NOTE

Search and the Single Dormitory Room

For over 1.8 million young Americans, "home" is a dormitory room.1 Although lacking the opulence usually associated with the American Dream, the dormitory room offers its scholarly tenant one of the family home's most precious comforts: privacy. This Note2 suggests that dormitory privacy should not be illusory. It argues that when a college3 breaches the standards of the fourth amendment in searching a student's room, the exclusionary rule4

2. In addition to traditional research sources, this Note relies on correspondence with a number of colleges and universities. Inquiries were originally sent to the largest state university in each state, requesting information on disciplinary procedures and search regulations. Twenty-seven universities answered these inquiries. A number gave additional help; the Housing Office at the University of Michigan supplied a great deal of information, and officials at the University of Alabama, the University of Arkansas, the University of Florida, the University of Georgia, the University of Illinois at Urbana-Champaign, Indiana University, and the University of Minnesota provided detailed information in follow-up correspondence.
3. The word "college," as used in this Note, means a state-run institution of higher education. The term is used interchangeably with "university." Cases involving high-school students will occasionally be used for analogy, but courts generally give less fourth amendment protection to high-school students. See, e.g., M. v. Board of Educ., 529 F. Supp. 288 (S.D. Ill. 1977), where a court held that high-school administrators need have only "reasonable cause to believe" that a law or regulation is being violated to justify the "limited intrusion" of asking a student to empty his pockets. 429 F. Supp. at 292. Nevertheless, in Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976), the court required high-school administrators to have probable cause when searching in cooperation with the police. See generally Comment, The Fourth Amendment and High School Students, 6 WILAMETTE L.J. 567 (1970).
4. The exclusionary rule finds its roots in the fourth amendment:
   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.
   The fourth amendment exclusionary rule was announced in Weeks v. United States, 232 U.S. 383 (1914). In that case, a defendant had been convicted of using the mails for transporting lottery tickets. Evidence obtained in a search that violated the fourth amendment's warrant requirements had been admitted at trial. 232 U.S. at 396. The Court ruled that the fourth amendment required the exclusion of such evidence, though this holding was limited to actions in federal courts and to evidence seized by federal officials. 232 U.S. at 391-92, 398.
   The general application of the fourth amendment to the states was considered in Wolf v. Colorado, 338 U.S. 25 (1949). According to the Court, the "security of one's privacy
should proscribe reliance on the fruits of that search to punish the student.

The argument progresses in two steps. Section I observes that the guarantees of the fourth amendment apply to searches of college students' rooms by college officials just as they apply to searches of any private dwelling by government officials. It against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society. It is therefore implicit in "the concept of ordered liberty" and as such enforceable against the States through the Due Process Clause." 338 U.S. at 27-28. Thus, the amendment applies to the states through the due process clause of the fourteenth amendment. The Wolf Court, however, refused to apply the exclusionary rule to the states. 338 U.S. at 33. That refusal was overruled in Mapp v. Ohio, 367 U.S. 643 (1961), in which the Court held the exclusionary rule to be one of the substantive rights of due process guaranteed to all persons by the fourteenth amendment. The Court held that the rule was of "constitutional origin," 367 U.S. at 649, and that it was "an essential part of the right to privacy." 367 U.S. at 656.


Although it may seem unfair that the privacy interests of students at state schools receive constitutional protection and those of students at private universities do not, the injustice stems from the limits of the Constitution's powers, see Civil Rights Cases, 109 U.S. 3 (1883), and not from any explicit preference for state-college students. Students of private schools need not be totally defenseless, however; Congress could prevent private violations of civil rights through its commerce power. Katzenbach v. McClung, 279 U.S. 294 (1964); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).
traces the happy demise of Moore v. Student Affairs Committee, which allowed students only limited fourth amendment rights, and the elevation of students' privacy rights to substantial equality with those of other adult citizens. Section II then contends that those rights require application of the exclusionary rule to bar illegally seized evidence from all college disciplinary proceedings that might punish the student severely. Two conflicting district court decisions, Morale v. Grigel and Smyth v. Lubbers, are compared by the light of three recent Supreme Court decisions construing the scope of the exclusionary rule. The Note concludes with a few simple recommendations for adapting the Constitution's strictures to universities' administrative regulations. Such regulations would let all members of the university family, even those without legal training, know the limits and the significance of dormitory privacy.

