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CHANGE AND CONTINUITY: A HISTORICAL PERSPECTIVE OF CAMPUS SEARCH AND SEIZURE ISSUES

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Illegal searches and seizures on college campuses involve issues that create much anxiety among college administrators. Images of the legal remedies that the students involved may seek and the extent of the universities' potential liability are aptly conjured by the administrators facing illegal search and seizure cases on their campuses. Due to the potential for liability, one would assume that college administrators would have become experts at dealing with cases involving searches and seizures. Some of the case law reviewed in this paper illustrates that this is not the case.

Perhaps campus officials can take comfort in knowing that there is legal counsel available in the event that illegal searches and seizures take place. Moreover, many administrators might believe they cannot bear any personal liability if they are not personally committing the illegal searches and seizures. Nevertheless, searches and seizures in on-campus housing occur with relative frequency; thus, college administrators should take inventory of their knowledge about what constitutes legal searches and seizures to be able to make better policy decisions regarding them.

The Fourth Amendment of the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

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particularly describing the place to be searched, and the persons or things to be seized.[1]

The Fourth Amendment has its origins prior to the American Revolution in the United States and "is more of an expression of a philosophy."[2] Belief in the inherent correctness of the Fourth Amendment is so prevalent that Justice Stewart said that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[3]

This paper will address Fourth Amendment issues regarding on-campus housing in public institutions of higher education. Smaller emphasis will be placed on cases from private institutions, and two such instances will be used to shed further light upon Fourth Amendment issues. Case law is cited in an effort to buttress the comments of the author. While not exhaustive, the cases cited have been selected based on their uniqueness to lend comprehension to policy decision-making in areas involving the Fourth Amendment. Presented chronologically, readers should gain an historical perspective on how legal decisions dealing with the Fourth Amendment have been rendered and how they have been applied to search and seizure issues involving college student on-campus housing.

I. FRAMING THE FOURTH AMENDMENT

College and university officials as well as campus, state, and local law enforcement officers often find themselves addressing problems which require their entry into students' dormitory rooms.[4] How access to dorm rooms is gained and what occurs inside them can raise Fourth Amendment concerns. Legal problems that typically stem from dorm room searches are caused both by *who* conducts the searches and *what* is the purpose of the searches.[5]

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1. U.S. Const. amend. IV.

2. Stuart C. Berman, Student Author, *Student Fourth Amendment Rights: Defining the Scope of the T.L.O. School-Search Exception*, 66 N.Y.U. L. Rev. 1077, 1083 (1991).

3. *Shelton v. Tucker*, 364 U.S. 479 (1960).

4. Joseph M. Smith & John L. Strope, *The Fourth Amendment: Dormitory Room Searches in Public Universities*, 97 W. Educ. L. Rep. 985 (1995).

5. *Id.*

Defining the term "search" may be helpful in understanding its constitutional implications. According to Black's Law Dictionary a search is:

> An examination of a person's house or other buildings or premises, or of his person, or of his vehicle, aircraft, etc., with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.[6]

It is apparent that this definition of the term "search" implicates the actions of university officials and their representatives when they encounter contraband or illegal substances upon conducting routine dorm room inspections or assessing or performing maintenance needs.

In a review of student Fourth Amendment rights, Berman explains the important function of the warrant clause contained in the Fourth Amendment:

> The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.[7]

Determining which types of searches are subject to a reasonable expectation of privacy and warrant clause protection has always been a controversial constitutional issue. In *Katz v. United States*,[8] Justice Harlan, in his concurring opinion, defined the two-pronged test which courts rely on in determining whether a person can expect to be protected by the Fourth Amendment. He concluded that in order to qualify for constitutional protection, a person must first "have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"[9] The constitutional question involving on-campus

6. Henry Campbell Black, *Black's Law Dictionary*, 1349 (6th ed., West 1990).
7. Berman, *supra* n. 3, at 1085.
8. 389 U.S. 347 (1967).
9. *Id.* at 353.

searches is whether campus dorm rooms are protected under Harlan's two pronged test, and if so, to what extent.

