NOTES

THE LEGALITY OF UNIVERSITY-CONDUCTED DORMITORY SEARCHES FOR INTERNAL DISCIPLINARY PURPOSES

Considerable controversy has arisen in recent years over the extent to which the fourth amendment's proscription of unreasonable searches and seizures[1] protects a student's interest in his residence hall room at a state university.[2] While dormitory searches conducted to procure evidence for use in criminal proceedings are clearly subject to the constitutionally imposed search warrant requirement,[3] the question of whether it is necessary to obtain a warrant for searches performed by university officials solely for internal disciplinary purposes is far more complex. In the latter case, two established legal principles come squarely into conflict: the long-recognized power of a university to promulgate and enforce reasonable regulations to effectuate legitimate educational objectives and the constitutional right of a student to be free from unreasonable searches and seizures.

The problems confronting university officials have changed rather dramatically over the years,[4] of course, but the necessity of maintaining

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1. The fourth amendment provides:

> 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 particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. IV.

2. *See, e.g.*, Piazzola v. Watkins, 442 F.2d 284 (5th Cir. 1971); Smyth v. Lubbers, 398 F. Supp. 777 (W.D. Mich. 1975); Moore v. Student Affairs Comm., 284 F. Supp. 725 (M.D. Ala. 1968); People v. Kelly, 195 Cal. App. 2d 669, 16 Cal. Rptr. 177 (1961); People v. Cohen, 57 Misc. 2d 366, 292 N.Y.S.2d 706 (Dist. Ct. 1968), *aff'd mem.*, 61 Misc. 2d 858, 306 N.Y.S.2d 788 (App. T. 1969); Commonwealth v. McCloskey, 217 Pa. Super. 432, 272 A.2d 271 (1970).

3. Piazzola v. Watkins, 442 F.2d 284, 289 (5th Cir. 1971); *see* People v. Cohen, 57 Misc. 2d 366, 292 N.Y.S.2d 706 (Dist. Ct. 1968), *aff'd mem.*, 61 Misc. 2d 858, 306 N.Y.S.2d 788 (App. T. 1969); *cf.* Commonwealth v. McCloskey, 217 Pa. Super. 432, 272 A.2d 271 (1970). *But cf.* People v. Kelly, 195 Cal. App. 2d 669, 16 Cal. Rptr. 177 (1961). See note 95 *infra*.

4. Compare, for example, the following two observations on student conduct. The first was made in 1924 by the Florida Supreme Court.

> [F]or some time immediately preceding her suspension, which took place April 6, 1907, numerous disorders took place in the girls' dormitory where Miss Hunt resided, some of which were described as hazing the normals, ringing cow bells and parading in the halls of the dormitory at forbidden hours, cutting the

some semblance of order in college residence halls has remained. Consequently, the courts have uniformly held that universities have the inherent authority to promulgate rules and regulations rationally related to legitimate educational objectives.[5] This authority, predicated upon an institution's interest in "advancing its educational program and protecting its facilities and internal relationships . . . ,"[6] has been judicially recognized in decisions sustaining such dormitory regulations as parietal rules,[7] evening curfews,[8] and restrictions on room visitation between males and females.[9]

A university's disciplinary power, however, is not absolute. It is delimited by the constitutional rights of its students.[10] As the Supreme

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lights, and such other events as were subversive of the discipline and rules of the University. Some of the witnesses spoke of these disorders as bordering on insurrection. Stetson Univ. v. Hunt, 88 Fla. 510, 514-15, 102 So. 637, 639 (1924).

Less than half a century later, a New York court noted:

> The practice of some students . . . who use narcotics and who take trips to the outer world instead of to the library, is appalling enough. But this egregious stupidity and callous irresponsibility should not be matched by the wanton invasion of constitutional liberties. People v. Cohen, 57 Misc. 2d 366, 369, 292 N.Y.S.2d 706, 709 (Dist. Ct. 1968), *aff'd mem.*, 61 Misc. 2d 858, 306 N.Y.S.2d 788 (App. T. 1969).

5. In Healy v. James, 408 U.S. 169 (1972), the Supreme Court quoted with approval a position asserted by Justice Blackmun when he was a circuit court judge:

> We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct. *Id.* at 192, *quoting* Esteban v. Central Mo. State College, 415 F.2d 1077, 1089 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970).

The power of a university to impose reasonable rules and regulations to effectuate legitimate educational purposes has been similarly recognized by lower federal courts and various state courts. *See, e.g.*, Prostrollo v. University of S.D., 507 F.2d 775 (8th Cir. 1974), *cert. denied*, 421 U.S. 952 (1975) (all single freshmen and sophomores must live in residence halls); Robinson v. Board of Regents, 475 F.2d 707 (6th Cir. 1973), *cert. denied*, 416 U.S. 982 (1974) (dormitory curfew for women only); Futrell v. Ahrens, 88 N.M. 284, 540 P.2d 214 (1975) (ban on visitation in residence hall bedrooms by persons of opposite sex) and cases cited therein.

6. ABA SECTION ON INDIVIDUAL RIGHTS AND RESPONSIBILITIES, A STATEMENT OF THE RIGHTS AND RESPONSIBILITIES OF COLLEGE AND UNIVERSITY STUDENTS in LAW AND DISCIPLINE ON CAMPUS 209, 213 (G. Holmes ed. 1971).

7. Prostrollo v. University of S.D., 507 F.2d 775 (8th Cir. 1974), *cert. denied*, 421 U.S. 952 (1975); Poynter v. Drevdahl, 359 F. Supp. 1137 (W.D. Mich. 1972); Pratz v. Louisiana Polytechnic Inst., 316 F. Supp. 872 (W.D. La. 1970), *appeal dismissed*, 401 U.S. 951, *aff'd mem.*, 401 U.S. 1004 (1971); Texas Woman's Univ. v. Chayklintaste, 530 S.W.2d 927 (Tex. 1975).

8. Robinson v. Board of Regents, 475 F.2d 707 (6th Cir. 1973), *cert. denied*, 416 U.S. 982 (1974).

9. Futrell v. Ahrens, 88 N.M. 284, 540 P.2d 214 (1975), *citing* Lynch v. Savignano, Civ. No. 70-375-F. (D. Mass., Oct. 6, 1970); Buehler v. College of William & Mary, Civ. No. 62-70-NN (E.D. Va., Apr. 6, 1970).

10. *See* Healy v. James, 408 U.S. 169, 180 (1972); Robinson v. Board of Regents, 475 F.2d 707, 709 (6th Cir. 1973), *cert. denied*, 416 U.S. 982 (1974); Esteban v.

