity, to define its function, and, in some cases, to set forth the kind and level of instruction it is empowered to give.

In practically all cases, the charter or act of incorporation requires that some agency for government of the institution be set up and indicated. Certain powers, necessary for conducting such an institution, are conferred upon this agency which becomes the governing board of the institution. This board thus acquires the authority not only to buy, sell, make contracts, and do all the other acts a legal person can do, it is also authorized to grant degrees and certificates that testify to the achievement of those who have attended the institution. The constitution of the state or the legislature, by act or charter, establishes the governing board of the institution. The legislature also may enact, for public institutions, a number of statutes which specify the way in which the business of the organization shall be conducted and which also set forth limitations upon the powers of the board in certain respects. Few, if any, of these statutes, however, assume to direct any of the acts of the governing board so far as the actual process of education is concerned.

Faculty Functions and Their Operation

The bylaws of the governing board will set forth the powers of the faculties. It is on the basis of this assignment of function in the bylaws of the board that the various faculties organize and draw up their bylaws. This general procedure is so common and uniform in American universities and colleges that it has become accepted throughout our society that the faculties in our colleges and universities should always control certain functions. These are thought of as the normal and necessary functions that are inherent in faculties for the carrying on of the educational process and no institution would be approved by accrediting associations, by other institutions or by higher education in general unless it left to the faculty these functions that are regarded as belonging to it.

Among these necessary educational functions are control of the following:

a. general educational policy
b. conduct of students
c. requirements for admission
d. course of study
e. conditions for graduation
f. award of prizes and honors

A university or college faculty, depending upon qualifications for membership, may include from less than one hundred to a thousand or more members. Clearly, there must be some method by which these faculty functions are to be discharged, i.e., some way in which the faculty may deal with all the matters assigned to it and still have time to do the teaching and research that a professional position requires. This is the reason that faculties establish committees and assign to them the control of various areas of faculty responsibility. Even those faculties that establish a smaller faculty unit to carry on the functions of the faculty, such as a university senate, must also have committees to operate and carry out certain of these functions.

It is important to note here that the faculty does not confer power upon its committees and draw the limits in which they must operate. Nor does it require that committee decisions be reported for approval. The true
situation is that the committee has an assignment of function, and, in carrying out that function, it has all the powers that the faculty has. The committee is the faculty at work in the particular area assigned to it. Any change in policy that requires a change in the bylaws must, of course, be referred to the faculty since the bylaws cannot be amended in any other way. In all cases, however, the committee does the work in its particular area and reports to the president, who is the chairman of the faculty. Some committees, by his direction, report to him through other officials, while some report directly to his office. Some committee decisions, before they are put into operation, may be referred to another committee for recommendations, some may be returned with suggestion for reconsideration. No committee action, clearly, can be ignored or prevented from reaching the president by anyone else to whom the report has been made.

Most university and college bylaws place no limitations on powers and authority of committees nor do they in any other way define the procedure, rules, or extent of authority. What the bylaws do indicate very precisely is the function of a committee, i.e., the area in which it is to operate. In that assigned area, then, the decisions of the committee are the decisions of the faculty. If a political theory is necessary to explain this procedure, it might be stated as follows: The faculty is what is called a direct or primary assembly, not a representative one. Moreover, the sovereign faculty (sovereign in its assigned areas) does not operate as a legislative assembly but for both legislative and judicial purposes. Some of its decisions are legislative in character—others are decidedly of a judicial nature.

It is for this reason that no rules and regulations are needed since everything that is done by the faculty or by its committees is done by the sovereign faculty itself. Where there is a separation of powers as in our executive, legislative, and judicial agencies in civil society, the body that legislates must draw up carefully and meticulously the rules and regulations because they are to be enforced, hence interpreted, by a different agency, the judiciary. The faculty needs no such jurisprudence because all the judicial functions are done by the faculty itself. A committee, then, is the faculty because it is a fair sample of the faculty—all its members have, by profession, the same standards of responsibility for the education of the youth.

It is clear from this discussion of faculty functions that major decisions on matters within the province of the faculty are made in meetings of the faculty, meeting as a primary assembly, composed of members who are qualified by their education and training to make decisions in educational matters. Large issues do not arise every day but when they do, it is the faculty, in its regular or called meetings, that discusses, considers, and decides. Many faculty members can remember repeated meetings in order that a vital issue might be properly considered and decided. It is difficult to imagine a more fitting and proper manner in which to decide fundamental educational questions.

Even more of the regular business of conducting the educational affairs of the institution is done in a university, in the divisional (college) faculties, since most of the matters delegated to faculties are handled, in a large university, by the faculties of the divisions. Here, as a rule, new staff members receive their first experience in faculty participation and serve on committees that operate in much the same manner, in their prescribed areas, as the university committees do. It is in this way, through committees or other devices, that members of the staff, both the teaching and non-teaching members, participate extensively in the government and administration of a college or university. The work is regarded as a burden by a few faculty members but most of them participate in administration and government with complete cooperation and great effectiveness.

**Responsibility of Staff Members for Student Conduct**

Since control of and responsibility for the conduct of students is one of the areas assigned usually to the faculty, it is clear that this responsibility extends to all the members of the staff and covers situations and circumstances beyond those involved in formal disciplinary procedures. Some committee or agency of the faculty will have as its assignment the administration of student discipline.

There grow up alongside these academic routines, however, newer procedures that are established to carry out the decisions of professional experts in the fields of medicine and psychiatry. In many institutions, the officials in charge of medical and psychiatric work will have authority to take action on medical grounds, to bar enrollment or to terminate enrollment of a student. These agencies will also have the authority to make submission to medical treatment a prerequisite for continued enrollment. In these cases, neither the student conduct committee nor the president is involved since the decision rests on a medical opinion or judgment, and lay authorities do not attempt to validate this decision. In some cases, the initial information on the case may have been discovered by the counseling service or by a mental hygiene clinic conducted by clinical psychologists but, for obvious reasons, the ultimate decision is made and the action is taken by the highest medical officer, usually the director of the student health service.

Such are the agencies formally invested with authority and responsibility for student conduct. There is
that only the disciplinary agencies named have any responsibility in the matter. But a consideration of the philosophical basis of this whole procedure will indicate that every staff member carries a heavy responsibility in this respect.

According to the rules of the institution, the teacher is in control of the class which he conducts and is, thus, during this time, in sole control of the situation. But outside his class the teacher is still an officer of the institution. Although according to the rules of the institution most staff members are not invested with general disciplinary authority, they still have the obligation to see that proper conduct is maintained and enforced. Hence, information that comes to their attention about student conduct cannot be ignored or filed away. A staff member who possesses such information, as an officer of the institution, has the obligation to either take action on the information himself, or if according to the rules of the institution, he himself cannot act, he is bound to make such information available to an agency that is able to act upon it.

Any staff member who feels that his information about student conduct is confidential and therefore cannot be disclosed must himself act if he can, or if he cannot, he must insist that the student free him from the confidence or disclose the information to the proper agency himself. In the last analysis, it is the staff member’s judgment that must dictate his acts. What this means is that if he decides that he will not disclose the information and will not or cannot act upon it himself then he assumes the responsibility for whatever happens as a result of his decision.

This is not to say that each teacher is a policeman—any more than I would say each parent is a policeman. In neither case is the primary intent to punish or vindicate the authority of society. The aim in both cases is to promote the welfare of the people involved and to make them upright, responsible citizens. The family, being a remedial institution of almost unlimited functions, goes much farther in its rehabilitation of recalcitrant youth than an educational institution can ever go. Somewhere along this line of rehabilitating the wayward youth, the school has to draw the line and say, in effect, “if we are going to maintain this as an educational institution, we cannot carry our program of rehabilitation and remedial service beyond a certain point.” We draw this line freely in the sphere of intellectual aptitude, and we have to draw it somewhere in the field of disciplinary rehabilitation. We cannot insist upon remedying every situation that is theoretically remediable—whether the deficiencies are physical, mental, or moral. We cannot usurp the functions of other social institutions and even in cases in which society has set up no other institution to seek a remedy, it may be that we cannot assume the function our-
selves. We must furnish such services of this type as are necessary in order to enable us to carry on our educational work. We cannot specialize upon them to such an extent that it changes the aims and functions set up for us by society.

But we must not forget that our primary interest and concern is for the welfare of the student. Hence if we must, for his own good and the good of others, separate a student from membership in our community, we should be prepared to consult and advise with the natural parent concerning the needs of the student involved. We can, and at times must, abandon our responsibility for the student by dismissing him from the university. But the natural parent cannot abandon his responsibility and he deserves all the help and assistance we can give in bringing the child into the proper environment or institution in order that his rehabilitation may be effected.
Chapter 3

The Effect of Disciplinary Actions on Students

One consequence of the failure of educators to discuss openly the disciplinary process is that disciplinary actions and the extent to which they are entered on student records have given rise to a number of practices and procedures that have not received the careful attention of the educators themselves.

As to what disciplinary actions will be entered on the official records, when they may be removed, if at all, and by whom, and what they will be taken to mean by others to whose attention they come—all these are matters that have received almost no attention or discussion by educators except by the registrars and directors of admissions who are charged with the duty of preparing and keeping the official records.

Some of these officials have taken the position that once such a notation is entered upon the record, it must never be changed or removed, otherwise the institution that entered it is practicing a fraud upon other colleges or universities to whom the transcript might be presented.

Others, largely teachers, have sometimes taken the position that disciplinary notations are primarily the concern of the institution that controls the record and such institution may decide in all cases whether all or any such notations should appear on the transcript or even on the official record. Certainly, the practices are not uniform as to what actions should be entered upon the record, nor even whether all actions entered upon the record should appear on the transcript.

This whole matter of deciding what actions should be entered, whether they should show on the transcript and whether they may ever be removed, once entered, receives its meaning and significance from the weight and importance that those entitled to use the record attach to these notations.

Use of Student Records — Institutional Purposes

Most institutions hold, in theory, the position that the college record belongs to the student but that the institution has custody of the record, which it may use freely in its official channels for the purpose of promoting the educational welfare of the person to whom the record belongs.

No difficulty arises, as a rule, as long as the student record is used in the institution for the purpose of carrying on the educational process. Administrative officers such as deans of divisions use those records constantly and many of them maintain unofficial copies in their own offices. Teachers have access to these records and use them for the making of recommendations, advising of students, and for other purposes. Placement officers use them constantly for the obvious purpose of placing students in employment.

Originally, no doubt, the purposes and uses listed here constituted almost the entire use made of such records. One further use was that the student could ask for and receive a copy of this record for use in employment and for other purposes. He might want a transcript of the record for use in entering another college, or he might want it for purposes of employment or promotion. The record belongs to him and it is clear that he has a right to obtain a copy of it. The kind of entries the institution has made on it, however, may affect vitally the value of the transcript for his purposes.

For the use of the record within the institution itself, the notation of disciplinary action is clearly an important fact that educators need to know. Some of these actions indicate misbehavior in personal conduct, some indicate academic dishonesty, some clearly indicate qualities, habits, and propensities in the student that will, or should, affect his advisement, his course load, his choice of curricula, and his placement. There is no standard pattern for the type of personality and character of students who succeed in college work. Knowledge of their conduct, especially about some important phases of it, is of great benefit in teaching and advising them.

At one time, it was a general custom of colleges to enter upon the record card all the honors, scholarships, memberships in honor societies, and even the student's participation in certain student activities. This practice has now been abandoned, especially by many institu-
tions with large enrollments, since most of the information will appear on the commencement programs or in other places easily accessible to anyone who is interested. This tendency of institutions to confine the official record and transcript to official entries concerning academic achievement—courses and grades—has served to make the records and transcripts more effective and useful to educators who are primarily concerned with use of such documents. The whole question of notations of disciplinary actions remains, since such entries are useful and important to educators and constitute, for them, a meaningful body of information.