II. CASES INVOLVING SEARCHES AND SEIZURES

An examination of the case law spanning the past 30 years dealing with on-campus searches and seizures and their Fourth Amendment implications illustrates just how incongruent courts have been in deciding the constitutionality of searches and seizures.

In the 1968 case, *Moore v. Student Affairs Committee*,[10] the court granted very broad authority to the university to conduct searches. In this case, the Dean of Men at Troy State University in Alabama, accompanied by two narcotics agents, conducted a warrantless search of six dorm rooms in two different residence halls on campus. In Moore's room, they found a matchbox containing what later proved to be a small amount of marijuana. Moore had been present but had not given his permission for the search.

The United States District Court for the Middle District of Alabama ruled in favor of Troy State University concluding that "[c]ollege students who reside in dormitories have a special relationship with the college involved. . . . Insofar as the Fourth Amendment affects that relationship, it does not depend on either a general theory of right of privacy or on traditional property concepts."[11] Furthermore, the court stated that the "validity [of the search] is determined by whether the regulation is a reasonable exercise of the college's supervisory duty."[12] More importantly, the court ruled that a "standard of 'reasonable cause to believe'" justified the search of Moore's room by the Dean of Men, even when the sole purpose of the search was to seek evidence of violations of criminal law.[13]

Quite significant in *Moore* is the court's willingness to allow a standard of "reasonable cause to believe" and to state that it is "lower than the constitutionally protected criminal law standard of 'probable cause.'"[14] It is apparent that the court's ruling

10. 284 F. Supp. 725 (M.D. Ala. 1968).
11. *Id.* at 729.
12. *Id.*
13. *Id.* at 730.
14. *Id.*

helped to more clearly define the latitude with which university officials could act. University officials are given far greater latitude under *Moore* than are police authorities because of the "special relationship" the court said college students have with universities. The *Moore* court even stated that the university had a reasonable right to inspect rooms, which might infringe on the "outer boundaries" of the student's Fourth Amendment rights, provided the university deemed it necessary in order to operate the university as an educational institution.[15] The constitutional boundary line for the search in *Moore* drawn by the court was that the university had to believe that the student was using the room for illegal purposes or a purpose which would otherwise seriously interfere with campus discipline.[16] The court concluded that "regulations and rules which are necessary in maintaining order and discipline are always considered reasonable."[17]

Two years later, in 1971, the Superior Court of Pennsylvania took a somewhat different view from that in *Moore* and granted less deference to the right universities have to conduct searches by specifically applying the exclusionary rule in a case involving criminal conduct.[18] The exclusionary rule "commands that where evidence has been obtained in violation of the search and seizure protections guaranteed by the U.S. Constitution, the illegally obtained evidence cannot be used at the trial of the defendant."[19] When a narcotics agent and a state trooper, accompanied by a university official, had a warrant to search a student's room on the campus of Bucknell University, a public institution, the court looked at the applicability of the Fourth Amendment due to an improper entry into the student's room.[20] In this case, the record clearly indicates that the Head Resident of McCloskey's residence hall had used his passkey to allow the officers into McCloskey's room.[21]

The court determined that the Fourth Amendment prohibition against unreasonable searches and seizures "requires that before a police official enters a private premise to conduct a

15. *Id.*
16. *Id.* at 728.
17. *Id.*
18. *Cmmw. v. McCloskey*, 217 Pa. Super. 432 (1970).
19. Black, *supra* n. 7, at 391.
20. *McCloskey*, 217 Pa. Super. at 433-34.
21. *Id.* at 434.

search or to make an arrest, he must give notice of his identity and purpose."[22] The court cited a Supreme Court case to support its ruling:

> An unannounced intrusion into a dwelling . . . is no less an unannounced intrusion whether officers break down a door, force open a chain lock on a partially opened door, open a locked door by use of a passkey, or . . . open a closed but unlocked door.[23]

The court determined that there had been no exigent circumstances which would have justified entry into McCloskey's locked room without announcement of identity or purpose.[24]