Court has stated, "[s]tudents in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect . . . ."[11] In accordance with this conclusion, it has been expressly held that the fourth amendment protects students living in on-campus housing from unreasonable searches and seizures.[12] Constitutional rights of university students have also been recognized, at least in dicta, in such areas as equal protection, freedom of association, freedom of speech, and freedom of religion.[13]

The only standard for evaluating the constitutionality of searches which appears on the face of the fourth amendment is that of reasonableness. In giving substance to this standard, the Supreme Court has held repeatedly that, while a warrant is normally required,[14] there exist a

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Central Mo. State College, 415 F.2d 1077, 1085 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). *See also* Goss v. Lopez, 419 U.S. 565 (1975); Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969). See note 13 *infra*.

11. Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 511 (1969). In *Tinker* the Court invalidated on first amendment grounds a high school regulation proscribing the wearing of black armbands, the school having failed to demonstrate that such symbolic activity would have a disruptive effect.

Although the *Tinker* case involved the first amendment rights of high school students, it has been relied upon in the college context, where it was deemed "equally applicable to all constitutional protections." Robinson v. Board of Regents, 475 F.2d 707, 709 (6th Cir. 1973), *cert. denied*, 416 U.S. 982 (1974). That *Tinker* should apply to collegians as well as secondary students is an obviously sound result. Most college students, unlike their high school counterparts, have reached the age of majority. Consequently, any efforts to restrict constitutional rights on the basis of the declining doctrine of *in loco parentis* are even less appropriate in regard to university students. *See* Van Alstyne, *Procedural Due Process and State University Students*, 10 U.C.L.A.L. REV. 368, 375-78 (1963); Van Alstyne, *The Student as University Resident*, 45 DENVER L.J. 582, 590-91 (1968).

12. Piazzola v. Watkins, 442 F.2d 284, 289 (5th Cir. 1971); Smyth v. Lubbers, 398 F. Supp. 777, 786 (W.D. Mich. 1975); *see* People v. Cohen, 57 Misc. 2d 366, 369, 292 N.Y.S.2d 706, 709 (Dist. Ct. 1968), *aff'd mem.*, 61 Misc. 2d 858, 306 N.Y.S.2d 788 (App. T. 1969); Commonwealth v. McCloskey, 217 Pa. Super. 432, 435-36, 272 A.2d 271, 273 (1970); *cf.* Moore v. Student Affairs Comm., 284 F. Supp. 725, 729 (M.D. Ala. 1968) (holding dormitory resident's fourth amendment rights subject to university's right to promulgate reasonable regulations). *But see* People v. Kelly, 195 Cal. App. 2d 669, 16 Cal. Rptr. 177 (1961) (upholding dormitory search).

13. *See, e.g.*, Healy v. James, 408 U.S. 169 (1972) (freedom of speech); Prostrollo v. University of S.D., 507 F.2d 775 (8th Cir. 1974), *cert. denied*, 421 U.S. 952 (1975) (freedom of association); Cooper v. Nix, 496 F.2d 1285 (5th Cir. 1974) (equal protection); Keegan v. University of Del., 349 A.2d 14 (Del. 1975) (freedom of religion). For a discussion of a dormitory resident's right to privacy in the context of university parietal rules, see Note, *Mandatory Housing Requirements: The Constitutionality of Parietal Rules*, 60 IOWA L. REV. 992, 1000-22 (1975). *See also* Van Alstyne, *Procedural Due Process*, *supra* note 11, at 387.

14. *See* Terry v. Ohio, 392 U.S. 1, 9 (1968); Elkins v. United States, 364 U.S. 206, 222 (1960); Carroll v. United States, 267 U.S. 132, 147 (1925). See note 3 *supra*.

few closely limited exceptions to this requirement based upon the presence of exigent circumstances.[15] This Note will consider the question of whether residence hall searches for school disciplinary reasons fall within the latter category. Stated more specifically, the issue is whether those unique characteristics of the university environment which have led to the development of a judicially sanctioned general regulatory power will automatically render a warrantless disciplimary search "reasonable" within the terms of the fourth amendment.

THE FOURTH AMENDMENT STATUS OF DORMITORY SEARCHES: EXCEPTION TO THE WARRANT REQUIREMENT

In its opinion in *Smyth v. Lubbers*,[16] the United States District Court for the Western District of Michigan has provided the most comprehensive recent treatment of the dormitory search problem, in a factual context which probably typifies the disciplinary procedures followed at many colleges and universities. The controversy arose when a student's dormitory room at Grand Valley State College in Allendale, Michigan was searched by campus police and administrators.[17] The search was conducted pursuant to two college regulations, incorporated by reference into the student's residence hall contract,[18] which prohibit-

15. *See, e.g.*, United States v. Edwards, 415 U.S. 800 (1974) (incident to a lawful arrest); Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (border search); Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (consent); Chambers v. Maroney, 399 U.S. 42 (1970) (automobile search); Terry v. Ohio, 392 U.S. 1 (1968) (stop and frisk); Warden v. Hayden, 387 U.S. 294 (1967) (hot pursuit); Schmerber v. California, 384 U.S. 757 (1966) (medical emergency); Latta v. Fitzharris, 521 F.2d 246 (9th Cir.), *cert. denied*, 423 U.S. 897 (1975) (search of parolee's residence by parole officer); United States v. Consuelo-Gonzalez, 521 F.2d 259 (9th Cir. 1975) (search of probationer by probation officer).

Warrantless searches have also been upheld in several situations involving employees of tightly controlled government agencies. *See* United States v. Collins, 349 F.2d 863 (2d Cir. 1965), *cert. denied*, 383 U.S. 960 (1966) (search of customs service employee by customs agents); United States v. Grisby, 335 F.2d 652 (4th Cir. 1964) (search of soldier's quarters by commanding officer); United States v. Donato, 269 F. Supp. 921 (E.D. Pa.), *aff'd per curiam*, 379 F.2d 288 (3d Cir. 1967) (search of mint employee's locker).

Similarly, limited warrantless searches have been deemed constitutional when highly regulated industries are involved. *See* United States v. Biswell, 406 U.S. 311 (1972) (firearms); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) (liquor).

16. 398 F. Supp. 777 (W.D. Mich. 1975).

17. *Id.* at 782. See note 91 *infra*.

