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Due Process and the University Student: The Academic/Disciplinary Dichotomy

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was highly critical of what it considered a "restructuring" of the federal system.[48] Justice Brennan's opinion asserts that the states have ample political power to guard against intrusion by the federal government.

In *The National League of Cities v. Usery* the Supreme Court declared unconstitutional an exercise of the congressional commerce power because, in the Court's judgment, the legislation offended the sovereignty of the states. If, in future cases, the Court strikes down congressional legislation in the name of protecting the federal system, then the tenth amendment may emerge as a hurdle for any congressional enactment which would restrict or coerce state action.[49] Any such decisions should define with greater clarity the character and extent of the tenth amendment limitation.

Richard Curry

DUE PROCESS AND THE UNIVERSITY STUDENT: THE ACADEMIC/DISCIPLINARY DICHOTOMY

Because of the unique status of the university student, expulsion from a university raises serious constitutional problems; the courts in this area face the difficult task of affording the student certain basic constitutional guarantees without excessively intruding into academic affairs. The flurry of student activism in the last decade produced increased demands for constitutional protection in the expulsion process, and the courts have as a result gradually expanded the student's claim to substantive and procedural due process. This note will attempt to outline the current posture of due process in the university-student relationship as a realistic compromise between the often competing interests of traditional judicial respect for academic wisdom and evolving social attitudes.

48. 96 S. Ct. at 2485 (Brennan, J., dissenting).

49. The future application of the instant case may, however, be quite limited. In footnote 17 of the majority opinion Justice Rehnquist specifically reserves decision as to whether other congressional powers affecting the essential functions of state governments will be subject to the tenth amendment limitation. *Id.* at 2474 n.17. Justice Blackmun, the "swing" vote in the instant case, expressed similar reservations in his concurrence: "I may misinterpret the Court's opinion, but it seems to me that it adopts a balancing approach, and does not outlaw federal power in areas such as environmental protection, where the federal interest is demonstrably greater." *Id.* at 2476.

Due Process in Disciplinary Expulsions

It is in the area of disciplinary expulsions that the courts have shown the greatest willingness to impose strict due process standards for the university student, but courts have been more reluctant to extend due process guarantees to private university students than to public university students. Authority is divided on the necessity of a hearing prior to expulsion from a private university, though courts are somewhat more inclined to require a hearing if the university receives aid or tax-exempt status from the state.[1] However, a few commentators believe that courts will be forced under one of several theories, including a finding of the necessary "state action" in disciplinary proceedings of a private university, to afford private university students procedural safeguards equal to those enjoyed by public university students.[2]

The dramatic developments in the application of due process guarantees to university students have occurred in the area of disciplinary expulsions from public universities. In the landmark decision of *Dixon v. Alabama State Board of Education*,[3] the Fifth Circuit Court of Appeals ruled in favor of students who had been expelled without a hearing from Alabama State College for participating in a civil rights movement sit-in at a luncheonette. In so ruling, the court clearly stated for the first time that due process requires notice and some opportunity for a hearing before a student can be expelled from a tax-supported college or university for misconduct.[4] The court quoted Justice Frankfurter's comment in *Joint*

1. Greene v. Howard Univ., 271 F. Supp. 609 (D.D.C. 1967) (no hearing required despite substantial financial support from Congress and HEW); Dehaan v. Brandeis Univ., 150 F. Supp. 626 (D. Mass. 1957) (no hearing required, no discussion of financing); John B. Stetson Univ. v. Hunt, 88 Fla. 510, 102 So. 637 (1924) (no hearing required if institution is receiving no aid from public treasury); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y.S. 435 (Sup. Ct. 1928) (no hearing required despite tax-exempt status where institution was receiving no financial aid from state); Commonwealth *ex rel.* Hill v. McCauley, 3 Pa. County Ct. 77 (1886) (hearing required in event of aid from the state).

2. For discussions of the theories available to extend due process to private university students, see Comment, 1970 DUKE L.J. 795 (1970); *Judicial Intervention in Expulsions or Suspensions by Private Universities*, 5 WILLAMETTE L.J. 277 (1969).

3. 294 F.2d 150 (5th Cir.), *cert. denied*, 268 U.S. 930 (1961).