Although the Commonwealth of Pennsylvania cited *Moore* to support its argument, the key factor, according to this court, was that *Moore* only involved disciplinary action by the school, whereas *McCloskey* involved criminal prosecution.[25] The "fruits" of the search were deemed inadmissible.[26] The findings of the lower court were reversed and the court vacated McCloskey's sentence for possession of five pounds of marijuana.[27]

In a case in 1971, *Piazzola v. Watkins*,[28] the court focused on the police involvement aspect of a search as well as the contractual relationship the student had with the university and again gave less deference to the right universities have to conduct searches. Here, the problem was not so much with the entry into Piazzola's room, since it related to the university's function as an educational institution, but rather with the application of the regulation so as to authorize a search for criminal evidence. The court held that a student occupying a college dormitory room enjoys the protection of the Fourth Amendment, and evidence obtained by an unreasonable and warrantless search is subject to the exclusionary rule and is inadmissible in criminal proceedings.[29]

Once again, the search took place at Troy State University in Alabama. Law enforcement officers, accompanied by univer-

22. *Id.*
23. *Id.* (quoting *Sabbath v. U.S.*, 391 U.S. 585, 590 (1968)).
24. *Id.* at 435.
25. *Id.* at 436.
26. *Id.* at 437.
27. *Id.*
28. 442 F.2d 284 (5th Cir. 1971).
29. *Id.* at 285.

sity officials, conducted warrantless searches in six or seven dormitory rooms in two different residence halls on campus.[30] Piazzola's room was searched twice. The first search, in which two narcotics agents and a university official were present, turned up no evidence. The second search was conducted solely by state and city police officials, who found marijuana.[31] Piazzola and another student were tried in a lower court and found guilty of possession of marijuana.[32] On appeal, the court held that:

> The University retains broad supervisory powers . . . provided [regulations are] reasonably construed and . . . limited in . . . application to further the University's function as an educational institution. The regulation cannot be construed or applied so as to give consent to search for evidence for the primary purpose of a criminal prosecution. Otherwise, the regulation itself would constitute an unconstitutional attempt to require a student to waive his protection from unreasonable searches and seizures as a condition to his occupancy of a college dormitory room.[33]

In affirming the appellate court's reversal of Piazolla's conviction, the court once again emphasized that university students do not leave their constitutional rights at the door of the university. *Piazzola* also illustrates that courts in 1971 were still ruling that universities had fairly wide latitude in warrantless dormitory room searches as long as it was only university officials who were doing the searching and the search was not primarily conducted for criminal investigation purposes.

Smyth v. Lubbers[34] was decided by the United States District Court for the Western District of Michigan, Southern Division in 1975 and went even further than *Piazolla* in curtailing the right universities have to conduct searches. This case, involving a warrantless search by university officials, took place on the campus of Grand Valley State College, a public institution in Michigan. The court held that the Fourth Amendment applies to governmental searches whether or not the "police" conduct the search.[35] Although the university maintained

30. *Id.* at 286.
31. *Id.*
32. *Id.* at 285.
33. *Id.* at 289.
34. 398 F. Supp. 777 (W.D. Mich. 1975).
35. *Id.* at 787.

that the search was administrative in nature, the affected students sued for violation of their civil rights and won because the court held that the searches were in essence seeking criminal evidence. Subsequently, the students received injunctive relief with respect to the college's disciplinary proceedings.

In *Smyth*, the court did not adhere to the type of reasoning that we saw in *Moore*. Whereas in *Moore*, the court had held that searches of dormitory rooms of college students might infringe on the outer boundaries of the students' Fourth Amendment rights, *Smyth* held that the "interest in the privacy of his room is not at the 'outer limits' but at the core of the Fourth Amendment."[36] Of greater significance to college administrators, the court noted that the Fourth Amendment is not limited to criminal prosecutions, but that it applies "to all [cases] alike, whether accused of crime or not."[37]