**Use of Student Records — Outside Agencies**

It is largely during the past three or four decades that the entry of disciplinary notations has become a matter of crucial, even critical, importance. This state of affairs has arisen because of the use which business firms and government agencies make, or wish to make, of this information.

Business firms, as a rule, although sometimes interested in such notations, do not set much store by the information contained in disciplinary notations. It is the agencies of government that have avidly sought such information, much of which, educators are convinced, they have systematically misused. Investigators for the Federal Bureau of Investigation, the Central Intelligence Agency, the Army, Navy, and Air Force, as well as the Civil Service and many other governmental agencies, have sought such information, sometimes with greater insistence than they have pursued the record of academic achievement. Record offices are, oftentimes, literally swamped with requests from such investigators, each agency having its own personnel who, according to their own accounts, have no access to such information in the possession of other government agencies.

These investigators frequently have little understanding of the meaning of disciplinary penalties or notations. Moreover, so far as the institution is concerned, the flow of information is always a one-way street. The agencies collect information for their own use but steadfastly refuse to give even the most important information collected elsewhere for the use of the institution. The investigator is never free to give information—he only collects it and sends it in. Someone in Washington, who can never be located, controls the use of the information that is never made available to educators who might make good use of it.

Of course, there are good reasons, from the standpoint of government, for all these policies. But the agencies demand the extremes of cooperation from the institution and give none in return. This situation results from the sharp distinction between the aims of the institution and the aims of government agencies in their relations with the individual person. Educators do not like this situation because they do not consider themselves policemen and investigators.

On the other hand, the educator is very sensitive to his obligations as a citizen and the responsibility of the institution for giving assistance to the official agencies in order that government may be as good as possible. As one professor expressed it: "It is our government, too." But he is caught in a situation where his educational procedures are being used, often in his opinion in a damaging way, against the very people whose welfare he has dedicated his life to promote. Frequently, he is convinced, the notations concerning student discipline are being used unintelligently and with little understanding of what such facts mean to him and ought to mean to others. He knows of cases where a hotheaded or inquiring student is suspected as a potential subversive character on the basis of notations which he understands and many others do not. This is a most serious matter and may result, in the opinion of many educators, in defeating the process of education which institutions are established to foster and promote. No student, during the course of his education, should be forced to direct or contain the learning process by the fear that questions, remarks, statements, associations, or actions might be interpreted later by some investigator as evidence of subversion, lack of loyalty, or irresponsibility and unfitness for some position of trust. Those responsible for his education have little difficulty in giving the proper evaluation to all these words and actions because they have not only seen and heard all of them many times before, but they know also the intellectual struggle and growth that produced or helped to produce them.

This would seem to suggest a scheme of uniform definitions for these invariably cryptic notations on transcripts. The commercial world does have such sets of uniform definitions which, through long customary use, have obtained the force of law in many commercial situations (see June, 1963, *Yale Law Journal* suggestion that complete and accurate disclosure of reason for discipline is demanded by procedural due process).

**The Aims and Methods of Student Discipline**

Here we must repeat and discuss again the essential nature and methods of student disciplinary actions. We have granted above that, in the educational process, discipline is quite important, and information about such actions is quite valuable to counselors, teachers, and educational administrators. Insofar as disciplinary infractions involve also a violation of the laws, the educational institution has no special commission from our society to take action. The college, like any citizen, must do its share, when called upon, to see
that the agencies that enforce the laws receive full cooperation and assistance. But, as an institution, it is not a part of this enforcement process and has no assignment of function in this area.

Much of the confusion on this whole matter has come about, as has been indicated, by the fact that everyone knows, in general, what law enforcement is, but only those engaged in the educational process seem to understand the purposes and aims of discipline of a non-parental type.

Disciplinary action by a faculty committee is a form of teaching and lies at the heart of the educational process, so far as those subject to it are concerned. The words used in books and lectures are sufficient, along with discussion and personal contact, to promote the process of intellectual growth and development in most of our students. But there are some who do not get the message in this way. Most of these we are able to impress by mild disciplinary actions but there are some whom we have to drop for a period of time until their maturity and motivation will enable them to receive what we have to offer. Some of these never achieve this maturity and motivation and do not return. In most cases, we are unable to determine, at the time our action is taken, whether they will return or not. It is a very rare experience for us to find a person whom we feel certain at the time that we shall never be able to educate. Such discards from the educational institution are extremely few. It is the nature of the educational process that those who are unable, at the time, to accept what it has to offer virtually eliminate themselves from further pursuit of what they do not understand or have concluded they do not want.

All law enforcement agencies concern themselves with conduct—with actions and undertakings that may be violations of the established laws. In the exercise of college disciplinary functions, it is indeed rare to have any, or very many, rules at all. For the most part, the faculty committee is concerned with the problem that its function is to promote the student's education and his present pattern of conduct interferes with the process, in some cases making it virtually impossible to promote his education at all. In the overwhelming number of cases, an action of disciplinary probation will serve to impress upon the student that he is attending college primarily for educational reasons. He is brought back to a consideration of his role and mission as a student and begins to apply himself to his intellectual work.

In many cases, the particular act that brought the disciplinary action is really a matter of little importance once the action has accomplished its purpose. Yet, to an investigator who is not an educator, the act itself, even after many years have passed, will be regarded as part of a record that arouses suspicions that there are serious flaws in the student's character. As long as disciplinary infractions, to most people, consisted of acts that are generally referred to as misbehavior, the problem was one which could be kept within reasonable limits. For several decades now, however, it is the task, apparently, of all governmental agencies to explore the intellectual outlook of those who have attended college and to furnish facts upon which judgments will be made concerning such matters as loyalty, mental stability, intentions, and fundamental principles. Thus, these agencies invade, without adequate skill, training, or knowledge, in the opinion of educators, the identical area in which the college has sought to perform its mission.

Most of us understand how this came about although many of us do not yet see how government can ever establish, in this area, a proper role for its activities.

The matter, stated briefly, resolves itself into this alarming fact—alarming at least to the educational world: The government seeks information collected by educators for the purpose of promoting the educational process and renders a judgment, made by persons without educational competence, in direct conflict with the conclusions reached on purely educational grounds by the educators themselves. One suspects that few, if any, really subversive persons have ever been identified on the basis of their college records although, no doubt, many have been wrongly suspected and caused to live under a cloud. The colleges have no use for subversives and those lacking in loyalty but they know that real subversives, who are known, have revealed themselves by their words and actions in the adult, non-college world.

The Record Card and Transcript

The colleges, as a rule, that resent this widespread attempt to misuse educational records have adopted one of two procedures in order to avoid participation in the attempt. Some of them have simply refused to allow any access to their records by investigators. In doing so, these institutions realize that they may be accused of refusing to give cooperation to governmental agencies in the pursuit of goals that many citizens regard as worthy and even necessary for our society.

Regardless of the type of financial support the college enjoys, no such institution wishes to be regarded by anyone as acting officially in a way contrary to what is in the best interests of the nation. The position is a difficult one and may bring criticism from people who regard the college as simply one more information-collection agency that should turn over everything it has to government officials.

The other procedure is in more general use. It involves some type of radical revision of the rules and
regulations that determine what notation shall be placed upon a student's record, how it shall be recorded, and when it may be removed. Some colleges, today, apparently make no disciplinary entries upon the student's record at all and, hence, none will show on the transcript. There are others in which the practice is to enter the notation on the record but this notation is erased or blacked-out before the transcript is made. Any such erasure or blacked-out portion gives rise to questions and this practice is not regarded as a desirable one by most educational institutions.

Another revision of the older procedure involves encumbering the record card with a removable flag or code, the meaning of which is known to those who need to use the record but remains unknown to anyone else. This flag or code is always removed, without trace, when the student graduates. It may also be removed before a transcript is made for a student who has not graduated if the proper official or committee of the institution authorizes its removal in specific cases.

All these procedures are regarded by the collegiate institutions as protective measures made necessary by the consistent use, often regarded by them as unwarranted, of educational information by agencies which are incompetent to interpret and use the information properly. The interpretation of academic information entered upon a college transcript requires considerable professional competence and, aside from educators themselves, there are few who are trained to read this information properly. Disciplinary notations are not only more damaging to the student whose record is being used, but they are more difficult to interpret as to their real meaning and significance. It is no exaggeration to say that many educators would regard the use of a college disciplinary record by a professional investigator as a complete misuse of educational information by one not qualified to use it. The statement is not intended to cast any reflection upon the investigator—but he is as incompetent to handle this kind of information as anyone else would be who is not trained as an educator. Many of us are astounded, at times, when we realize how we have allowed our educational records to be used, often improperly, by agencies that have no competence to make use of them in the proper way. But that has happened and it has taken the colleges a decade or so to realize what was going on. As educators, we cannot defend it and ought not to tolerate it.

Use of Transcripts by Other Educational Institutions

Although colleges are constantly attempting to reduce the amount of it, the mobility or transfer of undergraduates from one institution to another is main-
The other view differs considerably here in its results, because it goes back to the essential nature of student discipline for its principles. This position holds that disciplinary actions are not punishments or penalties from the point of view of the college that imposes them. They are frequently regarded as such by the persons affected but the purpose of the institution is different. Disciplinary penalties are used, according to this view, only to promote or make possible the educational progress of the student. If the action involves separation from the institution, the reason for this is that, in the opinion of educators who took the action, the student does not now have the proper maturity and motivation to receive what is offered him—at the institution by which the action was taken. Educators are fully aware that they do not understand all the factors and combinations of stimuli that bear upon the achieving of maturity and motivation for college work. They can determine with great accuracy, however, whether “learning-readiness” is present or not. They know, too, that certain types of juvenile and adolescent behavior are good indicators of the fact that the student is not yet ready to profit from college instruction. Hence, all disciplinary actions have as their aim the object of bringing the student and the college together at the time when the student is able to make use of what is available at the college.

This point of view gives no weight or importance to punishment as an end or goal of disciplinary actions. Moreover, since it is well known that local circumstances and conditions frequently have a bearing upon difficulty of adjustment and continuance of adolescent types of behavior, many would stress the fact that a student dismissed from one collegiate institution might, very profitably, attend some other one at once. These people recognize that it is not easy for the receiving institution to decide which students would do well at this college and which ones would not. They regard the acceptance of such students as a process of trial and error with some successes and some failures likely to appear. The disciplinary notation is of value in such cases because it alerts the receiving institution and makes possible special advisement and counseling techniques to promote adjustment. This process requires time and attention of advisers and teachers and there are many colleges today that take the position that they cannot justify spending this attention on problem students when there are so many anxious to enroll who are ready to proceed with their education. Each institution must make its own decisions on such matters, but it is clear, from this point of view, that the disciplinary action has little to do with the idea of punitive action taken because of certain acts which the student has committed.

If such information is sometimes given out, the result could be undercutting the other agency of government directly charged with custody of the information. For instance, if a claims adjuster for an auto insurer is given information which is also in the custody of the commissioner of highways, he probably is seeking information from the university because he was denied access at its principal depository.

Use of Student Records for Other Outside Purposes

In addition to the uses mentioned, there are other agencies outside the institution which call increasingly for information that can be obtained from student records in possession of the college.

1. Uses by the courts in civil process. The whole matter of use of disciplinary college records in cases of criminal prosecution will be discussed separately below. Here we are concerned with the desire to use student records for purposes of damage suits, for verification of date of birth, residence, or to refute or verify statements made on applications for insurance.