4. One possible limitation on *Dixon* involves the immediate and temporary suspension of a student who disrupts the academic atmosphere and endangers fellow students. Lopez v. Williams, 372 F. Supp. 1279 (S.D. Ohio 1973), *aff'd sub nom.* Goss v. Lopez, 419 U.S. 565 (1975); Marin v. Univ. of Puerto Rico, 377 F. Supp. 613 (D.P.R. 1973).

Anti-Fascist Refugee Committee v. McGrath[5] that the precise nature of the interest involved is a paramount consideration in the determination of what constitutes adequate due process safeguards. The court noted the importance of a college education today as an indication of the magnitude of the interest involved and accepted the argument that some due process protection is desirable to prevent unreasonable action on the part of school authorities.[6] The court concluded that the state cannot condition the grant of even a privilege on the renunciation of a constitutional right to due process and established general standards for disciplinary dismissal proceedings.[7]

However, the *Dixon* majority stipulated that a full judicial hearing might be "detrimental to the college's educational atmosphere"[8] and declined to establish specific procedural standards. In the 1963 case of *Due v. Florida A&M University*,[9] a district court applied a liberal construction of the notice and hearing requirements delineated in *Dixon*. The *Due* plaintiffs, who had been convicted for contempt of court for violation of a restraining order against student demonstrations, were simply telephoned and advised to appear before the University Disciplinary Committee after they denied receiving a letter from the University requesting such appearance. Each plaintiff upon presenting himself was informed of the charges against him, and none made a request to call witnesses or secure counsel. The court held that this procedure met the broad requirements of *Dixon* and emphasized the fact that these students were accorded a full opportunity to be heard.[10] The court added that the touchstones in the area of university procedural due process are "fairness and reasonableness."[11]

5. 341 U.S. 123 (1951).

6. Dixon v. Alabama State Bd. of Educ., 294 F.2d at 157: "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. It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society." *But see* San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1972) (education not a fundamental right).

7. *Id.* at 158: "The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case."

8. *Id.*

9. 233 F. Supp. 396 (N.D. Fla. 1963).

10. *Id.* at 403: "A fair reading of the *Dixon* case shows that it is not necessary to due process requirements that a full scale judicial trial be conducted by a university disciplinary committee with qualified attorneys either present or formally waived as in a felonious charge under the criminal law."

11. *Id.*

The *Due* decision may perhaps be faulted for its exceedingly broad interpretation of the *Dixon* criteria; at least one commentator has argued that the presentation of charges at the hearing stage did not provide the students adequate time to prepare their own defenses, especially in view of the fact that the charges involved complex legal questions regarding the contempt conviction.[12] Although *Due* was only a district court opinion, the fairness approach seems to prevail in student disciplinary expulsion cases in both district and circuit courts,[13] one of which cited *Due* in approving the fairness approach.[14] Consistently, the courts have limited the holding of *Dixon* in dealing with specific procedural questions such as the right to a public hearing, the right to call witnesses, the right to cross-examination, the right to counsel, the relevance of the rules of evidence, the right to appeal, and the right to a recording of the proceedings.

Though the *Dixon* court did not specifically mention the possibility of public hearings, the majority's emphasis on the adverse effects of publicity upon the college atmosphere would seem to preclude such hearings, which by their very nature would tend to make notoriety inevitable. Consistently with *Dixon* and the *Due* "fairness" reasoning, a district court in *Zanders v. Louisiana State Board of Education*[15] held that the university's insistence on a private hearing was not a violation of due process in that exclusion of the public "in no way tends to establish bias or unfairness in those proceedings."[16] Although *Zanders* holds that a public hearing is not an essential element of procedural due process, it may be advisable for universities to allow students to choose either a public or private hearing unless the circumstances are such that a public hearing would unduly disrupt university activities. Certainly allowing students this choice would indicate a willingness on the part of the university to

12. Comment, *Due Process and the Dismissal of Students at State-Supported Colleges and Universities*, 3 GA. ST. B.J. 101, 104 (1966).