I. Students Enjoy Full Fourth Amendment Rights

The law of student fourth amendment rights has been slow to develop. Because most students apparently prefer informal settlement to formal vindication of their rights, few disciplinary problems ever reach an official hearing. Moreover, although most universities allow students to engage counsel for formal hearings, very few students do so. As a result, courts have only recently been asked to scrutinize the broad powers of search and

10. A sample of state universities reported the following percentages of cases settled prior to a formal hearing:

<table>
<thead>
<tr>
<th>University</th>
<th>Cases Settled Before Formal Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Alabama</td>
<td>95%</td>
</tr>
<tr>
<td>University of Florida</td>
<td>95%</td>
</tr>
<tr>
<td>University of Illinois at Urbana-Champaign</td>
<td>95%</td>
</tr>
<tr>
<td>Indiana University</td>
<td>95%</td>
</tr>
<tr>
<td>University of Minnesota</td>
<td>95%</td>
</tr>
</tbody>
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(See letters on file with the Michigan Law Review.)

11. Universities reported the following frequencies of legal representation for students they discipline:
seizure that colleges have traditionally exercised over dormitory residents.

A. Student Rights at Low Ebb — The Moore Doctrine

The first important case on searches of college students' rooms, Moore v. Student Affairs Committee,12 was not decided until 1968. Two state narcotics agents and the Dean of Men at Troy State University in Alabama searched six dormitory rooms without a warrant,13 following a tip from "unnamed but reliable" informers. The local police chief suggested the search, but the dean approved it and it was performed in accord with university regulations.14 The investigators found marijuana in Moore's

<table>
<thead>
<tr>
<th>University</th>
<th>Student Represented by Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Alabama</td>
<td>0%</td>
</tr>
<tr>
<td>University of Arkansas</td>
<td>5%</td>
</tr>
<tr>
<td>University of Florida</td>
<td>0%</td>
</tr>
<tr>
<td>University of Georgia</td>
<td>&quot;only where serious criminal charges were pending&quot;</td>
</tr>
<tr>
<td>University of Illinois at Urbana-Champaign</td>
<td>&quot;few&quot;</td>
</tr>
<tr>
<td>Indiana University</td>
<td>&quot;less than&quot; 1%</td>
</tr>
</tbody>
</table>

(See letters on file with the Michigan Law Review.)


13. One of the more disturbing aspects of Moore is its failure to examine why a warrant was not issued. Although the opinion is not clear, the plaintiff's counsel may never have raised the issue. It is also possible that officials had little time to obtain a warrant; there was some haste in conducting the search because the students were to leave that afternoon for a term break, 284 F. Supp. at 728. But see Comment, The Dormitory Student's Fourth Amendment Right to Privacy: Fact or Fiction, 9 SANTA CLARA LAW. 143, 150 n.53 (1969). Even where there is probable cause, search without a warrant is per se unreasonable absent exigent circumstances, Katz v. United States, 389 U.S. 347, 357 (1967). The Supreme Court has been very reluctant to exempt any broad classes of searches from the warrant requirement, 389 U.S. at 357, and there appears to be no convincing reason to create an exception for campus searches. The university's interests in making the search are no more compelling than those of any traditional law-enforcement agency, and the Court has not been receptive to claims that obtaining a warrant is overly burdensome for agencies unconnected with law enforcement. See Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), where the Court rejected the Secretary of Labor's contention that obtaining a warrant for inspections under the Occupational Health and Safety Act would be too burdensome.

14. 284 F. Supp. at 728. The regulation was printed in the college and university bulletins, in the student handbook, and in a leaflet of residence hall policies that was made available to all students. It read:

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.
room, and after a hearing where Moore objected to the contraban­
dand's use as evidence, he was suspended indefinitely. Moore
then sued for readmission, claiming that the university's search
regulation was facially unreasonable and that its application had
violated his fourth amendment rights.\footnote{15}

The opinion, written by Judge Frank Johnson,\footnote{16} first dis­
cussed whether the university's regulation was unconstitutional
on its face. It held that university regulations on disciplinary
searches were to be presumed reasonable if they were "necessary"
to promote discipline and maintain an "educational atmosphere"
at the institution.\footnote{17} According to the court, these basic university
responsibilities rendered a regulation facially valid even if it ex­
plicitly gave students less protection from the intrusions of col­
lege officials than the fourth amendment gives a criminal suspect
from the intrusions of the police.\footnote{18} That conclusion is peculiar, for
in \textit{Mapp v. Ohio},\footnote{19} the Supreme Court had found the individual
citizen's privacy interests weightier in the fourth amendment bal­
ance than society's law enforcement interests. Disturbingly, the
\textit{Moore} opinion failed to consider these two competing interests
specifically.