The prevailing idea here is that the college has such information and it can be obtained more easily there than from any other source. Since most colleges do not require filing of birth certificates, the only information they have on this point is what the student indicated when he registered. The college also has his high school transcript and he is not likely to have consistently falsified this date over a period of years. One further development here is that in some cases involving damages for personal injury, attempts are made to see if college records show absence from class at certain dates or even if records of treatment at the college health service are available. Attorneys and investigators for insurance companies have been especially vigilant in seeking to use college records for these purposes.

2. Uses for purposes of credit rating. Certain agencies engaged commercially in the furnishing of ratings for credit purposes as well as local credit bureaus have frequently sought to get information from college records. The insistent push in this direction is usually blunted when met with refusal, but there are, evidently, institutions which have, in the past, allowed such use of records. The plea is always that it is for the best interests of the person concerned and, as a rule, only certain key information is sought.

3. Uses by outside agency. Another use which arises infrequently is the request for information from a record by an outside agency when the student has refused to give permission for such disclosures. Sometimes this involves an inquiry into the qualifications of a public official, sometimes it arises from claims made and disputed in political campaigns. Clearly, it is unwise to accede to such demands except in cases where a subpoena requires production of the record in court.
Disciplinary Action and Law Enforcement

It is necessary to give separate and somewhat lengthy treatment to the tendency to confuse the aims, goals, and purposes of disciplinary action and those of agencies which are established to enforce the laws. Here, the colleges have been most remiss and negligent in the past in explaining to members of the legal profession especially, the distinction between these two areas of activity. It is a crucial point since disciplinary actions may be brought into the courts for review of processes and procedures and it is important that those who enforce the laws understand the difference between discipline and law enforcement.

Confidential Nature of the Disciplinary Process

In most of our colleges and universities, the members of the faculty operate the procedures of student conduct or discipline in a most exemplary manner. As educators, these staff members approach the problem of student conduct as one which justifies the time they spend on it purely because the student's behavior is often an obstacle to their attempts to educate him.

Educational institutions have no mission or mandate from society to enforce the laws, protect property and lives, or punish those who are guilty of breaches of the law. Other agencies in society have this as their function and the institution does not share in this responsibility or assignment any more than does the ordinary law-abiding citizen. There is a responsibility, of course, but it is a general one and is not based upon any assignment of particular function.

Students sometimes talk about "double jeopardy" with respect to institutional and legal action and, at times, there is a tendency to try to make one of these actions bear some relationship to the other. Actually, there is no connection whatever, and the processes are established for entirely different reasons and with different purposes and goals.

At law, double jeopardy occurs only when the same act gives rise to two proceedings; furthermore, its most common form is a second trial for the same offense following an adjudication of innocence. Double jeopardy is a valid objection to proceedings after an adjudication of guilt only if the second proceeding punishes exactly the same acts as the first; however, there is no double jeopardy if the second proceeding requires the proof of additional facts. Thus, if an assault and battery is committed in a classroom against a professor, the law concerns itself (and its punishment) only with the assault and battery, and the university may concern itself with the different wrong occurring because of the classroom context. But, if the court proceeding establishes there has been no assault, then it would appear that the university could concern itself only with disruption, which has not been previously disproven. However, in any event, in order to avoid double jeopardy, it would seem that the university should require that the acts involving its punishment are materially different from the facts involving civil punishment or innocence.

Educators, as a rule, do not use today, if they ever did, the noble-sounding phrase in loco parentis. The ordinary parent does not operate a school and his interests are not identical with those of the educator. But the parent and the educator have one thing in common that is unique—both are concerned, in all their decisions, with the welfare of the person involved. The phrase is not a good one because it gives the impression of a rule of law and certainly misstates the true relationship. But the educator has the kind of interest a parent has and, aside from some churches which are concerned with penance and discipline, these are the only places one finds this as the dominant motive and interest in our society. Educators are concerned with general conduct of students as an indication of their readiness and capacity to receive what the educational institution is there to give.

It is quite clear that every academic staff member of the institution, whether engaged in teaching, research, or administration, has the same responsibility for the conduct and behavior of those enrolled in the institution. As a rule, these staff members understand, because of their training, the purposes and
goals of student discipline work and most of them do an extraordinarily good job of carrying it on.

By its very nature, however, this work has remained hidden and unpublishable and those outside the profession know little about it. There is little literature on the subject and the philosophy upon which it is based is rarely discussed even in the most esoteric professional manuals. This lack of understanding and information has resulted in an almost complete inability of other professional groups to understand what it is and why it is conducted in the way it is.

This failure of understanding is most crucial when, as is increasingly the case, courts of law are required to deal with questions involving the disciplinary process. The tendency, of course, is to conceive it in the law enforcement pattern and to give it the aims and purposes, as well as the procedures of law enforcement. A member of the bar might well hold the opinion that the safeguards required in the courts would improve any type of procedure and that the institutions are denying fundamental rights when they do not make use of them. This is where the basic difference in purpose and function appears.

Let us suppose that a student becomes subject to discipline for an act that may or may not be a violation of law. Someone may have reported the matter to the dean of students, he may have seen a notice in the paper or have received notice in some other way. The dean calls the student in for an interview. Action may be taken by the dean under authority from the committee on student conduct, and almost 80 per cent of the cases stop right here and are not reported further.

Let us suppose, however, that the dean refers the case to the committee. Before the committee, as before the dean, the student is simply asked to tell what happened. It is the experience of committees that the overwhelming number of students tell the truth about what happened. There is no police report, usually because the institution has no police for this purpose. There are no charges, no attempt is made to fit the punishment to the offense, but a judgment is made by the committee as to whether this person, with his present attitudes and frame of mind, is now capable of making the most of his educational opportunities.

If, as some have contended, the courts should be able to subpoena the records of this hearing, the statement given by the student could be used against him, perhaps, in the courts. The result of this would be to make discipline work impossible. The student, when asked to tell what happened, would simply say he could not tell because it might be used against him in the courts. Most committee members would see that the student was right, and there would be no point in holding the disciplinary hearing at all. Whenever the confidential character of statements by the student to the dean or the committee is destroyed, then the disciplinary process has little or no function left.

Without being absolutely sure, the author believes that in most states the law would not recognize privileged communication between the dean (unless he is an M.D. psychiatrist) and accused offender; almost certainly no state would recognize as legally privileged any communication between a student offender and a disciplinary committee of assorted students and professors. Such student discipline before criminal trial could materially increase chances for conviction.

It is the duty of educators to explain the process so that those in other professions, especially in the legal profession, will understand that it differs not only in degree but in its very nature from the process of enforcement of the laws. The only justification for the exercise of student discipline is that this is a part of the educational process and cannot be considered aside from the aims and goals of the institution.

It is common for officers of the law and citizens in general to assume that the disciplinary decisions of the university or college committee are more effective in changing a student's pattern of action than convictions in the courts. It is said that, in case of a judgment, the parent pays a student's fine and the experience has little ameliorative effect so far as his conduct is concerned. The institution, however, may send him home, and that is real punishment.

Agreed that expulsion is real punishment, but is it not for the state legislature to decide that a fine paid by parents is insufficient redress to society. If the wrong has been to society only, and not to the university, (e.g., off-campus traffic violations), what is the justification for this extra punishment? Note that the state itself would probably not have constitutional power to increase punishment for college students as a class.

Actually, a study of disciplinary work in a large university for almost 40 years indicates that students fear action by the university because the action is tied with their plans and programs for an education. Most of the disciplinary actions consist of probation which does not interfere with the student's education provided he is willing to reform his conduct. Suspension and dismissal do cause breaks in attendance (expulsion is almost never used) which are deemed necessary by the committee in order that the student may be able to develop more mature motivation for his work. In the last analysis, a disciplinary decision by a conduct committee is a judgment by trained and experienced educators concerning the maturity as well as the motivation of the student. It is hard to see how
such institutions could accept students who are not prepared in their intellectual, moral, social and personal maturity to make use of what the institution has to offer.

**Nature and Purpose of Student Discipline**

The disciplinary approach has several basic characteristics peculiar to itself and distinguished sharply from law enforcement.

1. Discipline is always exercised with the primary aim of promoting the welfare of the person who is the subject of it. Such considerations as vindication of the majesty of the law, asserting the interests of society, or of a deterrent to future violators—all these are considerations that do not enter at all or if they do, it is only incidentally and secondarily. The main aim is not the reform of the person or the redemption of the person but of his welfare—specifically his education, his tutelage, his progress in maturity, in rationality, in capacity for intellectual and moral achievement. We use moral here in the sense of an acknowledgment of a willingness to promote the welfare of others as someone is not looking after his welfare. We use it as an indication of a willingness to assume and carry responsibility as a responsible human being and a member of civilized society.

2. It is a characteristic of discipline that it must always be exercised in person by those who have the welfare of those subject to discipline as their primary aim. The exercise of discipline cannot ever be delegated to someone else who does not already have, by nature or by profession, this relationship of responsibility for the welfare of those subject to discipline. Hence, a faculty committee exercises disciplinary powers not by virtue of a grant of authority from the faculty but because the members are also members of the faculty and constitute, for this purpose, what we may call a "fair sample" of the faculty. It is important to note that there is no delegation of authority because, on disciplinary matters, the faculty is both the legislative and judicial branch, speaking in terms of analogy with civil society. This is the reason why the faculty, in its bylaws, makes no attempt to set forth the rules and standards for student conduct. It simply indicates what segment of the faculty will perform the function of the administration of discipline and assumes that this segment of the faculty, in the exercise of these functions, will lay down, in each case, what is required and indicate in what way the student has failed to conform to what is expected of him. Where facilities are involved, other segments of the faculty do lay down rules about the residence halls, group social events, use of buildings and grounds, and such matters. But the committee on student conduct, as a segment or fair sample of the faculty, simply requires of students that they behave themselves properly in the sense that these terms are generally understood in our society.

3. The exercise of discipline requires that those who administer it never, or in almost no case, despair of the eventual possibility that the subject may conform to what is expected of him. This is especially true of people of college age. Only very rarely—almost never—do we discard a student and say that we will never be able to make anything of him. We have a disciplinary penalty called expulsion but it is rarely used.

Our normal, most severe penalty is dismissal and it is clear—and students are so informed—that it is our practice, after lapse of a period of time and upon showing of a good record and proper conduct, to readmit such persons. We use this penalty because we want such persons to be scrutinized and approved by the committee on student conduct before they are readmitted. We hope they will be ready for an education within a year’s time but we cannot be sure of this unless we see them and question them before re-admission. We may require a longer time.

4. The penalties used in disciplinary procedures must be chosen primarily with the aim that the penalty itself will assist in the rehabilitation of the student. The faculty assumes that breaches of discipline, if serious enough, are substantial obstacles to the education of the student. Hence, the penalties are designed to assist in the removal of this obstacle. Since college attendance is voluntary and presumably the student desires to retain his status as a student, some of the more severe penalties bring about an interruption of this status—not primarily as a punishment for the infraction committed, but primarily because the faculty believes the student is not amenable to education with the attitudes and aims that his present conduct indicates. It is well known to faculty members that the mental outlook and attitude of a student who appears for discipline is probably a more important determinant of the final decision than the act that has been committed. Only in this way can decisions on disciplinary cases demonstrate that the primary aim is the welfare of the student himself. Any familiarity with the disciplinary process will adequately demonstrate that this—and not the keeping of law and order—is the reason for it. This also makes it clear that the conduct committee operates in an entirely different realm and makes its decisions upon entirely different grounds from the operations and decisions of the agencies which enforce the laws.
Chapter 5

Administration of Discipline and the Courts

In our discussion, up to this point, we have left aside questions concerned with review of disciplinary actions in courts of law and have tried to discuss the subject entirely from the point of view of the reasons for the exercise of discipline by educators and the use of records that indicate such actions. For those engaged in teaching and administration, this seems to be the important and fundamental aspect of the problem. Studies of student personnel work, such as that of Dean E. G. Williamson, Student Personnel Services in Colleges and Universities, treat the subject in the way that educators consider the most useful and profitable for carrying on the educational process.