The *Moore* court previously upheld the right of the university to conduct warrantless searches based on reasonable cause. In *Smyth*, the court held that officials of a public university merely conducting a search that feigns administrative purposes, but is in fact a search for criminal evidence, must show probable cause and obtain a search warrant prior to conducting the search."[38] In contrast with *Moore*, in which the court found that search warrants were unnecessary, the *Smyth* case, like *Piazzola*, focuses more on the purpose or intent of the search. The court suggests that routine and scheduled searches, general in nature, might not be subject to the warrant clause, but searches involving activities that are essentially criminal in nature and similar in substance to police searches are subject to the Fourth Amendment regardless of whether the evidence is being sought for criminal or university disciplinary proceedings.[39]

In *Smyth*, the Court recognized that the University had a clear policy in place with respect to dormitory searches:

> The college's policy regarding room searches was quite clear and provided that if College officials have reasonable cause to believe that students are continuing to violate federal, state or local laws or College regulations, the room is subject to search by College authorities. A search will be conducted re-

36. *Id.* at 789.

37. *Id.* at 786 (quoting *Weeks v. U.S.*, 232 U.S. 383, 392 (1914)).

38. *Id.* at 788.

39. *Id.*

luctantly and only if authorized by the GVSC President or a designee.[40]

The court further stated that "the plaintiffs' rooms were entered and searched pursuant to the College regulations and under the authority of the College Room Entry Procedures Rule 2c."[41] Nevertheless, the court found the college liable of violating the Fourth Amendment because the room search was conducted without a warrant and focused on one particular individual who was suspected of criminal activity and which aimed at discovering specific evidence.[42] So, even though the search was based on an administrative rule, its net effect was to discover criminal evidence, and as such, could not survive constitutional scrutiny.

In a 1976 case, *State v. Kappes*,[43] the court supported the right universities have to conduct searches by agreeing with Northern Arizona University officials that the purpose of entering Kappe's room was not for purposes of collecting criminal evidence, and that the discovery and seizure of marijuana by student advisors routinely making a room inspection were not the result of an unlawful search.[44] Additionally, the court addressed whether the student advisors had the authority to allow university and law enforcement officials into the room once they discovered marijuana and found that since they had a right to be in the room, they also had a right to allow law enforcement officials into the room.

Of significance to this case is the fact that the court found that the student advisors were acting as private individuals and not government officials, which would have subjected the evidence they seized to the exclusionary rule in subsequent criminal proceedings against Kappes. The court concluded, " . . . [w]e do not find that they [the student resident advisors] are tainted with that degree of governmental authority which will invoke the fourth amendment."[45]

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40. *Id.* at 782.
41. *Id.*
42. *Id.* at 786.
43. 26 Ariz. App. 567 (1976).
44. *Id.* at 570.
45. *Id.*

In the 1976 case of *Morale v. Grigel*,[46] the Federal District Court of New Hampshire held that the civil rights of Morale had been violated by warrantless searches by college officials but ultimately supported the right universities have to conduct searches if they are conducted for disciplinary proceedings only. The university won the case because the plaintiff, Morale, had attempted to argue that the exclusionary rule applied to campus disciplinary hearings.

In *Morale*, the Resident Assistant (RA), Grigel, and Head Resident of a dormitory on the campus of New Hampshire Technical Institute (NHTI), a public institution, received a report of a stolen stereo and decided to search student rooms for the stereo. Their intent was to ask for students' permission to search rooms if they were present but to use a passkey to gain entry and search rooms in their absence. When they came to Morale's room, he was present but did not specifically consent to the search. Although they did not locate the stereo, they did have a strong suspicion that Morale had been smoking marijuana.

Over the next two days, Grigel, usually in the company of other students or RAs, conducted no less than four separate, warrantless searches of Morale's room. Ultimately, he discovered marijuana seeds in a film canister in Morale's room. The court ruled that the four searches, conducted under Grigel's authority as an RA, were "inextricably bound together, one leading to the other; therefore, the taint of any one flows through the rest rendering the final seizure susceptible to censure for any prior Fourth Amendment violation."[47]

Although this case does not provide the best example of a "tainted search," the court in *Morale* emphasizes that a first search which is illegal makes any other subsequent searches illegal as well. The court also looks at the "reasonableness" of the search as it did in *Moore, McCloskey, Smyth*, and *Kappes*. In part of his summary, the judge ruled that "the search must further an interest that is separate and distinct from that served by New Hampshire's criminal law . . . [and] intensive

46. 422 F. Supp. 988 (N.H. 1976).