13. Sill v. Pennsylvania State Univ., 462 F.2d 463 (3d Cir. 1972); Winnick v. Manning, 460 F.2d 545 (2d Cir. 1972); Wright v. Texas S. Univ., 392 F.2d 728 (5th Cir. 1968); Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967); Lai v. Board of Trustees of East Carolina Univ., 330 F. Supp. 904 (E.D. N.C. 1971); Gardenhire v. Chalmers, 326 F. Supp. 1200 (D. Kan. 1971); Buttny v. Smiley, 281 F. Supp. 280 (D. Colo. 1968); Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966); Madera v. Board of Educ., 267 F. Supp. 356 (S.D. N.Y. 1967), *cert. denied*, 390 U.S. 1028 (1968).

14. Sill v. Pennsylvania State Univ., 462 F.2d 463 (3d Cir. 1972).

15. 281 F. Supp. 747 (W.D. La. 1968).

16. *Id.* at 768.

"remove the shroud of secrecy from disciplinary proceedings"[17] and would emphasize the fairness of the procedure in the eyes of students and the public.

Court decisions have seldom held that the student has a right to counsel at disciplinary hearings,[18] although the presence of counsel has been a factor tipping the balance in favor of fairness in some cases.[19] However, there is some indication of a growing judicial willingness to include a right to counsel as part of the procedural due process requirements in student disciplinary hearings. For example, in *Esteban v. Missouri State College*,[20] when the district court granted expelled students a new hearing on the grounds that the first hearing was inadequate[21] and enumerated requirements for the second hearing, it stated conspicuously that the plaintiff-students had to be permitted to have counsel present.[22] Furthermore, although the circuit court in the *Esteban* appeal did not specifically discuss the students' right to counsel, it noted the district court's procedural guidelines with approval and stated that due process mandated "a hearing with opportunity to present one's own side of the case and with all necessary protective measures."[23] At least one commentator has urged that universities are government agencies and must therefore use traditional procedures such as representation by counsel when acting as judicial bodies.[24] Though the law is unsettled in this area, it is difficult to understand how in any but the most extreme situations, the presence of counsel at a disciplinary hearing could unduly disrupt the orderly processes of university affairs. Moreover, failure to allow the student to have counsel present, especially when other compensatory safeguards are absent, may color the proceedings with a sufficient appearance of unfairness to cause a court to invalidate the expulsion.

Although a Tennessee state court in *State ex rel. Sherman v. Hyman*[25] once denied a student the right to call witnesses on the basis that the

17. Comment, *The Fourteenth Amendment and University Disciplinary Procedures*, 34 MO. L. REV. 236, 249 (1969).

18. Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967); Perkins, *Developments in the Law: Academic Freedom*, 81 HARV. L. REV. 1045, 1141 (1968).

19. *E.g.*, Zanders v. Louisiana State Bd. of Educ., 281 F. Supp 747 (W. D. La. 1968); Buttny v. Smiley, 281 F. Supp. 280 (D. Colo. 1968).

20. 277 F. Supp. 649 (W.D. Mo. 1967), *aff'd*, 415 F.2d 1077 (8th Cir. 1969).

21. The students at the first hearing were permitted to explain their conduct to only one of a number of persons on the disciplinary board.

22. 277 F. Supp. at 651 (W.D. Mo. 1967).

23. 415 F.2d at 1089 (8th Cir. 1969).

24. Note, 53 MINN. L. REV. 301, 323 (1968). *See also* Hannah v. Larche, 363 U.S. 420, 442 (1960).

25. 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943).

procedure would encourage students to become informers, that rationale has not survived in modern cases. In *Jones v. State Board of Education*,[26] the court affirmed that the right to due process guarantees the student an opportunity to produce evidence on his own behalf.[27] Though a university cannot compel testimony from those outside campus and cannot impose punishment for perjury on non-students, the student's interest in defending himself with the testimony of witnesses outweighs these arguments; and in the rare instances where summary procedure is necessary, the student could be temporarily suspended rather than expelled pending full investigation.[28]

