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By NEAL R. STAMP*

AT the outset, I completely agree with Professor Monypenny that the most important decisions made in an educational institution are not those that turn solely or directly on legal concepts. Clearly, the most important decisions are those involving questions of educational policy, financial policy, community relations, and similar policy matters. But this is not to say that the legal concepts which underlie these policy questions are of little consequence. Rather, it is only when we have a common understanding and acceptance of these underlying legal concepts that we are truly free to devote our attention to the important matters of educational policy. We are open to misinterpretation (and there are those who do so misinterpret) if we permit our preoccupation with policy matters to override legal concepts to the point of obscurity.

In the present-day university, I sense a widespread confusion about the nature and applicability of some of these basic legal concepts in the university-student relationship, and I assume that this confusion is one reason this particular conference was called. University administrators are well accustomed to, and much experienced in, dealing with the policy questions cited above. Until very recently, they have had little need to focus attention on underlying legal concepts. Now they are finding some basic and long-established policy postures subject to challenge by the student or faculty activist and by other interests from off campus. Many of these challengers attack the underlying legal basis for university policy and practices, not because their legal rights have been so seriously violated (except in race discrimination cases), but rather because experience has demonstrated that the legal attack hits the administrator in his most exposed and vulnerable flank.

This point is underscored by the remarks of Mr. Schwartz of the National Student Association in the opening session of this conference. He demonstrated considerable contempt for any serious legal analysis of the university-student relationship, saying he was interested only in using the law as a political tool for effecting change in university policy.

Thus we find ourselves with an interesting situation in which the university administrator, on the one hand, has little experience with the formalities and technicalities of the law, and the student

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activist, on the other hand, is exploiting this very lack of experience to confound the administrator, disrupt the relaxed, daily routine of the university community, and, in a surprising number of cases, win concessions which have little basis in law or educational policy. It is an interesting sidelight of the present confusion that the typical college or university administrator, far from being calloused and insensitive to the rights of individual students, is so liberal in spirit and kindly in nature that he falls easy prey to the loud but often unsubstantiated protestations of the small but highly vocal group of student activists at his institution. Consequently, I consider it very important that we *do* give full and sharp attention to the legal aspects of the university-student relationship without delay. I think it important that we analyze this relationship in its several facets in order to reassure our administrator-colleagues and help them to get on with the critically important questions of educational policy as Professor Monypenny has suggested.

However, as an operating legal counsel for a fairly large and diversified university, my approach to the legal aspects of the university-student relationship is very much different than those of the legal academicians. Whereas the teacher or scholar appropriately deals in broad theories, documenting and amplifying by reference to specific applications of these theories — usually by the footnote technique — the practicing legal counsel works in almost the opposite direction. In the area of free speech, the scholar begins with the first amendment to the Constitution and gives the doctrine meaning by developing its application to various factual situations as considered by the courts — usually the Supreme Court. On the other hand, the operating legal counsel is initially confronted with a statement of facts, usually flimsy and often obscure as to significant content. His first problem is to analyze these facts in terms of their legal implications. Before viewing the facts in terms of the first amendment, or any other constitutional doctrine, he must apply to them a whole series of graduated regulatory concepts, running from the provisions of a student conduct code through trustee legislation, institutional charter, and finally local, state, or federal law. In fact, it can be said that the operating legal counsel works in the area of the scholar's "footnotes" and that his best work — solving the problem without ever going to litigation — is not even a footnote. I make a point of this difference in approach because I think it is important for us to characterize the point of view or posture from which several of the distinguished papers at this conference have been presented. It is one thing to deliver a sweeping analysis of the law as it is or as the speaker thinks it should be. It is quite another thing to deal with the

day-by-day specifics of the relationship between the university and its individual students.

Against the background of the theme for this conference it is important to consider what the *legal* nature of a university *really* is. At this conference, the university has been variously described as a "community" or an "institution," but these terms are hardly descriptive of the university as a legal entity. The university is in fact a corporation. It has a charter from the state and a set of bylaws from which it draws its life and which, at the same time, prescribe and limit its purposes, powers, and functions. To be sure, the corporate purpose of a university is rather special: namely, to educate young people, to provide a storehouse of existing knowledge, and to add to this knowledge through scholarship and research.

If we look to the historical background of public and private educational systems in this country, we are reminded that a basic legal rationale for their existence is the interest of the state in an educated citizenry as being essential to a well-ordered and successful society. A university must, therefore, be responsive to this basic legal policy consideration, since, of necessity, it bears upon the university's legal rights, powers, and responsibilities in its relationships with students and other members of the community. In the university-student relationship, all of the rights and responsibilities of both parties stem from this basic concept — the university's interest in educating and its obligations to society, and the student's interest in being educated. Viewed in this light, the university must have greater freedom and flexibility in controlling the activities of the student than do local, state, or national governments in controlling the activities of the citizen. At the same time, and this point also requires emphasis, this greater freedom and flexibility which is so necessary to the successful educational process has no relevancy with respect to matters which are not central to, or reasonably incidental to, that educational process. Thus, the university-student relationship is a limited relationship, but within its limitations the university must be free to exercise discretionary controls if the relationship is to be successful.