18. The residence hall contract provided in part:

> The undersigned, in consideration for the board and room provided by Grand Valley State College, do[es] hereby agree as follows:
> . . . (2) To abide by the terms and conditions of residence in Grand Valley State College residence halls as stated in the current housing handbook, which terms and conditions are specifically made a part thereof [*sic*]. (3) That res-

ed the possession of marijuana[19] and authorized college officials to search a dormitory room if they had "reasonable cause" to believe a student was violating either a criminal law or a university regulation.[20] The search having revealed a quantity of marijuana, the student filed suit in federal court seeking "a judgment declaring that the search was . . . illegal and unconstitutional, and a permanent injunction prohibiting the defendants from expelling or suspending him from the College on the basis of any evidence discovered in the course of the search, or the fruits thereof."[21] The student's claim was not adjudicated, how-

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idency in Grand Valley State College residence halls, and this contract, are subject to all rules and regulations of Grand Valley State College. 398 F. Supp. at 782.

19. The college's student handbook stated:

> The possession, distribution or use by a student of any narcotic or hallucinogenic drugs, including marijuana, in either the refined or crude form except under the direction of a licensed physician is prohibited. *Id.* at 781-82.

20. The student handbook further provided:

> 2. Student rooms may be entered by residence hall staff-members if any of the following situations exist:
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> . . .
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> c. 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 reluctantly and only if authorized by the GVSC President or a designee.
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> 3. Student rooms may be entered and searched by county and state officials only after a search warrant has been presented stating the reason for the search. *Id.* at 782.

21. *Id.* at 781. The plaintiffs claimed jurisdiction on the basis of 42 U.S.C. § 1983 (1970) and 28 U.S.C. § 1343 (1970). Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983 (1970).

28 U.S.C. § 1343 (1970) provides:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
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> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
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> (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
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> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
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> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. 28 U.S.C. § 1343 (1970), *as amended*, 28 U.S.C. § 1343(1) (Supp. IV 1974).

ever, until after the school's judicial board had admitted the marijuana as evidence in its proceedings and had suspended him for one term.[22]

The court found initially that the student had "the same interest in the privacy of his room as any adult has in the privacy of his home . . .,"[23] and that therefore fourth amendment protections, including the general warrant requirement, were applicable.[24] In urging an exception to the warrant requirement, the college advanced each of the three arguments raised most frequently in the dormitory search cases: waiver,[25] inherent institutional authority to impose reasonable regulations,[26] and a lesser administrative search theory based on *Wyman v. James*.[27] Each was rejected by the court in reaching its decision to grant the requested relief. Using the facts and analysis in *Smyth* as a starting point, this section will discuss the general applicability of the first two of these three asserted justifications for warrantless dormitory searches. The applicability of the *Wyman* case to such searches will be considered in the following section.

Waiver

Courts have occasionally viewed the university-student relationship as being grounded in contract,[28] either express[29] or implied.[30] It would

22. 398 F. Supp. at 783.
23. *Id.* at 786.
24. *Id.* at 786, 793.
25. *Id.* at 788.
26. *Id.* at 789.
27. *Id.* at 793 *citing* 400 U.S. 309 (1971).
28. This theory is at least tangentially related to the right of a landlord to inspect leased premises and to make necessary repairs. For a discussion of a landlord's covenant to enter and make repairs, see 2 R. POWELL, REAL PROPERTY ¶ 233[1] (1975). The relationship between a university and a dormitory resident, however, is not strictly one of landlord and tenant. *See* Piazzola v. Watkins, 442 F.2d 284, 290 (5th Cir. 1971) (Clark, J., dissenting); Moore v. Student Affairs Comm., 284 F. Supp. 725, 729 (M.D. Ala. 1968); Englehart v. Serena, 318 Mo. 263, 273, 300 S.W. 268, 271 (1927). Even if it were such a relationship, this would not enable the university to delegate its right of inspection to police or other third parties. Chapman v. United States, 365 U.S. 610 (1961) (landlord could not consent to search of tenant's dwelling); United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951) (employee's superior could not consent to police search of employee's desk); Piazzola v. Watkins, 316 F. Supp. 624 (M.D. Ala. 1970), *aff'd*, 442 F.2d 284 (5th Cir. 1971) (college could not consent to police search of dormitory room); Commonwealth v. McCloskey, 217 Pa. Super. 432, 435-36, 272 A.2d 271, 273 (1970) (college could not consent to police search of dormitory room under landlord-tenant analogy); Delgado, *College Searches and Seizures: Students, Privacy, and the Fourth Amendment*, 26 HASTINGS L.J. 57, 62 (1974). *But see* Moore v. Student Affairs Comm., 284 F. Supp. 725 (M.D. Ala. 1968); People v. Kelly, 195 Cal. App. 2d 669, 16 Cal. Rptr. 177 (1961) (upholding warrantless searches of dormitory room by college officials and police); *cf.* United States v. Botsch, 364 F.2d 542 (2d Cir.

seem that, under this view, a student could agree to waive certain rights or privileges when he matriculates at college or engages to live in on-campus housing.[31] Fourth amendment rights, like other constitutional rights, are subject to voluntary waiver.[32] If an individual knowingly offers his advance consent to the search of certain premises, it is arguable that he no longer has "a reasonable expectation of privacy"[33] in such property.[34]

The shortcoming of this line of reasoning is its presupposition that the student and the university stand in roughly equal bargaining positions. In fact, the relative positions of the two parties are often anything but equal, with residence hall agreements frequently possessing many of the characteristics of adhesion contracts.[35] As was the case in *Smyth*, a

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1966), *cert. denied*, 386 U.S. 937 (1967) (landlord could consent to police search of leased premises where tenant had authorized landlord to receive deliveries on such property).

29. *See, e.g.*, University of Miami v. Militana, 184 So. 2d 701 (Fla. Dist. Ct. App. 1966). *See also* Moore v. Student Affairs Comm., 284 F. Supp. 725 (M.D. Ala. 1968) (stating that student's relationship with state university was not contractual but holding that student had "waived" objections to reasonable searches conducted pursuant to school regulation).

30. *See, e.g.*, Speake v. Grantham, 317 F. Supp. 1253, 1265 (S.D. Miss. 1970), *aff'd per curiam*, 440 F.2d 1351 (5th Cir. 1971); Carr v. St. John's Univ., 17 App. Div. 2d 632, 231 N.Y.S.2d 410, *aff'd mem.*, 12 N.Y.2d 802, 187 N.E.2d 18, 235 N.Y.S.2d 834 (1962). *But see* People v. Cohen, 57 Misc. 2d 366, 368, 292 N.Y.S.2d 706, 709 (Dist. Ct. 1968), *aff'd mem.*, 61 Misc. 2d 858, 306 N.Y.S.2d 788 (App. T. 1969).