As for the review of disciplinary procedure by the courts, this is a subject which warrants reference here only to the extent that suggested requirements for disciplinary procedures are designed to aid or hinder the process itself in a way that would make it possible or impossible for institutions to engage in it.

It is necessary here to refer only to a few of the most recent articles that make rather extreme contentions concerning the position courts should take in requiring schools to operate disciplinary procedures as if they were engaged in the process of enforcing the laws.

It seems clear that any court would act promptly to make it clear that colleges and universities are not endowed with any authority in the general field of law enforcement. They have no assignment or mission in this area and no authority to replace, not even to the slightest extent, the regular agencies that enforce the laws. If, on the other hand, the authorities of an educational institution should take the position that refusal to obey the laws is an important indication of character and of capacity to continue in the formal educational process, this is certainly a decision of an educational nature that schools rather than courts should be best qualified to make. Most of the courts, up to the present time, seem to have taken this position, saving only the contingency that schools, like all other agencies in our society, must be fair, reasonable, and free from vindictiveness in their dealings with individuals. An excellent review of this situation is presented in a publication of the American College Personnel Association (1961).

The extreme position on exercise of student disciplinary powers, and one which takes the process entirely outside the educational mission of the schools, is given in a proposed statement on Procedural Due Process and Substantive Due Process drawn up by the officers of the U. S. National Student Association. Almost every provision of this proposal assumes that student discipline is exercised for reasons other than the real ones and would impose requirements that would prevent its use as an important element in the educational process. Most of these considerations are pointed out by the two educators who comment on the proposal in the reference given.

The proposal contends that it should be stated clearly what actions will be considered violations of university regulations and that the penalties that may be imposed be made public. The assumption here that disciplinary actions are taken only or largely for violation of university regulations is quite false. Schools do not, as a rule, publish lists of regulations beyond a few basic ones, because disciplinary action is not primarily a punishment for violation of regulations but an action taken on the basis of the judgment of educators as to whether this particular stu-
dent, at this particular time, is properly amenable to the educational process. Some act or incident may be material; it may often be the reason for the matter being considered when it is raised. But the decision is not a punishment for the act but a conclusion as to whether the school is justified in retaining the student as a student, at the present time.

Another contention, one frequently made by lawyers who confuse disciplinary with legal procedures, is that the student be informed of charges made against him. The essence of the disciplinary procedure is, of course, that the student is not charged with anything. There are no charges. He is asked to explain his conduct and may say or refuse to say anything he wishes. The fact that he may have or have not committed a certain act is of considerably less importance, as a rule, than the judgment made of him by members of the faculty as to whether he is engaging in a meaningful way in the educational process, and is the kind of person the institution should graduate and upon whom it should confer a degree. Those who think of discipline in terms of legal process often refuse to believe we are honest or serious when we say there are no charges. But this is literally true. The student does not have charges against him any more than a child has when he appears for explanation before his parent.

A final position which shows the complete confusion of discipline and law enforcement is the contention in the proposal that the institution should "refrain from prosecuting students for actions which are subject to civil or criminal prosecution." The use of the word "prosecute" here is unfortunate, of course. But the idea of "double jeopardy" which is implicit in the contention is that the institution is exercising powers parallel to those exercised by the courts. This is quite incorrect, as everyone knows. Whatever may be done about a person's behavior in the way of civil or criminal action in the courts has no bearing one way or the other upon the action taken by the institution in the instance.

The institution is operating its own educational process and may or may not consider important a fact that is crucial in the courts. As a rule, committees on conduct do not use or seek to use the public records of court procedures. One reason is that the institution has disposed of the matter months, maybe a year or so, before it ever comes up for adjudication in the courts.

The proposal also contains contentions that the student should have access to the testimony of his accusers. It is well known to those who carry on the disciplinary process that, as a rule, there are no accusers and no charges. The proposal also contends that the student should be able to decline to testify against himself, when the disciplinary procedure requires as its basic procedure that the student tell in his own words what he has done and why he did it. Without this, no conclusion could ever be reached concerning his readiness to receive an education at this time. Finally, as is usually contended by those who are unable to understand the disciplinary approach, it is contended that the student must have counsel. It is logical, of course, that those who confuse the disciplinary approach with law enforcement should make such a contention. But, not only would the adversary procedure of courts not assist but completely defeat the aims of the disciplinary process, it would seek to establish what is false and well known to be false, i.e., that the institution has any right to charge a student, force him to answer to the charges, and acquit or convict him on the basis of a trial. Only the courts have this mission and the powers to accomplish it. All the institution is seeking to do in a disciplinary hearing is to determine whether this student is a proper person to continue as a student at this time. Questions having to do with his intellectual capacity and motivation for college work are decided, perhaps by a committee on admissions or entrance, usually without a hearing. Transcripts, tests, and other devices are used in such cases.

When the question is raised as to whether, because of his activities and pattern of conduct, he should be retained as a student, this decision is made by another committee of the faculty called usually the committee on discipline or student conduct. But not only is the process similar, the aims of the two procedures are identical. The only thing the institution is assigned to do is to educate students. In some cases the impediments to success are of one kind, in some cases of another. But whether the impediments are due to lack of ability, motivation, incentive, or desire, they operate in the same way and secure the same result as those which have to do with integrity, honesty, application, amenability to tutelage, and willingness to learn. It is a monstrous distortion of the educational process to insist that one of these procedures is comparable to enforcement of the laws and must therefore proceed in accordance with the procedure established for that purpose.

Those who insist that disciplinary procedure must adopt the procedure of law enforcement, confine themselves chiefly to citing a few known instances in which college and university officials are known to have acted in an unfair, unreasonable, or arbitrary manner. As educators, we know that these failures on our part are matched by others in which teachers without proper competence have effectively eliminated students through the assignment of grades in courses. We should work constantly to eliminate both these situations which result in unfair and arbitrary judgments on the student. It happens that, with the disciplinary decision, it is easier for us to correct such situations than can be done.
with improper assignment of grades in courses since no
one person has, by academic custom, the freedom to
assign disciplinary penalties that the teacher has in the
assignment of grades. As has been pointed out above,
disciplinary decisions should be made by a faculty com-
mittee after the student has been heard and questioned
by the members of the committee. This, in itself, is
an excellent guarantee that the decision will not only
be reasonably free from bias, unfairness, and spite,
but also that it is rendered on purely educational
grounds and for educational reasons. It is difficult to
conceive a worse distortion of educational policy than
would result from an attempt of a faculty committee
to conduct a trial with counsel and in accordance with
what is called "due process" in the courts. It is espe-
cially meaningful here to note that most of the faculty
members who seem to have difficulty understanding the
purposes and aims of the disciplinary procedure as part
of the educational process are members of faculties
of law. One would suppose that the reason for this
is that they find great difficulty in thinking through edu-
cational problems as educators rather than as lawyers.

One other contention made at times by students
and also by writers on the relationship of student dis-
cipline to legal procedure is one that holds that students
should sit as members on discipline or conduct com-
mittees. Members of college and university faculties
tend to hold different opinions on this point. Some
contend that, although students are likely to be more
severe on their fellow students than the members of
the faculty would be, it is important for students to
participate and remove from the minds of those dis-
ciplined the notion that discipline is something handed
down from above.

A major difficulty in the use of students on con-
duct committees lies in the fact, as we have seen, that
the regulations of governing boards usually delegate
the supervision and control of student conduct to the
faculty. Students cannot qualify as members of the
faculty, of course, but it is possible to have a student
committee that would consider such cases and make its
recommendations to a faculty committee. There are
some disadvantages here since some actions that draw
serious disciplinary penalties are of such a nature that
it is difficult for the student, even though he remains
in school, to associate with fellow students on an equal
basis if they are fully aware of what he has done. This
confidential aspect is important not only in cases involv-
ing deviant and similar behavior, but might be present
even in cases in which academic dishonesty is involved.

Some smaller institutions and professional schools
in large institutions have been quite successful in the
operation of honor systems for written work and exami-
nations. It is true, however, that even in such cases it
sometimes happens that lack of penalty at the time does
not always prevent the occurrence from following the
student even into later professional life as a distinct taint
upon his reputation.

There are many factors that must be considered
in the solution of such a problem as this. One thing
is clear, however. As long as the essential nature and
purpose of student disciplinary procedure remains as
it has been in the past, many types of changes and
modifications are possible. Those that depart from the
proper philosophical basis or confuse discipline with
enforcement of the laws cannot be tolerated in an edu-
cational institution, however, because they destroy the
practice as part of the educational process entirely.
Chapter 6

Suggestions and Recommendations

No two colleges or universities are organized in exactly the same way nor do they operate and carry on their functions in an identical manner. Yet the basic educational philosophy, the mission and purpose, are so uniform that any educator who is familiar with one will immediately feel at home in any other one. As a matter of fact, the standardization in courses, teaching methods, and educational administration in American colleges and universities is truly remarkable when one reflects on the number of such institutions, the different dates at which they were founded, and the variety of organizations and agencies that control them. We have done this by accreditation to some extent but, largely, it is the result of a common training in professional and graduate schools. The Carnegie Foundation for the Advancement of Teaching took the lead in this process of standardization and is more responsible than any other agency for the remarkable job that has been done.

In the administration of student discipline, the non-professional will see a host of titles, committees, and other devices that will lead him to believe that these institutions have no uniformity in their procedures and that they operate on the basis of educational theories that differ from one institution to another. Such is not the case. The apparent variety is there but it is confined to nonessentials, such things as official titles and machinery of procedure. The basic theory and educational philosophy is highly uniform and there is complete agreement among educators on it.

Organization for Administration of Discipline

A collegiate institution, regardless of its size, should have some official with educational training who is responsible for the administration of student discipline work. In some cases he is called the dean of students; in others the work is divided between the dean of men and the dean of women. Various other titles are used which do not indicate any difference in function from those cited here. Even a very small institution should have such a person, probably a teacher who gives part-time work to this position. In large institutions, several persons will be required but the key position should always be in the hands of an educator who is, or could be, a teacher. As we have seen, the administration of student discipline is a vital part of the educational process and should be carried on according to principles deriving from the purpose of the institution.

Regardless of the size of the school, there should be a faculty committee to conduct hearings and make decisions on the cases of students that are presented by the official in charge of student discipline. All of us know of cases in which for many years certain institutions delegated all these functions to some trusted member of the faculty who held little or no consultation with his colleagues. At one time, it was quite common for the president of such an institution to handle all discipline cases himself. He exercised these functions as chairman of the faculty. There are many other instances of a particular professor who showed interest in and talent for this work and who was trusted by his colleagues to have full charge of it. However well these simpler systems may have operated at one time, it is quite clear that today it is much better to have a panel or committee of faculty members in charge of hearings and the making of decisions about students.

It follows, from the nature of student disciplinary work as it has been described above, that a hearing for a student who appears for disciplinary purposes is not a trial and does not resemble a trial in any significant degree at all. In such a hearing there are no charges made and no defense is required. The student is simply told that certain things have been heard about him and he is asked to tell what happened. The committee is especially interested in his record as a student, in his general attitude, in his maturity and his motivation for college work. Members of committees are sometimes shocked to learn that some persons do certain things but they are cautioned to remember that they are not to seek to punish the student in accord with what they regard as the enormity of the offense. They are to decide whether, in view of all known circum-
stances, the college can and should continue to accept this person as a student and under what conditions.