The *Esteban* district court also stipulated that the students, though not their attorney, should be allowed to cross-examine witnesses.[29] The *Dixon* decision indicated that cross-examination of witnesses may not be an essential element of due process at the university disciplinary hearing, and courts have been somewhat reluctant to extend the right of cross-examination even to students. In *Winnick v. Manning*,[30] for example, the circuit court stated that the right to cross-examine witnesses had not been considered essential to due process; the court also concluded that cross-examination was particularly inappropriate in this case because the student wanted to question a witness's characterization of him as a "ringleader" in the disruption at issue, though the characterization had no effect on the outcome of the proceedings since the "ringleader" received the same punishment as his co-plaintiff fellow student. Cross-examination is, however, inevitably a factor which the court will consider in determining the overall fairness of a proceeding, and a number of universities provide for cross-examination by counsel as well as by students.[31] Although the existence of the right to cross-examine would further shield the hearing process from constitutional attack, some limitations on the nature of questioning may be necessary since the hearing will not be conducted by experienced attorneys or judges.[32]

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26. 279 F. Supp. 190 (M.D. Tenn. 1968), *aff'd*, 407 F.2d 834 (6th Cir. 1969).

27. *See also* Esteban v. Central Mo. State College, 277 F. Supp 649 (W.D. Mo. 1967) (see the text at notes 18-24, *supra*); Commonwealth *ex rel.* Hill v. McCauley, 3 Pa. County Ct. 77 (1886) (recognized the student's right to call witnesses on his behalf).

28. Perkins, *supra* note 18, at 1140.

29. 277 F. Supp. at 652.

30. 460 F.2d 545, 550 (2d Cir. 1972). *See also* Herman v. University of South Carolina, 341 F. Supp. 226 (D. S.C. 1971).

31. *E.g.*, Moore v. Student Affairs Comm., 284 F. Supp. 725 (M.D. Ala. 1968); Zanders v. Louisiana State Bd. of Educ., 281 F. Supp. 747 (W.D. La. 1968); Buttny v. Smiley, 281 F. Supp. 280 (D. Colo. 1968).

32. Perkins, *supra* note 18, at 1141.

To require the university to adhere strictly to the complex rules of evidence would place an unreasonably harsh burden on university administrators, who are usually untrained in the law; and the *Due* fairness approach is particularly appropriate in this area. For example, in *Goldberg v. Regents*,[33] a state court upheld the university's refusal to consider a tape recording of the events surrounding the student's offense and held that the university committee was not bound by the rules of evidence. There is indeed little doubt that wholesale application of the rules of evidence to the university disciplinary process would cause unnecessary expense and delay.[34] The admission or exclusion of certain types of evidence should be a factor in the determination of the fairness issue; the rules of evidence may serve as a valuable aid in this analytical process, but they should not be dispositive.

The court in *Zanders* recommended that the university disciplinary procedure include some system of appeal.[35] The court did not explicitly state, however, that the due process clause mandates an appeals system; the apparent basis for the recommendation was the university's interest in maintaining the confidence of the students and public.[36] There is no reason that the appeal procedure need be lengthy or expensive so long as it is basically fair to the student, and the value of such a procedure to the enhancement of the university's image far outweighs the relatively minor inconveniences the system might cause to some administrative officials; the existence of an appeals system would also reduce the number of suits since a student who loses at both the hearing and appeal stage is probably less likely to attempt to bring the issue to litigation. More importantly, the existence of an appeals system might at some point become an important factor in the determination of the fairness issue.

The court in *Due* declared that the students had no constitutional right to a stenographic or mechanical recording of the proceedings,[37] although in at least one circuit court case the student had been allowed to have a tape recording of the proceedings.[38] Certainly the employment of a profes-

33. 248 Cal. 2d 867, 57 Cal. Rptr. 463 (Ct. App. 1967).

34. Perkins, *supra* note 18, at 1142.

35. Zanders v. Louisiana State Bd. of Educ., 281 F. Supp. 747 (W.D. La. 1968).

36. *Id.* at 761: "The practicality of this suggestion lies in the fact that this would evidence one more sign of the particular institution taking initiative carefully to safeguard the basic rights of the student as well as its own position, prior to disciplining him for misconduct."

37. Due v. Florida A&M Univ., 233 F. Supp. 396, 403 (N.D. Fla. 1963).

38. Slaughter v. Brigham Young Univ., 514 F.2d 622 (9th Cir. 1975).

sional court reporter for each hearing would be unreasonably expensive, but the *Due* court failed to consider less expensive alternatives such as tape recordings or summary records.[39] The existence of written records would facilitate judicial review of the proceeding and would also tend to limit false charges by expelled students regarding the fairness of the hearing.