Let me enumerate briefly some of the more prominent relationships which exist between the university and the student involving the application of various legal concepts. First, there is the individual's admission as a student. The university is prohibited from discriminating on the basis of race, creed, or national origin, but otherwise it practices widespread discrimination in the selection of students. The individual applicant, when accepted into the status of a student, acquires both rights and responsibilities which stem from this status. These rights are not the civil rights of citizenship, and

thus all of the technical trappings of procedural due process which control the relationship between state and citizen are not applicable here. At the same time, the student's rights are recognized by society as being of very substantial value so that the university is not free to terminate his status without a basically fair process in the light of the total relationship between the two parties.

A second corporate relationship pertains to the provision of room and meals. Fundamentally, this is a landlord-tenant relationship and is normally regulated by a fairly specific contract. Other corporate relationships have to do with the provision of instruction (teachers, classrooms, laboratories, library, etc.), health services, and public services such as utilities, traffic control, and police and fire protection.

One corporate relationship which requires special mention is the financial support for the student. In the first place, the typical university absorbs a very large portion of the cost of instruction above and beyond the amount of tuition and fees paid. Secondly, the university provides direct financial assistance to the individual student from its own funds or from outside funds which are administered by the university. This relationship points up the fiduciary character of the total special purpose relationships between university and student.

In analyzing these corporate relationships, it is apparent that, rather than one particular legal principle controlling the entire relationship, a series of legal principles are directly and appropriately applicable to its various aspects. The first legal principle which comes to mind, in a negative sense, is the doctrine of *in loco parentis.* I say "negative" sense because so many student groups, faculty groups, and institutions have recently made a big point of announcing that they no longer adhere to the doctrine of *in loco parentis.* In my mind, this never was a legitimate concept because it grossly oversimplifies the relationship between a university and its students. On the one hand, no university with a student body numbering in the thousands could possibly assume the role of a surrogate parent for each student. On the other hand, universities have adopted policies and practices in the past — and will hopefully continue to do so in the future — which are solicitous of the welfare of its students. As a case in point, we at Cornell issued the report of a University Commission in September 1967, in which it was made abundantly clear that the University no longer recognized *in loco parentis* as a viable doctrine. Less than two months later, the University adopted a policy with respect to the dissemination of student records which gave the students a privileged protection substantially in excess of their rights under the law. The point here is that, while the university does not

and should not pretend to regulate every aspect of the student's private life, the university can and must continue to regulate and protect those aspects of the individual student's activity which are pertinent to the university's purposes and the university-student relationship.

A second legal concept which comes to mind is the law of contract. We have heard much at this conference to the effect that contract is no longer a viable concept for regulation of the university-student relationship. Such broad statements must be taken with at least a few grains of salt. It certainly is true that the university can no longer print a very broad statement in the annual catalog, reserving the right to expel the student without a hearing or without cause, and then expect the matter to stand up in the courts on the theory that the statement was a contract term between the parties which was accepted by the student at the time of registration. However, this is not to say that the basic university-student relationship does not involve the elements of a contract. It is much more appropriate to say that public policy, as enforced by the courts, will no longer countenance the enforcement of such an arbitrary contract provision in this particular type of relationship. In short, the contract concept is used daily in a most satisfactory manner in many facets of the university-student relationship. For example, we hear no complaints about the need for formalities of procedural due process when a student is dismissed for simple failure to pay tuition — the university's right of dismissal in this instance is certainly based upon the law of contract.

I mentioned earlier the fiduciary or trust concept which applies to the underlying eleemosynary nature of the institution as well as to the more specific provision of financial assistance to the individual student. This relationship and the legal and equitable principles which govern it go far toward characterizing the total relationship between university and student.

Finally, the university has a right to regulate its students for the purpose of protecting life and property — a power which can best be described as a sort of private "police" power. While a few universities have the power of arrest on the basis of specific statutory authority, all universities are recognized as having this basic right to regulate the activity of the individual when it may be harmful to the life or property of other members of the university community or of the university itself.

Thus, I hope it is clear from these few remarks that there are several different legal concepts which are variously applicable to different aspects of the total university-student relationship — the relationship between this special purpose corporation and the in-

dividual citizen who has been admitted and registered as a student. Hanging over all aspects of this relationship and over all of these legal concepts which have been discussed are the constitutional rights of the parties. The individual citizen who becomes a student surely does not forfeit the constitutional rights which are available to all citizens under all circumstances. I state the matter in this fashion because I think there is a tendency at the present time to lose our perspective, particularly when dealing with student demonstrations or other activist maneuvers. When we are confronted with a student demonstration, we are not ready to talk about the constitutional rights of anybody until we have engaged in a thorough analysis of the facts surrounding the demonstration and have applied appropriate university regulations, or local and state law. It is my own experience that this approach to the problem very often results in a resolution of doubts, if not an actual solution, long before a consideration of constitutional concepts becomes necessary.

In conclusion, I would emphasize the importance in this very confusing area of making very clear-cut distinctions between a legal analysis of the university-student relationship on the one hand and a discussion of applicable educational, philosophical, or sociological concepts on the other. When there is a confrontation between university and student we need to know the respective rights and responsibilities of the parties. We may desire to waive some of these rights (on behalf of the university) for reasons of educational policy, but, if this be the case, it is important that we do so knowingly. With respect to the student, it is most important that we ascertain his rights in the particular aspect of the relationship which is at issue. Too often, questions involving the university-student relationship have found their way into the courts because attention was not given to recognition of the student's rights early in the controversy. If we do make clear distinctions between legal rights and educational policy, we certainly can follow Professor Monypenny's admonition to place emphasis on the educational aspect of this very sensitive relationship within a legal framework which is not unduly restrictive or burdensome to either university or student.