31. See cases cited in notes 29 & 30 *supra*.

32. Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Bumper v. North Carolina, 391 U.S. 543 (1968); *see* Johnson v. Zerbst, 304 U.S. 458 (1938) (6th amendment); Smith v. United States, 337 U.S. 137 (1949) (5th amendment). The Supreme Court has recognized, however, that consent to a search does not constitute a waiver in the same sense as that term is used in other contexts. Consent to a search, unlike waiver of other constitutional rights, is valid even when there is no demonstration that it was a knowing and intelligent relinquishment of fourth amendment protections. Schneckloth v. Bustamonte, 412 U.S. at 235-46. *See generally* Mintz, *Search of Premises by Consent*, 73 DICK. L. REV. 44 (1968).

33. The fourth amendment concept of "a reasonable expectation of privacy" was first articulated in Katz v. United States, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring).

34. Professor Wright has contended that the existence of a university regulation reserving the right to search student dormitory rooms precludes the possibility of a student having a reasonable expectation of privacy. 3 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL § 663 (1969); Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027, 1079 (1969). This argument, however, fails to consider the inequality in bargaining position inhering in the university-student contractual relationship, and it does not take account of the doctrine of unconstitutional conditions. See notes 35-39 *infra* and accompanying text.

35. It has been observed by Professor Van Alstyne that

> [t]he rules which a student "contracts" to observe are altogether nonnegotiable, and there is in fact an absence of bargaining . . . . Thus, the nonnego-

student is often required effectively to waive certain rights as a precondition to enrolling at a given university or taking advantage of housing which it owns or subsidizes.[36] As the *Smyth* court recognized, however, a waiver of a constitutional right is ineffective unless knowingly and voluntarily made.[37] Moreover, at least in the case of state universities, any such waiver might also be prohibited under the doctrine of unconstitutional conditions.[38] It has consistently been held that "the state, in operating a public system of higher education, cannot condition attendance at one of its schools on the student's renunciation of his constitutional rights."[39]

Inherent Institutional Authority

Universities, as noted above, have long been held to have broad

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tiability of terms is compounded by the real lack of shopping alternatives, the inequality of the parties in fixing terms, parallel practices among sellers, and the impotency of individual applicants to affect terms. The contracts are purely on a take-it-or-leave-it basis. Frequently, the student has little idea of the terms of his contract in advance of matriculating, as he more often than not becomes enrolled before being presented with any sort of handbook which states the conditions of his attendance. Occasionally, he does not receive the handbook at all. Its provisions are typically subject to change at the sole pleasure of the college. Van Alstyne, *The Student as University Resident*, *supra* note 11, at 583 n.1.

For a similar argument, see Delgado, *supra* note 28, at 70-71.

36. 398 F. Supp. at 788.

37. *Id.* See note 32 *supra*. *Cf.* Piazzola v. Watkins, 442 F.2d 284, 289 (5th Cir. 1971) (waiver deemed invalid). *Contra*, Moore v. Student Affairs Comm., 284 F. Supp. 725, 731 (M.D. Ala. 1968) (waiver deemed valid).

38. The doctrine provides that the "enjoyment of governmental benefits may not be conditioned upon the waiver or relinquishment of significant constitutional rights, in the absence of some compelling social interest which justifies the subordination of those rights under the circumstances." Van Alstyne, *Student Academic Freedom and the Rule-Making Powers of Public Universities: Some Constitutional Considerations*, 2 LAW IN TRANSITION Q. 1, 21 (1965); *see* Note, *Unconstitutional Conditions*, 73 HARV. L. REV. 1595 (1960).

39. Robinson v. Board of Regents, 475 F.2d 707, 709 (6th Cir. 1973), *cert. denied*, 416 U.S. 982 (1974); *see* Piazzola v. Watkins, 442 F.2d 284, 289-90 (5th Cir. 1971) (fourth amendment); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 156-57 (5th Cir. 1961) (due process); Smyth v. Lubbers, 398 F. Supp. 777, 788 (W.D. Mich. 1975) (fourth amendment); Dickey v. Alabama State Bd. of Educ., 273 F. Supp. 613, 618 (M.D. Ala. 1967), *vacated as moot*, 402 F.2d 515 (5th Cir. 1967) (first amendment). *See also* Esteban v. Central Mo. State College, 415 F.2d 1077, 1089 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970).

The doctrine of unconstitutional conditions does not alter the fact that, in certain circumstances, the presence of a compelling state interest may justify the subordination of a fundamental constitutional right. See note 58 *infra*. Since the preservation of a university's educational function would appear to qualify as a "compelling" interest, the doctrine of unconstitutional conditions does not, in itself, determine the legality of particular conduct. The more significant inquiry is whether the university regulation, on its face and as applied, reasonably promotes a legitimate educational objective. See notes 44-58 *infra* and accompanying text.

power to promulgate and enforce such regulations as are necessary to the achievement of educational goals.[40] The leading authority for extending this recognized power to exempt dormitory searches from the warrant requirement is *Moore v. Student Affairs Committee of Troy State University*.[41]

In *Moore*, the district court upheld a warrantless dormitory search, authorized by university regulations,[42] which was conducted by a campus administrator accompanied by state narcotics agents. Initially, the court established the premise that colleges have "an 'affirmative obligation' to promulgate and enforce reasonable regulations designed to protect campus order and discipline and to promote an environment consistent with the educational process."[43] A two-step rationale was ostensibly employed to assess the constitutional validity of regulations so promulgated. First, the court asked whether the regulation in question was in fact necessary to the achievement of a legitimate educational purpose.[44] If so, then a presumption of facial validity was created which could be overcome on the second level only by a showing that the regulation had been unreasonably applied.[45] The court found both the Troy State regulation and its application acceptable.[46]

The *Smyth* court appeared to apply the same test in a similar factual context, but reached an opposite result. While recognizing the educational necessity of imposing restrictions on drug use,[47] the court rejected the search on the second level, finding that the method of application went far beyond the reasonable requirements of any justifiable educational purpose.[48]

The tests applied by the two courts, however, were not identical. While both started from the premise that colleges have the power to establish and enforce reasonable regulations, differences appear in their

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40. See notes 5-9 *supra* and accompanying text.

41. 284 F. Supp. 725 (M.D. Ala. 1968).

42. The search was conducted pursuant to a regulation, printed in various student handbooks, which provided:

> The college reserves the right to enter rooms for inspection purposes. If the administration deems it necessary the room may be searched and the occupant required to open his personal baggage and any other personal material which is sealed. *Id.* at 728.

43. *Id.* at 729 (footnote omitted).

44. *Id.* at 728-30.

45. *Id.* at 730.