47. *Id.* at 997.

searches of rooms for stolen goods serve no legitimate interest of the Institute."[48]

Further, the court addressed whether the search was lawful based on Morale's consent:" . . . [if] it has appeared that the consent was not given voluntarily—that it was granted only in submission to a claim of lawful authority—then we have found the consent invalid and the search unreasonable."[49]

Lastly, like the holdings in *Piazzola, Smyth*, and *Kappes*, the court also held that the university could not "condition attendance at NHTI upon waiver of constitutional rights."[50] In the end, however, the court found that no real remedy existed for Morale because the evidence obtained by the illegal searches was only used only for internal campus disciplinary purposes to which the exclusionary rule does not apply.

In 1982, the U.S. Supreme Court in *Washington v. Chrisman*[51] contemplated whether a police officer could, in accordance with the Fourth Amendment, accompany an arrested student into his residence hall room and seize contraband discovered there in plain view.[52] The Court supported the right universities have to conduct searches if the plain view rule to the Warrant Clause applies.

In *Chrisman*, the campus police officer at Washington State University noticed a student leaving a residence hall with a half gallon bottle of gin. When the underage student was stopped and asked for identification, the student told the officer his identification was in his room. The officer considered the student under arrest but accompanied the student to his room to retrieve his I.D. When they arrived at the student's room, the officer remained in the open doorway while the student retrieved his I.D. Also in the room was the student's roommate, Chrisman.[53]

Seconds after the first student entered the room, the officer noticed seeds and a pipe lying on a desk in plain view. The officer entered the room, ascertained that the suspect seeds were marijuana seeds, and that the pipe smelled of marijuana. After reading both students their Miranda rights, which they waived,

48. *Id.* at 988.
49. *Id.*
50. *Id.* at 999.
51. 455 U.S. 1 (1982).
52. *Id.*
53. *Id.* at 3.

the officer asked if there were other drugs in the room, and Chrisman handed him a box containing three bags of marijuana and $112 cash. After a second officer arrived, the officers explained to both students that they had an absolute right to insist on a search warrant, but that they could voluntarily consent to a search of the room. The students expressed their consent and signed written forms consenting to the search, which yielded more marijuana and some LSD.[54]

In this case, a divided court ruled in favor of the University. The Court first dealt with the "plain view" exception to the Fourth Amendment warrant requirement. This exception permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be.[55] Next, the Court dealt with the issue of whether the officer had a right to be in the doorway of the student's room. It determined that the officer had a right to accompany the student to his room and to keep the arrested student within view, stating, "it is of no legal significance whether the officer was in the room, on the threshold, or in the hallway, since he had a right to be in any of these places as an incident of a valid arrest."[56] Finally, the Court stated that "the fundamental premise [is] that the Fourth Amendment protects only against *unreasonable* intrusions into an individual's privacy. . . . The Fourth Amendment does not prohibit seizure of evidence of criminal conduct found in these circumstances."[57]

In 1991, the court in *Duarte v. Commonwealth*[58] supported a university's right to conduct searches. In this case, the Dean of Students at a private institution, Averett College, directed two college officials to search Duarte's room located in a campus dormitory. The college officials found several bags of marijuana and drug paraphernalia. Duarte was arrested and convicted of possession of marijuana with intent to distribute, which he appealed.[59]

On appeal, Duarte contended that the search of his room was unreasonable and unlawful; therefore, the evidence ob-

54. *Id.* at 4.
55. *Id.* at 5.
56. *Id.* at 8.
57. *Id.* at 8-9 (emphasis added).
58. 12 Va. App. 1023 (1991).
59. *Id.* at 1024-25.

tained as a result of the search should have been excluded from his trial.[60] The court ruled against exclusion:

> [F]ourth amendment protections against unreasonable searches and seizures are 'wholly inapplicable' to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.[61]

The *Duarte* court held that university officials were acting merely as individuals and the search they conducted was legal while the *Smyth* court determined that university officials were acting as agents of the government and the search they conducted was illegal.[62] The divergent holdings are due to the fact that the university in *Smyth* was public while the college in *Duarte* was private, and that criminal evidence obtained by private individuals or entities is not subject to the exclusionary rule.