Though *Dixon* obviously created some thorny procedural problems regarding the nature of the required hearing process, the decision is significant in its straightforward affirmation of a principle that had only been implicit in previous decisions. An extremely important aspect of the *Dixon* decision is that prior decisions in the same area had dealt exclusively with sufficiency of hearing;[40] the fact that none explicitly denied the necessity of a hearing gives additional cogency to the *Dixon* position. The *Dixon* court was able to fashion a workable solution to pressing social problems without discarding the principle that disciplinary matters are more amenable to strict due process requirements than are academic matters, and subsequent decisions have preserved the important academic-/disciplinary dichotomy despite revolutionary changes in the status of the university student.

Due Process in Academic Expulsions

Even in the wake of the historic *Dixon* decision, which dramatically expanded students' due process rights in disciplinary dismissals, the courts have steadfastly refused to impose similar requirements in the area of academic dismissals. The historic attitude of the courts toward dismissal for academic reasons is that overriding academic considerations dictate a strong presumption of reasonableness in favor of the university procedure. Thus, academic expulsion without a hearing is not a violation of due process.[41] The courts will review such dismissal on the allegation that the decision was arbitrary, capricious, or in bad faith, and will order a hearing only in the event that the allegation is established.[42] The district court in

39. Perkins, *supra* note 18, at 1142.

40. People *ex rel.* Bluett v. Board of Trustees, 10 Ill. App. 2d 207, 134 N.E. 2d 635 (1956); Tanton v. McKenney, 226 Misc. 245, 197 N.W. 510 (Mich. 1924); State *ex rel.* Ingersoll v. Clapp, 81 Mont. 200, 263 P. 433 (1928), *cert. denied*, 277 U.S. 591 (1928); State *ex rel.* Sherman v. Hyman, 180 Tenn. 99, 171 S.W. 2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943).

41. *E.g.*, Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976); Connelly v. University of Vermont, 244 F. Supp. 156 (D. Vt. 1965); Edde v. Columbia Univ., 8 Misc. 2d 795, 168 N.Y.S.2d 643 (1957), *cert. denied* 359 U.S. 956 (1959).

42. Gaspar v. Bruton, 513 F.2d 843 (10th Cir. 1975); Greenhill v. Bailey, 378 F. Supp. 632 (S.D. Iowa 1974), *rev'd*, 519 F.2d 5 (8th Cir. 1975); Connelly v. University of Vermont, 244 F. Supp. 156 (D. Vt. 1965).

Connelly v. University of Vermont[43] described the discretion of school authorities in this area as "absolute"[44] and clearly articulated the reason for the judiciary's historic hands-off approach to academic affairs:

> [I]n matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends to no small degree upon the school faculty's freedom from interference from other non-educational tribunals. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student.[45]

Moreover, the standard for establishing that an academic dismissal is "arbitrary, capricious, or in bad faith"[46] is quite high; a showing of ill will or bad motive will be necessary.[47] The rationale for this standard seems to be that such a purportedly "academic" dismissal is in fact based on other than academic considerations,[48] and only when the dismissal is clearly unrelated to academics will the courts as a rule be willing to intervene in university affairs in the name of due process. It follows that the rules regarding academic dismissal arise from the basic assumption that courts lack the necessary expertise to make purely academic policy decisions.

Academic dismissals that involve unusually serious consequences for the dismissed student seem to constitute the sole exception to the strict rule of judicial non-intervention. The circuit court in *Greenhill v. Bailey*[49] reiterated the narrow arbitrariness standard but ordered a hearing because more than mere academic dismissal was involved; the dismissal was accompanied by a letter to the American Medical Association, claiming that Greenhill lacked "intellectual ability" to pursue medical studies. Because of the serious effect of this additional action, which could fore-

43. 244 F. Supp. 156 (D. Vt. 1965).

44. *Id.* at 160.

45. *Id.*

46. *Id.* at 159.

47. Gaspar v. Bruton, 513 F.2d 843 (10th Cir. 1975); Greenhill v. Bailey, 278 F. Supp. 632 (S.D. Iowa 1974), *rev'd*, 519 F.2d 5 (8th Cir. 1975).