46. *Id.* While the Fifth Circuit held in Piazzola v. Watkins, 442 F.2d 284 (5th Cir. 1971), that the Troy State regulation could not be construed to authorize the college to consent to police searches for evidence of crime, the result in *Moore* was not disturbed.

47. 398 F. Supp. at 790.

48. *Id.* at 789-90.

interpretations of the second-level question regarding reasonable application. The *Moore* court's definition of reasonable application only required that the college authorities have a "reasonable belief" that a student was using his room for a purpose which contravened a school regulation.[49] If such a belief existed, a university-conducted search was fully authorized despite the fact that it infringed "to some extent on the outer bounds of the Fourth Amendment rights of students."[50]

It has been recognized by most courts, including those in both *Smyth* and *Moore*, that the fourth amendment protects students living in on-campus housing from unreasonable searches and seizures.[51] Accordingly, the reasonableness of the search must be determined regardless of whether it only infringed on the "outer bounds" of the student's rights. The *Smyth* court appears to have correctly stated the problem when it recognized that any invasion of one's fourth amendment rights runs to the "very core" of the amendment.[52]

The *Smyth* court's analysis provided a more demanding test than that proposed in *Moore* for determining whether a regulation has been reasonably applied. That test, based upon the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*,[53] demonstrates the weaknesses inherent in the solution advanced in *Moore*. In *Tinker*, the Court implicitly acknowledged that the state's interest in the maintenance of school order was sufficient to overcome a fundamental constitutional right.[54] A school regulation prohibiting potentially disruptive conduct, therefore, would be reasonable. Each application of the regulation, however, must be specifically justified by a showing of compelling facts demonstrating a threat to the state's legitimate interest.[55] In *Tinker*, for example, the Court required "facts which might reasonably have led school authorities to forecast substan-

49. 284 F. Supp. at 730.

50. *Id.* at 729.

51. Smyth v. Lubbers, 398 F. Supp. at 786; Moore v. Student Affairs Comm., 284 F. Supp. at 729.

52. 398 F. Supp. at 786.

53. 393 U.S. 503 (1969). See note 11 *supra.*

54. *Id.* at 507.

55. *Id.* at 514.

The doctrine that a regulation must be valid both on its face and in its implementation has long been recognized as a matter of constitutional law. *See* Louisiana v. United States, 380 U.S. 145 (1965); Yick Wo v. Hopkins, 118 U.S. 356 (1886). Furthermore, "[a] search which is reasonable at its inception may yet violate the Fourth Amendment by virtue of its intolerable intensity and scope." United States v. Kroll, 351 F. Supp. 148, 153 (W.D. Mo. 1972), *aff'd*, 481 F.2d 884 (8th Cir. 1973), *citing* Sibron v. New York, 392 U.S. 40, 65-66 (1968); Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring); Kremen v. United States, 353 U.S. 346 (1957); Go-Bart Co. v. United States, 282 U.S. 344, 356-58 (1931).

tial disruption of or material interference with school activities . . . ."[56] Similarly, in the dormitory search context, the university must be able to take the step beyond the reasonableness of the regulation and show its compelling interest in the chosen method of application on the occasion in question. In *Moore*, decided prior to *Tinker*, the court was influenced by the facial reasonableness of the regulation in determining the reasonableness of its application.[57] The *Smyth* court, however, took the only acceptable post-*Tinker* approach, and independently scrutinized the actual means of application to determine whether the university had a compelling interest in acting as it did.[58]

Wyman v. James: THE "LESSER SEARCH" CONCEPT AND THE PERMISSIBILITY OF REASONABLE WARRANTLESS SEARCHES

The fourth amendment imperative that searches be reasonable[59] has generally been thought to necessitate use of a search warrant "subject only to a few specifically established and well-delineated exceptions . . . ."[60] The Supreme Court's opinion in *Wyman v. James*,[61] however, suggests that some warrantless "searches" may be constitutionally permissible even though not within any of the traditional exceptions to the warrant requirement. Consequently, it may be possible to argue, as did the university in *Smyth*,[62] that although university-conducted dormi-

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56. 393 U.S. at 514.

57. See notes 44-46 *supra* and accompanying text.

58. 398 F. Supp. at 789-90. The problem facing the courts in regard to fourth amendment rights differs from that with respect to first amendment or due process rights. Inherent in the definition of the latter is a balancing process, weighing the interests of the state against those of the individual. *See, e.g.*, Schenck v. United States, 249 U.S. 47, 52 (1919) ("The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic."); Schaefer, *Federalism and State Criminal Procedure*, 70 HARV. L. REV. 1, 6 (1956) ("Due process cannot be confined to a particular set of existing procedures because due process speaks for the future as well as the present, and at any given time includes those procedures that are fair and feasible in the light of then existing values and capabilities"). While there is also a balancing process involved in fourth amendment considerations, *see* Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967), the Court has traditionally stated that a warrantless search will be deemed reasonable only in a few well-defined areas. Any balancing that occurs is inherent in the reasonableness standard imposed by the terms of the amendment. See notes 14-15 *supra* and accompanying text.

59. See note 1 *supra*.

60. Katz v. United States, 389 U.S. 347, 357 (1967). See notes 14-15 *supra* and accompanying text.

61. 400 U.S. 309 (1971).

62. 398 F. Supp. at 793.

The *Smyth* court rejected the *Wyman* analogy out of hand, finding that case "simply inapposite." *Id.* The court focused in conclusory fashion on the dissimilarities between

tory searches for intra-institutional purposes do not normally fall within any of the historically exempt categories,[63] such searches are still permissible under *Wyman*. In *Wyman* the Court upheld a New York statute[64] requiring a welfare recipient to submit to periodic visits by case workers as a condition precedent to the continuation of benefits.[65] The Court advanced alternative rationales for its holding: first, a welfare visit is not a search as contemplated by the fourth amendment;[66] second, even assuming that the visit does constitute a search, such a warrantless intrusion is reasonable and therefore not violative of the fourth amendment.[67]

In finding that no fourth amendment search had occurred, the Court relied on the predominance of the rehabilitative over the investigative aspects of the search, noting that the latter factors were insignificant when compared with a more traditional search in the criminal law context.[68] It was further emphasized that the actual physical entry was not compelled, but could be avoided by a choice not to seek additional benefits.[69] Although a search of a residence hall room by school administrators for intra-institutional purposes also differs significantly from a classic search for criminal evidence, the "no search" rationale of *Wyman* would appear to be inapplicable. Regardless of any educational ends which it may ultimately serve, a dormitory search where contraband or proscribed conduct is suspected is by its very nature investigative. Furthermore, in the typical dormitory search situation there is no opportunity to avoid the physical intrusion; in *Smyth*, for example, entry was made without the consent of the occupants of the room.[70] Finally,

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the two situations discussed in this section, but ignored the apparent parallels. The *Smyth* court also failed to distiniguish between *Wyman*'s alternative rationales. The contention of this Note is that the *Wyman* analogy is at least sufficiently strong to merit detailed consideration. See notes 72-94 *infra* and accompanying text.