In the 1992 case of *State v. Hunter*,[63] the court supported a university's right to conduct searches. In this case, Hunter was a student at Utah State University. During a wave of vandalism in Hunter's residence hall and after informing residents at a floor meeting that room to room inspections likely would be conducted if the vandalism did not cease, college officials, along with a campus police officer, conducted room inspections on Hunter's floor. The officers and college officials found stolen university property, including a sign and a banner.[64] Hunter was subsequently charged with a class B misdemeanor.

Citing *Kappes, Katz*, and *Moore,* the court in this case concluded that the " . . . search was a reasonable exercise of the university's authority to maintain an educational environment. . . . Thus, it is incumbent upon the university to take whatever reasonable measures are necessary to provide a clean, safe, well-disciplined environment in its dormitories."[65] The court determined that because the search was conducted by university officials and that the accompanying police officer was not directly involved, the evidence seized was not subject to the exclusionary rule and was not suppressable in subse-

60. *Id.* at 1025.
61. *Id.*
62. *Smyth*, 398 F. Supp. 777 at 778.
63. 831 P.2d 1033 (Utah App. 1992).
64. *Id.* at 1035.
65. *Id.* at 1036.

quent criminal proceedings. This holding contrasts sharply with those of *Piazzola, Smyth*, and *Morale.* Furthermore, in justifying the search in *Hunter,* the court ruled that " . . . not only did university officials have a right to maintain an educational atmosphere, they had a contractual *duty* to do so."[66]

In 1996, the court in *Commonwealth v. Neilson*[67] curtailed the manner in which universities may conduct searches. The search in this case took place in a student's room at Fitchburg State College, a public college in Massachusetts.[68] The court determined that college officials made a lawful entry into Neilson's room and discovered marijuana plants and many materials used in the cultivation of marijuana in Neilson's closet. They contacted the campus police, who entered the room, saw the evidence, seized it, and removed it from the room. Neilson was not present during the search and seizure.[69]

Here, the court ruled that a "constitutional violation occurred when the campus police searched the room and seized evidence . . . without a search warrant, consent, or exigent circumstances."[70] More importantly, the court looked at Neilson's consent to the search of his room through his residence contract. This was how the court determined that Neilson had given his consent to college officials. What the court stressed, however, was that Neilson did not give his expressed consent to the police: "The [defendant's] consent [was] given, not to police officials, but to the University and the latter cannot fragmentize, share or delegate it."[71] Although the marijuana and cultivation materials were in plain view of the police, the court found that "the plain view doctrine does not apply to the police seizure where the officers were not lawfully present in the dormitory room when they made their plain view observations."[72] The court, focused on the warrant clause of the Fourth Amendment, stating that "the sole purpose of the warrantless police entry . . . was to confiscate contraband for purposes of a

66. *Id.* at 1037.
67. 423 Mass. 75 (1996).
68. *Id.* at 76.
69. *Id.* at 76-77.
70. *Id.* at 79.
71. *Id.* (quoting *People v. Cohen*, N.Y. Misc. 2d. 366, 368 (1968)).
72. *Id.*

criminal proceeding. An entry for such a purpose required a warrant . . . ."[73]

In a 1996 case similar to *Duarte*, the Supreme Court of Tennessee supported the right universities have to conduct searches in *State v. Burroughs*.[74] In this case, the court held that the director of a residence hall at Knoxville College, a private institution, acted as a private individual rather than as a state agent when he searched a student's room and discovered cocaine. The director of the hall contacted a local police officer, who arrived at the room, determined that the director had found cocaine, and called a narcotics officer. The director turned over the cocaine to the local police officer after removing it from the room.[75] The student was then arrested and convicted of possession of cocaine with intent to sell.