The student is free to refuse to tell the committee anything about his actions. As a rule, if he does refuse to tell anything, he is informed that he will be separated from the institution and his readmission will be considered at any time he indicates a willingness to tell the committee what happened. Here we see why the confidential and privileged character of these hearings is so vital to discipline work. If any other agency may make use of information given by the student to the committee, then the committee members themselves would not wish to have the information given. They seek it themselves because they need it in order to further the student's education; they do not desire to gather information to turn over to other agencies whose interests are in keeping order in society.

In most institutions, there will be some mechanism established in the faculty bylaws by which a student may appeal a decision of the committee to some other agency for review of his conduct. Such an appeal will usually go to the president or be granted through his office. This appeal should never reopen the matter of determination of facts but should consider only if the decision of the committee is in line with the customary conclusions in such cases and if all those involved in the same degree are treated alike, always taking into account the attitude, maturity, and motivation of the student. Hence the appeal should always provide personal hearing as did the original hearing by the committee. It should always provide, also, an opportunity for parents to appear and be heard. But, in no case, either before the committee on conduct or the appeals committee, should any appearance of counsel, professional or otherwise, be permitted. The adversary process used in courts fits well with legal proceedings but there are few similarities between court procedure and the manner in which a disciplinary hearing is or should be conducted. In discipline work, there is no prosecutor, there are no police, and there are no laws to construe and apply. I disagree. One similarity between courtroom and discipline is that both seek to discover the true facts and act upon the basis of them. One of the prime uses of counsel is that he is able to uncover and present facts because of his skill with them which is not possessed by the average student. It is pretentious to assume that a committee of laymen can be infallible in its interpretation of facts collected by fallible (although probably well-intentioned) laymen when a trained trial judge will not even trust his own abilities to do this.

Disciplinary Penalties

The college disciplinary process has a very limited number of actions that may be taken concerning a student. The committee may take no action and, in such cases, this terminates the matter but does not erase the fact that the person has appeared. The mildest action is disciplinary probation and this is the one used in about 80 per cent of the instances considered. This action alerts the student to the fact that he is "on his good behavior," is being watched carefully, and another deviation in behavior will likely result in much more severe action. The greatest value of this action is that conditions may be attached which, if obeyed, will assist in arriving at the purpose of the committee in taking the action. A condition may be that, during the period of probation, the student shall not have or drive an automobile in the college town. The condition may prevent participation in some or all student affairs and activities outside the classroom program. In some cases it involves periodic reporting to some designated official of the institution or to the counseling service or the student health service. Any condition may be used which is likely to promote the committee's purpose for education of the student with the hope that the inducement to proper habits and customary behavior will help to accomplish this purpose.

The penalty of suspension has serious disadvantages as well as advantages. It does operate powerfully to secure compliance with what the student is ordered to do but it also takes him out of school for a designated period. Unless suspension covers only a few days, it is better not to use it unless it is made to run to the end of a term or quarter of the institution's calendar. It is unsound educationally to take a student out of school for several weeks and then restore him to classes in which he has missed so much of the work. Suspension has its virtues, however, when properly used. It can be terminated at the end of a semester or quarter and the student becomes automatically eligible to re-enroll at that time without further official action. As a penalty, in the eyes of the student and his family, it means loss of funds and loss of time. But from the educational point of view, it means that patterns of association, habits, and, perhaps, bad associates, will be lost and contacts not re-established when the new enrollment term begins.

Many disciplinary agencies now use dismissal as the action most commonly employed in situations regarded as serious. Separation from the institution not only terminates all relationships that may be regarded as tending to interfere with the process of education but it throws the student back upon his parents who are best able to help him plan his future. It also involves the necessity of clearance with the same committee before the student may be readmitted. The committee will wish to interview him again and decide whether the obstacles to his being a successful student
are still present. Each committee must make its own decisions on such matters but the procedure is sound since it places the emphasis where it belongs: on the student's readiness and motivation to make proper use of what the college has to offer.

The action called expulsion does not require discussion. It is rarely used because a committee finds it very difficult to say that a person will never be ready to continue his education. We simply do not know.

**Notations on the Record and Transcript**

There is no easy answer to the question as to what disciplinary notations should be entered upon the student record, when they should be removed, and to whom this information should be made available. As we have seen above, this is a complex problem and should be carefully considered and solved by educators themselves. The suggestions made here are intended as starting points for consideration of the entire subject. After all, such a matter that has hitherto received little common attention by educators from diverse types of institutions cannot be properly solved with reference to the needs and purposes of one or two colleges alone. But there are certain immutable educational principles that should be observed and certain educational values that must be safeguarded at all costs. Let us look first at the manner in which student records are kept.

It is a common practice to place high school transcripts, admissions applications, and similar documents in a file that is sometimes referred to as the *certificate file*. This file does not contain the official record card although some of the personal information on the record card is derived from it. In the case of disciplinary action, the official notice from the committee on student conduct or from the dean of students, the president, or other proper official will be placed in this file. In the same way, a proper notice authorizing the entry of termination of the disciplinary action will be placed here. Other correspondence bearing upon the student's enrollment will be found here. This file, then, constitutes the basic collection of documents concerning the student and information in other records is frequently drawn from it for use.

This certificate file is a permanent record but, clearly, large collegiate institutions cannot be expected to add indefinitely to the large number of folders and correspondence that is found in it. This record, after passage of a certain number of years, may be placed on microfilm and the original papers may be destroyed. Thus, the record will always be available but will occupy little space in the vaults where such things are kept. The material in the certificate file is used, normally, only by personnel of the record office who extract from it items for entry on other records. In an educational institution, however, it must be available, when needed, to members of the staff who require information from it for carrying on the educational work. Let us note here that the disciplinary record placed in the certificate file contains no details concerning the acts due to which the action was taken by disciplinary agencies. This correspondence indicates only that a certain action was taken by a certain agency, the terms of the action, and the effective dates, together with, usually, a certification by an administrative official that this is a correct copy of the action taken and authorization to the record office to enter it in the usual manner on the official records.

The document regarded usually as the official record of the student is the so-called *record card*. This is usually a single card or sheet, on durable paper, that can be filed, handled, and used without deterioration. It incorporates personal information from the certificate file, lists courses taken and grades received, academic actions of deans and faculties, degrees received, and such other information as is authorized to be added by faculties and other academic authorities. One of our questions, of considerable moment, is what disciplinary notations contained in the certificate file should be entered here? In some institutions, the use of this record card is available not only to staff members but also to official government investigators. Some institutions, although not many it is believed, allow access to this record by a properly identified person who makes inquiry about a student.

As the record card is compiled, in part, from documents contained in the certificate file, so the transcript is made from the record card. The two documents are different in the sense that the transcript may be furnished to the student on request or sent to any agency, another school, an employer, the armed services, that he designates as the recipient of it.

**Use of Record Cards and Transcripts**

It is desirable that another educational institution know, just as it is for the one which takes the action, that a student is under certain disciplinary penalties at a particular time. A student who is in "good standing" is one who has no academic deficiencies or disciplinary notations on his record. Such things should be made available by one institution to another. Yet there are some agencies that seek use of the record card or transcript who have no right to know about disciplinary action and who do not know how to make proper use of it when they have it. In fact, as we have seen, some of them use such notations in an improper and damaging manner.

Here lies the nub of the problem which must be solved in a satisfactory manner. One solution of it will be suggested here—there may be other solutions that are as good or better. Disciplinary notations may
be noted on the record card by a removable flag that can be removed without trace. When the student is graduated, all such flags should be removed since the faculty, in recommending the student for the degree has indicated that it seems no reasons, on grounds of moral character, to withhold the degree. The dean of the faculty has notice of all such disciplinary actions and may inform the faculty that such actions have been taken.

The flag on the record card is necessary for use by the record office, otherwise the information that a disciplinary action exists will, at times, be lost or overlooked, since laborious checking back into the certificate file in each case is simply not feasible when use of a record or making of a transcript is called for. A good rule would be that no one except members of the staff could have access to this record card. It is realized, however, that for purposes of convenience alone, many colleges will allow government investigators to see it and the investigator will want to know what the flag means. It is at this point that the policy of the institution must assume control.

Some official of sufficient rank in the institution that he handles important policy matters ought to be the one to handle this situation. It may be the dean of students, an administrative dean, the dean of faculties, or the president himself. In addition to all the disciplinary records we have mentioned, there must be one highly confidential, locked file, that contains the report of the disciplinary action and the reasons for the action, including a recital of facts and circumstances, a description of the act committed, and original documents, if any, bearing upon the matter. This file, logically, belongs to the president as chairman of the faculty and head of the institution but it may be in the custody of some fairly high official such as one of those named above.

All requests concerning the meaning of flags on record cards should be referred to this official who, on the basis of his judgment and experience, should disclose whatever facts he considers to be proper and refuse to disclose any others. His decisions must rest upon his opinion as to whether it is in the best interests of the student to give information in view of the purpose for which it might be used. This is not a perfect solution. Some investigators will report that there is a flag on the record card and, since no information was given, the flag might mean something much more damaging than the actual facts would reveal. That is why the best solution is to deny access to the record card to everyone except staff members.

The policy with respect to transcripts remains. Students request transcripts for all sorts of purposes, transfer to other colleges, for employment purposes, for promotions in the armed services, and for many other reasons. The suggested procedure here is that when the student asks for or authorizes a transcript and there is a flag on the record card, the student should be reminded, before the transcript is prepared, that the notation exists. He should be told that he may apply to the proper disciplinary agency and ask that the notation be removed. If this agency considers the matter and refuses to remove it, the notation of disciplinary action must appear on the transcript. In many cases, the agency that took the action will, for good reason, authorize removal of the notation. The action which authorizes removal will be documented in the certificate file and in the central disciplinary file as well. The most important thing to remember with respect to this whole complex and difficult matter is this: the original disciplinary proceeding and action was a part of the educational process, done by professional educators as a part of their duties as members of the faculty. Any change or termination or alteration of the original action must be made for educational reasons by the same agency that took the action or under regulations laid down by this agency and delegated to a responsible educational officer. There is no other way in which discipline can be retained in its proper place as a part of the educational process.

Use of Records for Legal Process

The use of record cards in civil legal processes is not a difficult problem, for the most part. The notation of disciplinary action is not involved in such a process and the disclosure of other information having to do with birth, residence, enrollment, and, in some cases, grades, although the record belongs to the student, is such that, except in the case involved, it would not be damaging to the reputation of the person. The invariable rule in such cases ought to be that the institution never produces or divulges this information except in answer to a subpoena issued by a proper legal agency. The reason for this is that the record belongs to the student, and except when compelled to produce it in court, the institution that has custody of the record has no right to make it available except at the person's request or with his consent. There should never be any exception to this rule, since proper agencies can secure such a subpoena when they have a right to the information.

The difficult matter here involves the production of disciplinary records, even when ordered to do so by subpoena, since such disclosure, under any circumstances, defeats the disciplinary process and blocks the educational program of the institution. It should be noted here that the officials who keep the records will not be involved in this contingency since the entries in the certificate file, on the record card, and on the transcript do not show anything except that a certain
disciplinary action was taken. A subpoena for the record of disciplinary action would seek to produce the facts revealed at the hearing, especially the account given by the student as to his own actions and the actions of others involved in the affair. The full record of these disclosures is contained in the confidential central file kept by the president or by some official operating reasonably close to his office. But this is not the whole story. Members of the committee who heard the recital of facts and made the decision as to what disciplinary action should be taken could be interrogated and required to testify concerning facts revealed in the hearing. In some cases it has happened that the chairman of the committee who, later, compiled the report for the central file, may have made notes and entries for his own use in writing this official report. In some cases, professional counselors on the staff of the institution may have been consulted about aspects of the case and administrative officers as well as medical personnel may have attended the hearing upon invitation. All these persons are in possession of vital information about the student and his participation in the particular affair. A subpoena may have been issued that all such information be produced in court. It is possible that the criminal charge is a serious one, perhaps a felony, and the community may have been inflamed by indignant stories in the local press relating popular notions of various aspects of the case. Moreover, the faculty members and officials of the institution feel, very naturally, that they should not obstruct the course of justice, especially since the reputation of the institution and of the community may have suffered in the accounts published about the events.