63. See note 15 *supra*. One court has suggested in dictum that dormitory searches constitute one of the traditional exceptions. United States v. Kroll, 351 F. Supp. 148, 152 (W.D. Mo. 1972), *aff'd*, 481 F.2d 884 (8th Cir. 1973).

64. N.Y. Soc. Serv. Law § 134-a (McKinney 1976). The statute, passed as part of the program for Aid to Families with Dependent Children, provided for limited investigations of a recipient's eligibility, set forth the guidelines for the investigations, and authorized denial of benefits if home visitation was refused by the recipient. *Id.*

65. The doctrine of unconstitutional conditions, see note 38 *supra*, is not applicable in the welfare context in light of the Court's conclusion in *Wyman* that the condition established by the statute did not require a welfare recipient to sacrifice any constitutional rights. See notes 66 & 68-69 *infra* and accompanying text.

66. 400 U.S. at 317-18.

67. *Id.* at 318-24.

68. *Id.* at 317.

69. *Id.* at 317-18.

70. 398 F. Supp. at 782.

the absence of prospective criminal proceedings does not vitiate this conclusion, as it has been established that fourth amendment protections are not limited to criminal proceedings.[71]

The second *Wyman* rationale, that limited warrantless searches may be reasonable under certain circumstances, is more nearly apposite to dormitory searches. Several of the special circumstances justifying warrantless searches in the welfare setting are likely to be present in the context of university residence searches.[72]

In *Wyman* the Court emphasized the legitimate state objective of assuring that a tax-supported program not be frustrated.[73] This reasoning seems to be equally applicable in regard to campus dormitories, where highly congested, interdependent living conditions pose unique problems. Not only does a university have a responsibility to protect its physical facilities, but, more importantly, it has an interest in creating and maintaining an educational atmosphere within university housing.[74] Additionally, in many situations a search may be the only practical means of accomplishing the legitimate state objectives. In *Wyman* the Court noted that alternative procedures would not supply certain information obtainable through a welfare search: verification of actual residence at a stated address, determination of any impending medical needs of dependent children, and the existence of dependent children not yet registered in school.[75] Similarly, a warrantless dormitory search might frequently be the only practical way to enforce necessary university regulations. A search for electrically unsafe appliances, for example, is directly analogous to the situation in *Wyman*: regular inspection is clearly necessary here to protect state property, but in most cases there will be no probable cause to suspect a violation on which a warrant might be based. Moreover, in a case such as *Smyth*, where the university admits to having had at least "reasonable" cause, a practical dilemma would result if it were compelled to go to a magistrate to obtain a warrant. The university would effectively be forced to choose between nonenforcement of necessary regulations, an arguable dereliction of its educational responsibilities, and regularly involving the public authorities in

71. Wyman v. James, 400 U.S. 309, 317 (1971); Camara v. Municipal Court, 387 U.S. 523, 530 (1967).

72. *See* Piazzola v. Watkins, 316 F. Supp. 624, 628 (M.D. Ala. 1970), *aff'd*, 442 F.2d 284 (5th Cir. 1971) ("[S]tudents and their college share a *special relationship* which gives to the college certain special rights . . .") (emphasis added). See note 83 *infra* and accompanying text.

73. 400 U.S. at 318-19.

74. See notes 6-9 *supra* and accompanying text.

75. 400 U.S. at 322.

campus affairs,[76] a likely source of destructive tension among students, administrators and campus security personnel.[77]

Both welfare visits and dormitory searches do, of course, involve significant governmental intrusion into an individual's living quarters. The *Wyman* Court emphasized the limited non-criminal nature of the search, however, and balanced that factor against the state's primary objective, which was to carry out the rehabilitative purposes of the welfare program.[78] The typical university-conducted dormitory search is similarly limited. While the absence of criminal overtones does not remove a dormitory search from the fourth amendment search category,[79] it does increase the resemblance to the rationale of *Wyman*.[80] In the first place, the potential impact on an individual student—whether measured in terms of actual punitive measures or the collateral consequences—has been held to be substantially less severe when evidence procured in a dormitory search is to be used only in a campus disciplinary hearing.[81] Furthermore, the less onerous effect of university disci-

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76. *See* Comment, *Public Universities and Due Process of Law: Students' Protection Against Unreasonable Search and Seizure*, 17 U. KAN. L. REV. 512, 523 (1969); Note, *Equity on the Campus: The Limits of Injunctive Regulation of University Protest*, 80 YALE L.J. 987, 1006-07 (1971).

Furthermore, it is quite likely that this same result would obtain if search warrants were executed by campus police officers. *See* James v. Goldberg, 303 F. Supp. 935, 946 (S.D.N.Y. 1969) (McLean, J., dissenting), *rev'd sub nom.* Wyman v. James, 400 U.S. 309 (1971) (contending that a warrant requirement as a condition precedent to a case worker's inspection of welfare recipient's home would introduce "a hostile arm's length element" between them); Comment, *Public Universities, supra* (observing that use of warrants in searches of dormitory rooms by school officials would have detrimental effect on the relationship between students and college administrators).

77. The argument that college officials must meet the same warrant requirements as do law enforcement personnel appears strongest in areas where the regulation prohibiting certain conduct overlaps with similar state statutory provisions. However, a regulation such as that prohibiting the possession of drugs should only be considered as one of many campus rules rather than as an extension of a statute. Accordingly, the same considerations are involved whether the college seeks enforcement of a regulation prohibiting the possession of drugs or one prohibiting the use of electrical appliances. The rationale permitting the college to establish and enforce reasonable regulations applies in both cases. See notes 5-9 *supra* and accompanying text.

78. 400 U.S. at 322-23.

79. See note 71 *supra* and accompanying text.

80. The fact that it is not a criminal offense to refuse a dormitory search or a welfare visit is significant. Where failure to submit to a mandatory inspection constitutes a criminal offense, a warrant is required (although a less stringent probable cause standard may be applicable). See v. City of Seattle, 387 U.S. 541 (1967); Camara v. Municipal Court, 387 U.S. 523 (1967). The *Camara* and *See* decisions were distinguished on this basis in Wyman v. James, 400 U.S. 309, 324-25 (1971).