In *Burroughs*, the court cited a U.S. Supreme Court case, stating that it "recognized that a search by a private individual may transgress the protections of the Fourth Amendment . . . when an individual acts as an agent or instrument of the state."[76] As in *Duarte*, the court determined that the college official in *Burroughs* was not acting as an agent of the state. This ruling contrasts the *Smyth* ruling, where college officials were found to be acting as agents of the state. Again, we encounter the divergent ways in which courts rule on Fourth Amendment issues involving private institutions and public institutions: *Duarte* and *Burroughs* involved private institutions whereas *Smyth* involved a public institution.

III. FUTURE DIRECTIONS AND IMPLICATIONS

Given the various divergent views courts have taken in cases dealing with search and seizure issues, it will be interesting to note how a future court will rule in cases involving searches by campus police officers at Appalachian State University, a public institution. This university has adopted a policy which "allows campus police to search a dormitory room for drugs without a student's permission or a warrant."[77]

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73. *Id.*

74. 926 S.W.2d 243 (Tenn. 1996).

75. *Id.* at 244-245.

76. *Id.* at 245 (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 487 (1971)).

77. Ben Gose, *Dorm Searches Stir Student Complaints at Appalachian State U.*, The Chron. of Higher Educ. (Mar. 22, 1996) (available at <http://chronicle.com>).

If the court follows the ruling in *Smyth*, it is likely that the searches will be held invalid for violating the Fourth Amendment, despite the fact that the university claims it does not intend to use the evidence discovered in the searches for criminal proceedings. It is hypothesized that "the university that relies upon campus law enforcement officials to conduct searches may be posturing itself for a challenge that it operates its special needs search as a pretext for criminal investigations."[78] Additional instances of potential constitutional violations involve similar policies employed by the University of Wisconsin[79] and Southern University.[80]

The cases reviewed in this paper provide a basis for critically viewing search and seizure issues in college settings. Whether Fourth Amendment protections apply is determined by several factors. First, administrators at private institutions can be confident that any searches and seizures conducted by college officials, whether for school disciplinary proceedings or for criminal indictments, will be upheld as legal and constitutional.[81] Second, administrators at public institutions making search and seizure policy decisions must take into consideration who will be making the search and whether the person(s) conducting the search were lawfully in the place where the search occurred or whether a search warrant should have been obtained prior to the search. A police officer may conduct a search if an exception to the warrant clause exists, such as the plain view doctrine.[82] Third, one should review the purpose of the search to determine whether the search was conducted for disciplinary purposes or whether it was conducted with the intent of instituting criminal proceedings against the student or students involved. Most courts seem unwilling to allow warrantless searches that have the primary purpose of discovering criminal evidence.[83] Finally, it is incumbent upon the prudent administrator to research the law in his or her own jurisdiction

78. J. F. Shekleton, Presentation, *Campus Life and Government Investigations* (Annual Meeting of the Natl Assoc. of College and U. Attys., San Antonio, Tex., June 16-19, 1996), in ED399893, 24.

79. *University of Wisconsin Students Protest Dorm Search, Marijuana Seizures*, The Chron. of Higher Educ. (Mar. 29, 1996) (available at <http://chronicle.com>).

80. *La. Judge Prohibits Random Dormitory Searches at Southern U.*, The Chron. of Higher Educ. (Nov. 1, 1996) (available at <http://chronicle.com>).

81. See e.g. *Duarte* and *Burroughs*.

82. See e.g. *Chrisman*.

83. See e.g. *Smyth*, *McCloskey* and *Piazzola*.

to determine what policies will enjoy constitutional protection because contradictions in the law exist across state lines.[84]

As in most situations, hindsight provides the best opportunity to evaluate actions or decisions. Although there is no substitution for sound legal counsel, college administrators may yet be served by becoming well-informed regarding the provisions of the Fourth Amendment and by understanding how these provisions have been interpreted by courts in their respective jurisdictions. By using these two criteria in making search and seizure policy decisions, administrators can avoid potential violations of the Fourth Amendment.

84. See e.g., *Neilson*, but see *Hunter*.