Obedience to the subpoena would seem to absolve individuals from any blame for disclosure of what is ordinarily considered official and highly confidential information. Moreover, these institutional officials may well have been advised by competent legal counsel that the law by precedent or statute has never given the educator any privilege against disclosure of such information as it has, in many instances, to physicians, attorneys, and priests and ministers.

It is at this point that we begin to realize the enormous consequence of the fact that educators have failed to inform the public and especially the lawmakers and courts concerning the nature of the disciplinary process and its function as a part of the educational program. Clearly, disclosure of this information, under these or any other circumstances, will make it impossible for colleges to hold disciplinary hearings and expect students to tell them the truth. The colleges have no prosecutors or police and have no power to make investigations such as law enforcement agencies carry on as part of their normal functions. Yet to abandon their contention that the disciplinary process is necessary and vital for the educational program would mean that they would be barred from even exploring one whole aspect of the maturity and motivation of their students.

There is no answer to this problem that the college can tolerate or live with except one. It must have, from its governing board, a specific mandate to refuse to disclose such information, on any level, and by any official who has knowledge of it. If the law enforcement agencies should persist in the attempt to force them to disclose such information, the governing boards must see that the matter of privilege for educators, in each case, be ruled upon by the highest courts. We will have to show that the confidential and privileged character of this information is necessary in order for us to carry on properly the process of education that is assigned to us as our mission in this society. This, I think, we can do. But we have a much better chance of showing it if we seize all the opportunities we have to make this fact clear to other professional groups and to the public in general. This means that we must discuss the subject among ourselves, we must write papers and books about it, and we must carefully refine our techniques so that we carry out, in all cases, the principles which we assert.
Chapter 7

Conclusion

It seems clear that, if the analysis given here is correct in major outlines, the institutions of higher education will need to give some attention to the whole field of student discipline and use of notations concerning it during the next decade. In the present state of things, if either the government or the courts see fit to declare such records public in the sense that they may be used by official agencies, our work in this whole area will be vastly complicated if not made completely impossible.

Such an outcome would not appear in one dramatic action with all the collegiate institutions forced to comply at the same time. A court case in one state, severe government pressure in another, all arising out of individual and accidental conditions, would likely be the way in which it would come. The cases that would set the precedents would be worthy ones where despicable crimes and serious menace to the national welfare were involved. These would later be used as opening wedges for less serious matters and less worthy causes. We need not assume any malice or conspiracy on the part of anyone to injure the colleges. As long as our story is as imperfectly understood as it is at present, few responsible citizens would feel that we were being required to do anything but what we should do anyway.

The first breaches will come in situations where a public institution, probably a city junior or senior college or a state college or university, is involved. As things stand at present, it could be made a matter of record that the collegiate institutions as a whole had never condemned the practice of making public use of such records under proper safeguards. Moreover, many such institutions, no doubt, could be cited as having willingly agreed to such procedures without feeling that their own educational processes were being invaded. All this would only make it look as if the particular institution involved was being rather cautious or cantankerous in its unwillingness to cooperate with official agencies. There would be little sympathy among the general public or even in professional groups for the position the institution was taking in insisting that the record was a part of the educational process and must remain confidential and privileged.

How can the collegiate institutions best safeguard their interests in this area? In the first place, it is clear that there should be some joint action or statement worked out and presented as the established opinion of those engaged in higher education. To be most effective, the action should be taken before any critical case or issue is presented for settlement. In other words, our position on the use of student discipline and the use of the disciplinary record should be stated in a way that no doubt is left as to whether it is the voice of higher education. We have several large organizations of collegiate institutions, the three most significant ones being the Association of American Universities, the Association of American Colleges, and the Association of Land Grant Colleges and State Universities. All of these speak with the voice of American higher education. There are professional associations such as the American Association of Collegiate Registrars and College Admissions Officers and the American College Personnel Association who might well recommend that institutions take a unified position.

If the matter is as important as has been contended here, the ideal approach would be for the regional accrediting associations to lay down certain broad requirements concerning the administration of discipline and the use and keeping of disciplinary records. Anything of the nature mentioned here would help an institution that faced a crisis produced by a subpoena for disciplinary records or an insistent and well-supported demand to open its records to government agencies and investigators.
PART II
Due Process and Discipline

by
L. F. Snoxell
Chapter 8

Student Discipline and Established Due Process

Grants of Authority

Under the grants of power found in the charters of institutions of higher education, boards of regents or trustees have been given broad grants of authority to manage and govern universities and colleges including the implicit grant to enforce compliance with those regulations and policies which they establish (Bakken, 1961, pp. 5-7 & 31-32). The charters are silent on the subject of student participation in the functions of institutional management and government.

The governing boards manage the affairs of universities and colleges, including student discipline, in a variety of ways (Cattell, 1913, pp. 17-62). First, the governing boards enact regulations, define official policies, and approve constitutions of units of academic government such as a faculty senate. Second, the boards appoint faculty and administrative officers and define their duties and responsibilities. Third, the boards make studies and investigations of existing conditions and practices and direct such changes as they deem advisable. Fourth, the boards delegate the carrying out of prescribed policies to certain officials, committees, and agencies of their own creation. Fifth, the boards intercede directly by holding hearings or indirectly by becoming a final appeal body. The governing boards thus act to carry out both legislative and judicial functions.

In early American colleges it was not unusual practice for governing boards to hold hearings for students charged with offensive conduct. However, the more typical early practice in the handling of student misconduct was the active, personal intervention of individual members of the faculty and the institutional presidents who also served on the teaching faculty (Peabody, 1888, pp. 31-33 & 44-45; Thwing, 1906, pp. 93-97). Variations in faculty and presidential investigations, judgments, and prescription of penalties led to assigning authority to committees. At times presidents would appoint ad hoc faculty committee; in some instances standing faculty committees carried out discipline functions; and in still other instances college faculties or the general university faculty served as the discipline agent. With the expansion of the student population and development of student services, the governing boards granted authority and jurisdiction over student discipline to specifically designated individuals and agencies.

Student discipline, by delegation of authority from the governing boards, is usually assigned at the present time either to the president or to college and university faculties, and deans of students are delegated responsibility for coordinating and for carrying out discipline programs (Hawes, 1929, pp. 27-29). Typically a president appoints a faculty or faculty-student group to assist a dean of students to dispose of unusual and difficult cases. Added to this pattern of administration are two new developments in the handling of student discipline. One consists of delegating responsibility under a policy of rehabilitation to professionally trained counselors (Williamson & Foley, 1949, pp. 191-226). The second is the utilization of judiciary boards to share in the disciplining of college students (Falvey, 1952, pp. 51-54, 59-65). The membership of such boards includes both students and staff, or students with participating staff advisers. In practice, most institutions of higher education assign the discipline function to a number of individuals and committees, with lines of appeal running to a dean of students, a faculty or one of its standing committees, and to the president.

Decentralization of Responsibility for Student Discipline

Examples of the decentralization of responsibility for discipline both in the academic and non-academic areas of concern illustrate the performance of different functions—executive, legislative, and judicial—by a single staff member. Individual instructors are by tradition and faculty action granted jurisdiction over classroom decorum and over minor infractions of the often unwritten code of academic integrity. Instructors, often acting independently without review and approval, may reprimand students for plagiarism, cheating in an assignment or examination, or violating
rules relating to class attendance and deadlines set for completing papers. For such violations instructors may assign a failing grade, may require that a student drop out of the class, or may report the student to college discipline authorities or to an honors commission for both a finding of fact and such action as the facts would warrant in the judgment of the officials. There are also college administrative officers who in consultation with their faculties act directly, or through a review of recommendations, to dismiss students for unethical behavior and character deficiencies such as in the case of a student in one of the professional colleges who takes advantage of clients for his own personal gain.

Professional staff members, such as physicians and psychiatrists, have responsibilities for the general health of the student and staff population, for the health of individual patients, and for the maintenance of a quality service within a budgetary allotment. In the exercise of their responsibilities they may insist that a student submit to regular treatment as a requisite to his continuance in a college or that a student be terminated for the best interests of the university community or for his own long-range interests. The staff may even refuse to spend health service funds on students with serious, recurrent types of illness. As an official of a university, a physician may present his opinion to the student, the student's parents, and the college dean as an administrative decision which if unchallenged becomes in fact an adjudicative action.

Residence hall directors and staff exercise another kind of responsibility, that of maintaining peace and order and of protecting persons and property in residence halls. In the carrying out of their responsibilities such officials issue certain instructions or rules and, in instances of non-compliance, admonish a student, assess costs for restitution of damages to property, restrict privileges, or require that he move from his quarters. Such actions are essentially the invoking of penalties as a result of a personal evaluation of guilt and, if unchallenged, constitute an adjudicative action by persons who make and enforce their own rules.

The assignment of responsibility for carrying out programs and services within an institution of higher education results in both rule-making and enforcement actions by the same members of the staff. To be sure, many administrative actions are so reasonable that they are accepted by students without question. In fact, the decentralization of authority results in expediting the carrying out of the basic purposes and services of a university. However, decentralization also invites unreviewed and unilateral actions by staff members who from time to time are under situational pressures to which they over-react and on occasion may become arbitrary and even capricious. In those instances in which students believe injustices have been done, campus adjudicative machinery should be available to them to provide for reviews of administrative actions, thus assuring fair treatment and reasonable due process.

Due Process Defined

The manner through which a university or college exercises jurisdiction over the behavior of students and the procedures by which its responsibilities are carried out constitute the institution's due process. Some advocates of one extreme position maintain that due process as defined and practiced in our courts of law should be followed on college campuses (Byse, 1962, pp. 170-187). This argument holds that the courts have developed the only kinds of procedures that protect a citizen from unwarranted or unreasonable exercise of authority by a government official or agency. Persons arguing such a position remind us that the need for protection of the individual against the arbitrary exercise of authority is documented in the history of man's struggle against autocratic control. Advocates of another extreme position hold that due process as formally defined cannot be practiced realistically in an educational community and that each college must evolve its own due process in the light of its objectives and its traditions (Williamson, 1961, pp. 163-171). In a civil community, adult citizens exercise control of the government by the ballot and are thus responsible to themselves. But in an educational community the students are responsible to the university or college, and the staff and faculty are accountable to a governing board. Thus it is clear that campus citizens do not exercise political control over their community. Colleges do develop and define their own internal procedures, policies, and regulations to advance the missions for which they were chartered and to thus develop and maintain services for students. Within this special framework of responsibility and accountability, colleges develop systems of control for obtaining compliance with their rules. Advocates of the second position would not deny that there have been abuses of authority by college officials. They would emphasize instead that the developing political, social, and economic structures of our nation are reflected in institutional organization and procedures, that internal administrative changes are rapidly eliminating abuses and injustices, and that colleges must be provided a wide latitude of discretion if student discipline is to be maintained.