81. One federal district court has concluded that, in terms of effect, there are important distinctions between university disciplinary proceedings and the state system of criminal justice administration:

plinary proceedings enables an educational institution to take certain actions "that would be impermissible if imposed by the government upon all citizens" since there is "a constitutional distinction between the infliction of criminal punishment, on the one hand, and the imposition of milder administrative or disciplinary sanctions, on the other, even though the same . . . interest is implicated by each."[82]

Additionally, the dormitory search and the welfare visit are similar in their essentially civilian nature.[83] As suggested above,[84] the Su-

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In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community. Even then, the disciplinary process is not equivalent to the criminal law processes of federal and state criminal law. For, while the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social, and economic future, he or she may not be imprisoned, fined, disenfranchised, or subject to probationary supervision. General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education, 45 F.R.D. 133, 142 (W.D. Mo. 1968).

The purported analogy between criminal justice administration and university disciplinary procedures has also been rejected by the Fifth and Eighth Circuits. Piazzola v. Watkins, 442 F.2d 284, 289 (5th Cir. 1971); Esteban v. Central Mo. State College, 415 F.2d 1077, 1088 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970). It should be noted, however, that several commentators have given some credence to this comparison, at least insofar as it involves the impact of the sanctions upon the individual being disciplined. *See* Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. FLA. L. REV. 290, 296 (1968); Van Alstyne, *The Student as University Resident*, *supra* note 11, at 595; Note, *College Searches and Seizures: Privacy and Due Process Problems on Campus*, 3 GA. L. REV. 426, 439 (1969).

82. Healy v. James, 408 U.S. 169, 203 (1972) (Rehnquist, J., concurring).

83. The *Wyman* Court noted that the welfare searches are conducted by case workers rather than "by police or uniformed authority." 400 U.S. at 322. College residence hall searches, however, are commonly conducted by campus security officers. Moreover, over seventy percent of all campus security forces have been deputized by a city, county, or state to make arrests for any criminal offenses occurring on campus. Berman, *Law and Order on Campus: An Analysis of the Role and Problems of the Security Police*, 49 J. URBAN L. 513, 519 (1971). Although the argument for abandoning the warrant requirement in such a fact situation is somewhat less persuasive than in *Wyman*, the use of campus police should not entirely undermine the lesser search rationale. In *Smyth*, for example, two of the five university officials who searched the student's room were campus policemen who were also deputy county sheriffs. 398 F. Supp. 777, 782, 792. Such security officers function principally as university rather than state officials. Moreover, the fact that they were deputized did not necessitate criminal prosecution of the students. A Michigan law enforcement officer is never statutorily required to make an arrest. Rather, "[a]ny peace officer *may*, without a warrant, arrest a person" for a felony or misdemeanor committed in the officer's presence or a felony not committed in his presence if certain circumstances obtain. MICH. COMP. LAWS ANN. § 764.15 (1968) (emphasis added). In fact, a Michigan peace officer is not authorized to make a warrantless arrest for a misdemeanor not committed in his presence. People v. Dixon, 392 Mich. 691, 222 N.W.2d 749 (1974); Gallagher v. Michigan Secretary of State, 59 Mich. App. 269, 229 N.W.2d 410 (1975). Consequently, the campus security officers in *Smyth* were free to utilize the intra-institutional

preme Court's conclusion that search warrants have "seriously objectionable features in the welfare context"[85] seems equally appropriate to the university-student relationship.

Finally, in both the welfare visit and the dormitory search there is a substantial concern for the welfare of an otherwise unprotected third party. In arguing in favor of the reasonableness of the search in *Wyman*, the Court looked first to the interests of the children of welfare recipients, and found them to be "paramount."[86] In the dormitory situation, the interests of those students who stand to be disturbed by violations of university regulations are deserving of comparable consideration. If a necessary regulation can be implemented only by means of a warrantless search, there is a strong argument that the interests of the intended beneficiaries of a state educational program should outweigh the interests of those whose actions tend to frustrate the program's purposes.

The typical dormitory search and the *Wyman* welfare visit do differ in one important respect. The welfare client in *Wyman* was given advance notice of the proposed visit[87] and could have avoided the actual physical intrusion by withholding consent.[88] In a dormitory search like that conducted in *Smyth*, on the other hand, the investigative purpose of the search would be frustrated if the student were given advance warning or an opportunity to deny the authorities permission to enter.[89] The distinction is mitigated somewhat, however, by the fact that a refusal to submit to the welfare visit would result in a termination of benefits. In light of economic reality, the decision whether or not to acquiesce in the visit can hardly be characterized as voluntary.

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disciplinary proceedings rather than the criminal law system. *See also* ALA. CODE tit. 15, § 154 (1958); CAL. PENAL CODE § 836 (West 1970); D.C. CODE § 23-581 (1973); ILL. ANN. STAT. ch. 38, § 107-2 (Smith-Hurd 1970). *But see* ILL. ANN. STAT. ch. 125, § 82 (Smith-Hurd 1970) ("It shall be the duty of every sheriff . . . or other officer having the power of a sheriff . . . when any criminal offense . . . is committed or attempted in his presence, forthwith to apprehend the offender . . . .").

Of course, a warrantless search of on-campus housing conducted by university officials without the assistance of campus police—or at least without the aid of *deputized* campus security officers—would present a factual situation more closely analogous to that in *Wyman*.

84. See notes 76-77 *supra* and accompanying text.

85. 400 U.S. at 323.

86. *Id.* at 318.

87. *Id.* at 313.

88. *Id.* at 317-18.

89. A further distinction arises from the statement in *Wyman* that "[p]rivacy is emphasized . . . . [S]nooping in the home [is] forbidden." *Id.* at 321. The search of a student's room obviously involves "snooping"; thus the intrusiveness of the entry is significantly greater than that to which a welfare recipient is subjected.

Wyman's second rationale does not propose another highly specific exception to the warrant requirement, but rather allows a uniquely flexible balancing approach to be invoked when the intrusion and its consequences are limited and the justification is compelling.[90] In view of the considerations discussed above, the *Wyman* analysis would seem to be appropriate for evaluating the constitutionality of a non-criminal dormitory search. While it is clear that warrantless dormitory searches for intra-institutional purposes are not strictly analogous to the welfare visit considered in *Wyman*, many of the special circumstances which impressed the Court in that case are also present in the college context. In spite of the important distinctions, the points of analogy are sufficiently strong to suggest that many otherwise questionable dormitory searches can be upheld under *Wyman*'s second rationale. The likelihood of a finding of reasonableness would be enhanced by a university policy against the kind of arbitrary use of the search power which occurred in *Smyth*.[91] At a minimum, it should usually be required that dormitory searches be authorized by unbiased university administrators other than those conducting the search, that the application include a list of reasons for the search and the objects or information sought,[92] and that the

90. Even in dealing with the traditional warrant exceptions, the Court has begun to show considerable flexibility in permitting expansion to cover situations which are not entirely analogous to the narrow circumstances originally used to justify the exception.