48. The court in *Connelly* (see the text at note 43, *supra*), for example, commented that a medical student dismissed for failure to meet academic requirements had stated a cause of action only to the extent that he alleged that his dismissal was for reasons other than the quality of his work. The student in his complaint had alleged that an instructor had decided not to give him a passing grade because of personal animosity toward the student and regardless of the quality of his work.

49. 519 F.2d 5 (8th Cir. 1975).

close other opportunities for Greenhill, the court ordered a hearing. The subsequent case of *Horowitiz v. Board of Curators of the University of Missouri*[50] cited *Greenhill* in holding that because academic dismissal from medical school made it difficult or impossible to obtain employment in a medically related field or enter another medical school, a hearing was required by the fourteenth amendment.[51] However, the holding should be interpreted as limited to medical schools, since academic dismissal from undergraduate universities or even from graduate schools does not stigmatize the student to such an extent.

The recent Fifth Circuit decision of *Mahavongsanan v. Hall*[52] is a salient example of the tenacity with which the courts continue to uphold the discretion of academicians in the academic realm. The plaintiff in that case claimed that her due process rights had been violated when Georgia State University denied her a master's degree in education after she twice failed a comprehensive examination and also failed to complete additional course work in lieu of the examination. The district court had cited the *Dixon* decision in ruling for the plaintiff.[53] But the Court of Appeals, noting the university's stated interest in eliminating "an ongoing stigma of erosion of their academic certification process," distinguished the *Dixon* line of cases on the basis that they had been limited to disciplinary decisions.[54] The court enunciated a clear dichotomy between due process standards in academic dismissals and due process standards in disciplinary dismissals:

> Misconduct and failure to attain a standard of scholarship cannot be equated. A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship.[55]

Mahavongsanan stands for the proposition that a decade of dramatic social evolution did not weaken what is arguably an extremely desirable judicial respect for the good judgment of the academic community in strictly academic matters.

Conclusions

The legal evolution in the area of due process for the university student has not yet run its full course. Some further extension of due

50. 538 F.2d 1317 (8th Cir. 1976).
51. *Id.* at 1321.
52. 529 F.2d 448 (5th Cir. 1976).
53. 401 F. Supp. 381 (N.D. Ga. 1975).
54. 529 F.2d at 449.
55. *Id.* at 450.

process guarantees may be desirable, particularly in the area of disciplinary expulsions from private universities. The "contract" approach which has heretofore constituted the major obstacle seems today an anachronistic characterization of the relationship between university and student, and the "state action" argument is open to question in view of the complicated financing of most private universities.

However, in general decisions dealing with the due process rights of university students exemplify an enlightened judicial attitude toward the function of the law in our complicated society. Due process by its very nature precludes any mechanical application of a pre-determined formula to every conceivable situation. In disciplinary matters, the issues involved lend themselves more readily to the elaborate trappings of strict due process. But a decent respect for society's interest in educational excellence dictates greater deference to the wisdom of trained professionals in the strictly academic sphere, including the area of academic dismissals. Because of the primacy of national educational goals, a continuing judicial awareness of the dichotomy between academic and disciplinary matters will be necessary if the courts are to meet adequately the challenge of vindicating constitutional rights while respecting academic freedom.

M. Michele Fournet

TOWARD A MORE RATIONAL ANALYSIS OF THE STATE ACTION EXEMPTION IN ANTITRUST LAW

The Michigan Public Service Commission, a state agency charged with the regulation of public utilities, approved a tariff requiring Detroit Edison, a public utility and sole distributor of electricity in southeast Michigan, to administer a program of providing electric light bulbs to its customers. Since the tariff included the cost of providing the light bulbs as an element of its regular service, Detroit Edison billed its customers only for the electricity consumed and did not separately charge for the light bulbs. Petitioner, a merchant engaged in retail sale of light bulbs, sued Detroit Edison asserting that the program allowed the utility to use its protected monopoly position to restrain competition in the sale of light bulbs and thus to violate the Sherman Act.[1] The Court of Appeals, citing *Parker v. Brown*,[2] found that Commission approval amounted to state

1. 15 U.S.C. §§ 1 (1975); 2, 3 (1974); 4-7 (1970).
2. 317 U.S. 341 (1943).