Reasonable and Relevant Control of Behavior

What constitutes a proper concern of a university in matters relating to the discipline of students is a puzzling question. Most universities have some rules of the "thou shalt not" variety; many include an omni-
bus clause such as prohibiting "conduct unbecoming a student" or "conduct not in the best interests of the college"; and some formulate general statements as, for example, "The standard of conduct for persons attending the University is the practice and usage of good society. The University expects every student to conduct himself at all times and on every occasion in accordance with good taste and to observe the regulations of the University and the laws of the city, state and national government that apply to matters of conduct" (Code of Student Life, 1957-58, pp. 1-2).

Early American colleges adopted detailed lists of rules and punishments (Clark, 1922, pp. 6-7). It seemed that the more detailed the rules the more sporting it became for students to find ways of breaking them. In fact, flaunting the rules became something of a game to be carried out under cover of darkness (Thwing, 1900, pp. 115-117). These detailed rules were difficult, if not impossible, to enforce and became outmoded in the first quarter of the twentieth century. Contributing to the demise of published codes of conduct of the prohibitory type was the change in perception by college officials of discipline as re-education and rehabilitation instead of punishment. Many, if not most, colleges replaced the traditional negative codes with more positive formulations that describe in general terms the kinds of conduct expected of students.

The University . . . expects that each student will obey the laws enacted by federal, state, and local governments. In addition there are certain rules and regulations governing student conduct which have been established by the regents, administrative officials, University Senate, college and department faculties, and residence hall groups.

It is each student's responsibility to be alert to avoid the types of misconduct mentioned here and any other misconduct harmful to the University, its staff and students.

Courtesy to your instructors and University staff members, to other students, and to the public is expected of each of us and a failure to show this type of responsibility is unacceptable.

Each student is expected to be honest in his work. Dishonesty in assignment, examinations, or other academic work is considered an extremely serious offense by the faculty and students.

University policy specifies that the property of the University as well as that of individuals should be respected. Theft of any kind, whether of money or other property, is unacceptable. The destruction or mutilation of books, magazines, or other library material in University libraries is another type of conduct which is not condoned. Equally so is unauthorized use of, damage to, or destruction of University buildings, equipment, and property.

Drinking on campus or in the residences is another type of behavior not approved by the University. Drunkenness or any type of behavior which is disturbing or disorderly reflects on the University and therefore is contrary to the best interests of the University and other students.

Misuse of University identification to obtain privileges to which you or to which others are not entitled under existing regulations is a University offense.

Indecent and immoral conduct discredits both the offending individuals and the University and is contrary to the best interests of the University community.

The residence of your choice will have special additional rules. Most rules for student residence halls exist simply to provide for better living, as for example established study hours, use of facilities, and the manner in which bills are handled.

The University also has certain standards established concerning entertainment, hours, and room visitation. You should acquaint yourself with the rules of your residence unit upon your arrival (The Moccasin, pp. 60-61).

One perceptive dean of students explained that universities "take for granted that young people of college age know in the main what is right and what is reasonable as to conduct so that it is not necessary that every sin in the Decalogue or that every violation under the statute should be named in the college catalogue and penalty for its violations attached" (Clark, 1922, p. 6).

Recently a court decision directed attention to the substantive standard which must be met to justify expulsion. An allegation of conduct unbecoming a student, even if proved true, might not be sufficient grounds for warranting a suspension action. A portion of that decision emphasizes the need for evaluating the minimum standard that justifies expulsion.

It is not enough to say, as did the district court in the present case, 'The right to attend a public college or university is not in and of itself a constitutional right.' . . . One might not have a constitutional right to go to Bagdad, but the government may not prohibit one from going unless by means consonant with due process of law. As in that case, so here, it is necessary to consider the nature both of the private interest which has been impaired and the governmental power which has been exercised . . . . The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs were students in good standing.\footnote{Dixon v. Alabama State Board of Education, 294 Fed. Rep. 2d 150, U.S. Ct. App. 1961, pp. 156-157.}

A review of university standards of conduct and rules of behavior does identify interests of universities that mark the boundaries of their jurisdiction over student conduct (Snodell, 1964, pp. 16-18):

1. A university has a primary concern with matters which impinge upon academic achievement and standards, and the personal integrity of its students.
2. A university has an obligation to protect its property and the property of members of its community.
3. A university has a special interest in the mental and physical health and the safety of members of its community.
4. A university has a fundamental concern for preserving the peace, for insuring orderly procedures, and for maintaining student morale.
5. A university has some responsibility for character development, for maintaining standards of decency and good taste, and for providing a moral climate on the campus.

6. A university has a commitment to enforce its contractual obligations.

7. A university seeks to protect its public image as an educational institution responsible through its governing board to a statewide community.

Policies and regulations adopted by university agencies that lie within the limits of the seven areas of concern would certainly accord with tradition and public expectation. However, the mere violation of a rule may not in itself constitute a sufficient ground for expelling a student.

**Challenges to College Disciplinary Procedures**

From time to time in published articles and in courts of law, discipline proceedings are challenged on the adequacy of their formulations of due process and the fairness of their disciplinary practices. The frequency of challenges has increased in the last few years, perhaps due to heightened sensitivities to civil rights which in turn have spotlighted the treatment accorded various classes or groups of citizens, to the greater number of students attending college, and to conflicts engendered by the introduction of a broader spectrum of values by increasing numbers of students from wider varieties of socio-economic groups.

Seavy, a law professor, indicted both colleges and courts for their deficiencies in providing adequate safeguards to the procedural rights of students (Seavy, 1957, pp. 1406-1409). In the five cases he cited that had come before various state courts, he found lacking the protection of such rights as knowledge of evidence against the accused; knowledge of the accuser; a hearing; and permission to be represented by counsel, to introduce witnesses, and to cross-examine those who made the accusations. He lashed out particularly against placing a student in a position of having the burden of proving himself innocent. Although his presentation was critical of the adequacy of both college and court interpretations of due process, he did acknowledge that all the formalities of court procedures were not requisite to due process within educational institutions.

A year later an extended annotation, "Right of students to hearing on charges before suspension or expulsion," appeared in the American Law Review. The decisions cited and discussed provide ample evidence that internally derived definitions of due process have been sporadically challenged by students in American courts. The annotator narrows his field of investigation to the question of whether or not a student is entitled to a hearing before suspension or expulsion where such a hearing is not required by statute. In the case of public schools, authorities seem to agree that on grounds of misconduct students may not be dismissed legally without a hearing, but that on grounds of failure to attain the requisite scholastic standard no hearing is needed for dismissal. Authorities are not in agreement concerning the kind of hearing required, that is, whether a hearing should be conducted with the formalities of a court, with written charges, with evidence in support of the charges introduced, with witnesses appearing under oath, with the student represented by counsel, with cross-examination privileges accorded counsel, and under the strict rules of evidence enforced in the courts. In the case of private schools, the necessity for notice and hearing are tempered somewhat by the courts in terms of the specific and implied contracts of admission. However, the great freedom once accorded private institutions in defining due process seems to be narrowing, if not disappearing altogether.

In a doctoral study completed in 1964, Terrill examined the handling of 167 collegiate offenders in 34 colleges and concluded that colleges deny students basic constitutional rights (Terrill, 1964). She used as her criteria of rights the formal procedures followed in the trial courts in the United States. She concluded that the primary consideration in adjudicating complaints against students is the welfare of the students and institutions and that as a result of such emphasis, constitutional rights of offenders are seldom a critical or primary factor in the disposition of complaints by college officials.

Levine also built a case against colleges for not granting students such procedural rights as "fair warning of rules," "fair hearing of specific charges," and cross-examination of witnesses, and such substantive rights as freedom of speech, press, and assembly (Levine, 1963, pp. 1362-1410). The bias of his position, stated forthrightly in his introduction, leads him to surmise that justice is the exclusive domain of the courts and that student discipline as administered in universities is sadly lacking in elementary fairness. Had the body of student regulations been imposed upon these students by force of public law rather than as students by university authority, courts predictably would have evoked basic constitutional rights to require fairer enforcement procedures, or to strike many of the rules down (Levine, 1963, p. 1363).

He appears to champion the position of those who argue for formal court procedures in a college discipline setting as did Seavy (1957) and his colleague, Byse (1962), and the Pennsylvania trial judge in 1886.

These four challenges are quite similar in that they assume trial court procedures and evidentiary and adversarial rules and procedures employed in our legal tri-
bunals are necessary and appropriate in a college disciplinary setting. The relationship of college to students in their discipline proceedings is thus assumed to be the same as that of the state and a defendant in a criminal proceeding. But the relationship between a college and a student is more appropriately like the state and the child in a juvenile court, the judge facing an unhappy married couple in a domestic relations court, a hospital staff deciding on the advisability of discharging a patient or placing him in restraints, or a welfare worker appraising the earning capacity of a family to derive the amount of public assistance it will be given.

Ratterman and Yanitelli in commenting on a United States National Student Association proposed statement on due process pointed out clearly the confusion that results when a university is perceived as a microcosm of civil society (Ratterman & Yanitelli, 1963, pp. 7-10). If a university is expected to develop a corpus of law detailing every possible offense and every possible penalty, establish courts of justice in which adversary proceedings are required, and develop an internal security force to obtain evidence of violations, it would be functioning in matters "peripheral to and often in conflict with the university's true responsibility" which is the pursuit of truth wherever it may be found (Ratterman & Yanitelli, 1963, p. 9). Furthermore, a university which would function in accordance with such expectations might find itself so circumscribed by a legalistic framework that its spirit of freedom would be jeopardized by its exercise of responsibility. Such a university would in fact become a political community requiring new charter grants of power and new definitions of relationships.

Contract Relationships and Student Discipline

Law and tradition appear to develop around certain kinds of relationships, e.g., citizen to sovereign, and the formulae successfully applied in the resolution of conflicts in one area are often adapted to new relationships, e.g., students to colleges. Thus the concept of relationship existing between students and college has a pronounced effect upon the administration of student discipline and the extent of court interference. Is the relationship one of in loco parentis, defined in Goth v. Berea College as placing college officials in the position of parents in such concerns as "the physical and moral welfare, and mental training of pupils"? Or is it a fiduciary relationship as that between a trustee and children whose parents are both deceased?" (Seavy, 1957). Is it a service relationship as that between a governmental agency and the citizens it serves? Is it a membership relationship as that between a labor union and a corporation? Or is it a status type of relationship in the schoolmaster-pupil context? The courts have not delineated the problem by defining the nature of the relationship between students and educational institutions but they have consistently recognized a contractual relationship between students and universities.

Assuming that the contractual concept is valid as a controlling determinate in student discipline, does this mean that a university may make and enforce any rule which it deems necessary to the maintenance of discipline as it carries out its mission? An Illinois court held that a college governing board had the power "to adopt and enforce such rules as may be deemed expedient for the government of the institution" and added that the board would have possessed such power "without an expressed grant, because [it is] incident to the very object of the incorporation, and indispensable to the successful management of the college." An Ohio court took the position that university officials "under the custom of the land, [are] justified in disciplining students . . . and the student who enters such an institution agrees to conform to that rule of law and to be tried for his misdemeanors by the rule that has been applied by such institutions for so long a time that it has become the rule of law." A Michigan court accepted the position that a university could set the terms of the contract with regard to the regulation of student behavior. The decision of that court includes the following statement: "Inherently the managing offices have the power to maintain such discipline as will effectuate the purposes of the institution . . . That in the absence of an abuse of discretion, the school authorities and not the courts shall prescribe proper disciplinary measures." Under the concept of a relationship by contract these three representative decisions grant colleges broad authority to enact rules and to enforce rules for the maintenance of student discipline.