The recent expansion of the "search incident to arrest" exception illustrates this trend. In Chimel v. California, 395 U.S. 752 (1969), the Court held that a warrantless search could be conducted immediately after the arrest of a suspect in order to remove from his person or reach weapons or destructible evidence. *Id.* at 762-63. In United States v. Robinson, 414 U.S. 218 (1973), and Gustafson v. Florida, 414 U.S. 260 (1973), the "search incident" exception was used to justify a full, warrantless search of a person arrested for a traffic violation, despite the absence of the factors underlying the exception as set forth in *Chimel*. The Court stated that the officer making the arrest need not assert that he believed that the arrestee was armed, *Robinson*, 414 U.S. at 235; *Gustafson*, 414 U.S. at 266, and, of course, there is little tangible evidence of a traffic violation which might otherwise justify a search.

A similar expansion is apparent in the "stop and frisk" area. *See, e.g.*, Adams v. Williams, 407 U.S. 143 (1972), which upheld a frisk conducted pursuant to an informant's "tip" subsequently corroborated by the police officer, despite the holding in Terry v. Ohio, 392 U.S. 1 (1968) that a "stop and frisk" is permissible only where the officer himself "observes unusnal conduct." *Id.* at 30.

91. For example, the search in *Smyth* was conducted at 12:45 a.m. by a group of five officials, two of whom were deputized campus security officers. 398 F. Supp. at 782.

92. Consider, for example, the regulations involved in *Moore* (Troy State University) and *Smyth* (Grand Valley State College). The Troy State student handbook provided that university-conducted residence hall searches must be authorized by the "administration." See note 42 *supra*. The Grand Valley regulation provided the student somewhat greater protection, requiring that the college "President or a designee" authorize dormitory searches. See note 20 *supra*.

The *Smyth* court suggested that colleges "explore the possibility of a warrant

search be conducted in a reasonable manner, within a proper scope,[93] and at a reasonable time.[94]

CONCLUSION

There is little doubt that the prophylactic effect of the fourth amendment is sufficient to protect college residence hall occupants from warrantless room searches conducted by the police to procure evidence for use in criminal proceedings. Moreover, if college officials expect to find evidence of a criminal offense in a dormitory search and intend to have criminal charges brought against the student, then there should be full compliance with the mandates of the fourth amendment, including the warrant requirement.[95] Whether the amendment also forbids uni-

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procedure internal to the institution." 398 F. Supp. at 792. Such a plan would provide minimal procedural safeguards and would apparently be viewed favorably by educators. The Joint Statement on Rights and Freedoms of Students, which has been approved by the Association of American Colleges, the American Association of University Professors, the National Association of Student Personnel Administrators, the National Association of Women Deans and Counsellors, and the American Association of Higher Education, provides that "an appropriate and responsible authority should be designated to whom application should be made before a [residence hall] search is conducted." *See* Van Alstyne, *The Judicial Trend, supra* note 81, at 296, 305.

93. *See* Chimel v. California, 395 U.S. 752, 768 (1969); Sibron v. New York, 392 U.S. 40, 62-65 (1968).

The scope of regular inspections to check for compliance with health and safety regulations is generally limited to examination of conditions visible to any visitor to the room. If the intrusion is in fact so limited, college officials would probably be authorized to inspect rooms without a showing of reasonable cause. Health and safety inspections have generally been treated with leniency by the courts. A distinction has been made between the term "inspection," which is not aimed at uncovering evidence for purposes of subsequent imposition of penalties, and the term "search," which implies an expectation of uncovering evidence of wrongdoing. *See* United States v. Alfred M. Lewis, Inc., 431 F.2d 303 (9th Cir.), *cert. denied*, 400 U.S. 878 (1970); United States v. Thriftimart, Inc., 429 F.2d 1006 (9th Cir.), *cert. denied*, 400 U.S. 926 (1970); F. GRAD, PUBLIC HEALTH LAW MANUAL 76 (1965).

94. *See* Wyman v. James, 400 U.S. 309, 326 (1971); Parrish v. Civil Serv. Comm'n, 66 Cal. 2d 260, 425 P.2d 223, 57 Cal. Rptr. 623 (1967); Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963). A search such as the one conducted in Smyth v. Lubbers, 398 F. Supp. 777 (W.D. Mich. 1975) would probably be deemed unreasonable since it occurred at 12:45 a.m. and without notice. *Id.* at 782. Additionally, the student should be present during the search if possible. *See* Van Alstyne, *The Judicial Trend, supra* note 81, at 305.

95. There has been concern among judges and commentators that if college officials are permitted to search without a warrant the evidence they find may well be used in subsequent criminal proceedings. *See* Smyth v. Lubbers, 398 F. Supp. 777, 787 (W.D. Mich. 1975); K. ALEXANDER & E. SOLOMAN, COLLEGE AND UNIVERSITY LAW 429-30 (1972). *See also* Merriken v. Cressman, 364 F. Supp. 913, 916 (E.D. Pa. 1973).

There is, of course, the possibility that a reasonable entry by campus administrators into a student's room, not directed at obtaining evidence of a crime, might result in the

versity-conducted dormitory searches for intra-university disciplinary purposes, however, is less certain. Neither the waiver theory nor that of a university's inherent right to promulgate reasonable regulations is sufficient, standing alone, to support an abrogation of a student's fourth amendment rights in his dormitory room. Nor can a warrantless invasion of a student's residence be exempted from the category of searches contemplated by the fourth amendment. The alternative rationale advanced in support of the holding in *Wyman v. James*,[96] however, opens the door to a finding of reasonableness where a warrantless non-criminal search is limited in its impact and is necessary to the achievement of an important government purpose. University-conducted dormitory searches for internal disciplinary purposes may be supportable under this rubric if no practical alternative is available and if the search procedures are so closely circumscribed as to preclude arbitrary official conduct.

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discovery of such evidence. Under these circumstances, the evidence may either be admissible in a criminal proceeding under the so-called "plain view" doctrine, or used by police to establish probable cause in order to obtain a warrant for a subsequent search. *See* Coolidge v. New Hampshire, 403 U.S. 443, 465-73 (1971); Wyman v. James, 400 U.S. 309, 323 (1971).

96. 400 U.S. 309 (1971).