Restraint of Authority

The grants to colleges, although sweeping, are not unlimited. By describing certain circumstances that would prompt them to interfere in student discipline, the courts have placed restraints on the authority of colleges. The courts would intercede if a procedure or action were unlawful and against the public policy, unauthorized, without sufficient reason, generally unfair, with malice, not within the scope of college

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4 Goth v. Berea College, 156 Ky. 376, 161 S.W. 204 (1913).
6 Pratt v. Wheaton College, 40 Ill. 186, 187 (1866).
7 Kobitz v. Western Reserve Univ., 21 Ohio, CCR (144) 1901.
9 Goth v. Berea College, op. cit.
10 Stollard v. White, 82, Ind. 278 (1882).
11 Anthony v. Syracuse Univ., op. cit.
12 Kobitz v. Western Reserve, op. cit.
13 McCormach v. Burt, 95 Ill. 362 (1880).
jurisdiction,14 palpably unreasonable,15 capricious,16 a clear abuse of discretion,17 or arbitrary.18

Another limitation on the contract relationship is found in an analysis of university discipline by Levine. He points out the significance of the principle of natural justice to contracts between colleges and their students. Under this principle a contract will be construed against the party drawing it when a complex contract contains unreasonable and unconscionable clauses, when one party is in a position to present an unfair agreement on a "take it or leave it basis," and when the stronger power reserves authority which constitutes a forfeiture of basic rights and a license to injure without cause (Levine, 1963).

Judicial Tests of Due Process

A university disciplinary proceeding is not a criminal procedure. Rather it is a civil administrative procedure of an adjudicative nature (Johnson, 1964, pp. 349-350). Universities claim authority to exercise broad discretion to regulate student behavior and to utilize their own procedures for maintaining student discipline (Williamson, 1961, pp. 163-170). Students claim certain procedural rights such as fair hearings on specific charges, representation by counsel, opportunity to present witnesses, and to cross-examine hostile witnesses as well as such substantive rights a freedom of speech, press, religion, and assembly. Courts are asked from time to time to decide the propriety of college disciplinary proceedings the result of which is an action expelling students from universities, both public and private. A major question for determination is what are the procedural safeguards that should be accorded the individual student in a college discipline proceedings?

In a study by O'Leary and Templin (1961) of due process in college disciplinary proceedings, three schools of thought were identified as having emerged from court decisions. One position, no hearing required, established in Anthony v. Syracuse University 19 in 1928, would permit a college wide discretion in determining what situations call for the dismissal of a student but would still require that the college have some reason for its action. A second position, the formal hearing doctrine, taken in Hill v. McCauley 20 in 1886, would require formal judicial procedures by colleges in instances of dismissal. A third position, the informal

hearing doctrine, Steier v. New York State Educational Commission,21 denies the necessity for formal judicial procedures but requires that a college utilize those procedures that will insure that a student is treated fairly. This latter school of thought, a moderate position between Anthony and Hill, appears to have in its favor the weight of authority and the approbation of an author writing a National Student Association publication (Preston, 1957, pp. 45-49). O'Leary and Templin cite as cases most frequently used as precedents and most representative of the third point of view Ingersoll v. Clapp,22 Sherman v. Hyman,23 and Steier v. New York State Educational Commission.24 Ingersoll was the case of a student dismissed for conduct not in conformity with the usual standards of society by a dean's council without a hearing, confrontation of witnesses, and cross-examination of witnesses. The Montana court held that the method used for judging the necessity for suspension rests with the University official charged with its management, i.e., the president, and stated that the courts would not interfere in the absence of a clear showing that he acted arbitrarily and had abused the authority entrusted to him. The court specifically disapproved the Hill ruling and noted that a president had no power to compel attendance or testimony of witnesses.

Sherman was the case of a student seeking reinstatement after suspension for theft of an examination. To test the reasonableness of the college procedures, the court asked two questions: Was the procedure used by the college such as meets the requirements of justice to the college and the relators? Was the accused given a fair and reasonable opportunity to make his defense? The Tennessee court directed its attention to defining what would constitute fair and reasonable procedures in college discipline cases and concluded that the accused should be informed of the nature of the charges, provided with the names of the principle witnesses, and given a fair opportunity to make a defense. The court disposed of the case before it with this statement:

We find it to be the unanimous holding of the authorities that the courts will not interfere with the discretion of school officials in matters affecting discipline of students unless there is a manifest abuse of discretion or where their action has been arbitrary or unlawful.20

Steier was the case of a student enrolled in a public college in New York who claimed that he had been deprived of his right to due process as guaranteed under the 14th amendment of the federal constitution. The
Supreme Court held that education is reserved to the individual states with one restriction, namely, that no state may in its educational programs discriminate against an individual because of race, color or creed and therefore refused certiorari.

O'Leary and Templin also quoted a passage from the decision of *Woods v. Simpson* to summarize the majority position. This case stemmed from the refusal of a public college to re-register a student because of her refusal to answer questions with regard to an objectionable letter which she had sent to a newspaper and also for "general conduct." The Maryland Court stated:

The maintenance of discipline, the upkeep of the necessary tone on standard of behavior in a body of students in a college is ... a task that demands special experience, and is often one of much delicacy ... and the officers must ... be left untrammeled in handling the problems which arise, as their judgment and discretion may dictate, looking to the ends to be accomplished. Only in extraordinary situations can a court of law ever be called upon to step in between students and the officials in charge of them. When it is made clear that an action with respect to a student has been, not an honest exercise of discretion, looking to proper ends, but beyond the limits of that discretion, or arising from some motive extraneous to the purposes committed to that discretion, the courts may be called upon for relief. In such cases, the officials have, as it is sometimes stated, acted arbitrarily, or abused their discretion, and the courts may be required to remedy that ... Any other rule would be subversive of all discipline in the schools, and of the educational interests of the state. To hold that dissatisfied students in college and schools of this state can review the discretion of the faculties, in cases where the facts justify the exercise of discretion, would be most unwise.26

There was a departure from the majority view of due process in student disciplinary proceedings in the *Dixon* 27 and *Knight* 28 cases. In *Dixon* a number of students had been dismissed by the Board of Education without a hearing on the grounds that they were individually guilty of conduct unbecoming a student and future teachers, for insubordination and insurrection, and for inciting other students to like conduct. In *Knight* students were suspended by a state college without a hearing in accordance with a regulation of the Board of Education that required the dismissal of students arrested and convicted for personal misconduct. *Dixon* skirts the question of the court's jurisdiction in college disciplinary proceedings; asserts that a college education, although not a constitutional right, is of great value; and refers back to the almost forgotten *Hill* case for a precedent. In *Dixon* the Circuit Court of Appeals suggested (not required) certain procedural standards as guidelines for colleges to follow to satisfy due process:

1. A student should be given notice of the charges against him and the grounds which, if proved, would justify expulsion.
2. A hearing which should be held would permit both sides to state their respective positions.
3. A student should be given the names of the witnesses against him and a report of the facts to which the witnesses testify.
4. A student should be permitted an opportunity to present his own defense and call witnesses in his behalf.
5. The rudiments of "fair play" should govern disciplinary proceedings.

In *Knight* the court ruled that the regulation requiring dismissal of students convicted on charges involving personal conduct was reasonable but that the suspension without a hearing was improper. The students were not advised of the charges and were not provided an opportunity to present their side of the case. The court cited *Dixon* and *Sherman* as the proper precedents. In summary, the standard of due process in student discipline proceedings that the courts will uphold is *fundamental fairness or fair play, and reasonable rules reasonably applied*. This criterion as defined does not include full adversary proceedings, written notice or precise charges, and public hearings.

In deciding cases of college discipline that are appealed to the courts, the courts have, as Levine points out, certain principles or statutes from which judgment can be made as to the legitimacy of the interest claimed by the college and the students and the rationality of the discipline action:

1. Constitutional provisions limiting state ends (e.g., If the state has no power to promote religion, a state college can have no valid interest in enforcing chapel attendance).
2. State statutes (e.g., Laws relating to non-discrimination are applicable to the selection of students by public colleges).
3. Authoritatively declared public policy (e.g., Limitation of enrollment to students with a certain high school rank or comprehensive examination score).
4. A university's goals or its conception of rational policy for the administration of student affairs (e.g., Regulation of the financial affairs of student organizations).
5. Custom of the schools and colleges (e.g., Use of an honor system).29

**Summary and Suggested Self-Study**

Universities through their governing boards which operate under state charter authority admit persons to the status of students, establish rules of conduct for students, delegate authority to regulate student conduct to special agencies and groups, and appoint officials to carry out programs and services many of which involve

regulation of student behavior. The responsibility for the maintenance of student discipline is traditionally vested in the faculty and the president. By delegation of authority and appointment, a dean of students is given jurisdiction over student discipline and it is he who administers a university's disciplinary program.

Current student discipline programs emphasize rehabilitation and re-education rather than punishment as desirable objectives and thus share with students the rule-making and rule-enforcing functions. The control a university exercises over the behavior of students and the procedures used to maintain student discipline constitutes a university's due process. Students have challenged university due process in courts of law. The courts have shown restraint and reluctance to interfere in matters pertaining to student discipline. However, they have exercised jurisdiction and have set aside university disciplinary actions in instances in which fundamental fairness was lacking.

Fair play in the treatment of students by institutions of higher education is a concept to which both universities and courts should be committed. Williamson in his recent analysis of civil rights and discipline procedures commented on the leadership position colleges ought to take to insure fair play:

Clearly, an institution of higher learning should be in the vanguard of society in shielding the individual against unjust, arbitrary, capricious, and unilateral action by administrators or by committees of faculty and student members (Williamson, 1961, p. 1965).

Colleges should expect the courts to grant relief to injured parties whenever authority is exercised in such an unreasonable manner.

In the spirit of fundamental fairness what then should universities do to insure reasonable and just treatment of students reported for misconduct? A university could conduct periodic examination of its rules, procedures, and mission. Such studies of authority over students, as exercised by officials of a university or college, would identify not only the offices assuming jurisdiction but also the extent and limits of their authority over students and the relationships among the officials exercising such authority. From such a study, lines of administrative review and appeal from decisions could be charted. In addition the individuals and agencies formulating regulations as well as the kinds of regulations formulated could be identified.

A university could also "test" the fairness of its procedures. The fairness of the existing policies and procedures could be determined by such tests as: Is authority exercised unilaterally and arbitrarily? Are decisions referred or referable for administrative review? Are students provided a channel through which to file appeals? Are students informed of the availability of appeals procedure from an official's decision?

A university would of course revise any procedure found to be unfair. Inquiry into the functioning of the adjudicative machinery would provide answers to the perennial question about what procedural rights do students enjoy within the institution. Do discipline proceedings provide (a) that the student be informed of the nature of the complaint made against him and the source from which the complaint came? (b) that the student be given a hearing if he desires one? (c) that the student be permitted representation by an advocate of his own choosing? (d) that the student be advised of the evidence against him? (e) that the student be given an opportunity to present witnesses in his own behalf? (f) that the student have the right of appeal through proper channels to the governing board?

University proceedings for handling student discipline cannot be expected to follow the rules of trial courts. For instance, universities have no power to subpoena witnesses and compel them to testify. They have no authority to require witnesses to take an oath and to punish for perjury. In fact, their jurisdiction is limited to student members of a university community and these students are only temporary residents. Moreover, the range of appropriate penalties to a university is exceedingly restricted. In fact, the only true penalty is forfeiture of the privilege of membership for varying periods of time. All other available penalties such as warnings and admonition, censure, restriction of privileges, and probation, rest upon the implied threat that membership in the community is in jeopardy. And operating a formal court is not a primary function of a university. It is clear that universities can maintain student discipline by employing informal proceedings that are fundamentally fair and yet congruent with their mission of education of youth in preparation for civic responsibilities as well as for individual excellence.

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