To better fill the societal interest side of the balance, the
court might have argued that the university — unlike municipal
law enforcers — has two distinct interests: an interest in a disci­
plined "educational atmosphere" and an interest in law enforce­
ment on its campus. These interests might be considered cumula­
tively, their combined significance outweighing the law enforce­
ment interests presented by society in \textit{Mapp}. Whatever the valid­
ity of such a "cumulation-of-interests" argument,\footnote{20} the \textit{Moore}
court did not rely on it. Instead, the court found that the extraor­
dinary power to search without probable cause reposed comforta­
ably in the university's duty to maintain a disciplined

\footnotesize{\begin{itemize}
\item[15.] 284 F. Supp. at 730.
\item[16.] \textit{See generally} R. Kennedy, Jr., \textit{Judge Frank M. Johnson, Jr.: A Biography}
(1978).
\item[17.] 284 F. Supp. at 729.
\item[18.] 284 F. Supp. at 728-30. "The student is subject only to reasonable rules and
regulations, but his rights must yield to the extent that they would interfere with the
institution's fundamental duty to operate the school as an educational institution."284
F. Supp. at 730 (emphasis original).
\item[20.] The "cumulation-of-interests" argument seems to lack force in view of some
universities' renunciation of any attempts to promote an amorphous "educational atmos­
phere." \textit{See note 69 infra; An End to Expulsions?}, \textit{Newsweek}, March 28, 1977, at 72.
\end{itemize}}
"educational atmosphere." Yet that conclusion does not square with the balance struck in Mapp. Is it more necessary for a university to regulate hotplates, water balloons, and noisy stereos, than it is for society to protect itself from criminal activity? Indeed, is it more necessary for a university to protect itself from criminal activity than it is for society in general? Even if the court's conclusion were tenable, it would not be relevant unless the Troy State regulation was, on its face, necessary to promote an "educational atmosphere." The opinion, however, gives no analysis to support that dubious factual determination.

Even more troubling was the Moore court's neglect of the other pan in the fourth amendment balance: the court did not study the regulation's infringement upon students' privacy. The regulation did not limit searches to those based upon probable cause, or even to those based upon "reasonable cause" — a more lenient standard for dormitory room searches, which the court appeared to endorse later in the opinion. Instead, the regulation broadly sanctioned searches of student rooms whenever "the administration deem[ed] it necessary." It contemplated no "disinterested determination" of the necessity of the search. The Moore court summarily dismissed consideration of the student's privacy interest with the cavalier observation that a student was not "a tenant in any sense of the word."

After holding the regulation reasonable on its face, the court considered whether the regulation had been reasonably applied...
in searching Moore’s room. Emphasizing the special nature of the “student-college relationship,” the court held that the standard of justification necessary to search a dormitory room was lower than the “criminal standard” of probable cause. A university could search a dormitory room when there was “reasonable cause to believe” that the room was being used for an illegal purpose, or a purpose that otherwise seriously interfered with campus discipline. The court gave three reasons for this lower standard: (1) the university has a duty to maintain discipline, (2) the student has only a limited property interest, and (3) the student, upon admission to college, waives objection to searches motivated by “reasonable cause.”

To support its first reason — the university’s responsibility to maintain discipline — the court relied on cases dealing with searches of military quarters and of a high-school locker. Leaving aside the question of whether high-school students or military personnel should be entitled to full fourth amendment rights, the court’s analogies seem inappropriate. Military personnel must be strictly disciplined to follow orders that often contradict their inclinations. On the other hand, independence of thought is the lifeblood of a university; institutions of higher learning owe their greatness to an atmosphere that encourages a healthy skepticism of prevailing views. The high school’s duty to maintain discipline is also distinguishable. High schools stand in loco parentis to their students, adopting a more stringent supervisory role than would suit a college setting. In addition, because of the relative

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27. 284 F. Supp. at 730.
28. 284 F. Supp. at 730-31. One confusing aspect of Moore is that, in the early portion of the opinion, the court stated that these last two grounds should not be controlling, 284 F. Supp. at 729. Yet, later in the opinion, the court disregarded its own admonition and relied on both the limited nature of the student’s property interest and a waiver rationale in upholding the regulation, 284 F. Supp. at 731.
29. E.g., United States v. Grisby, 335 F.2d 652 (4th Cir. 1964).
immaturity of the students, high schools need far greater disciplinary powers to maintain order in the classroom, a task not easily solved by resort to criminal or juvenile laws. The proper disciplinary standard for the regimented environment of military barracks or high-school corridors hardly seems transferable to the "atmosphere of speculation, experiment, and creation" that colleges must foster. Indeed, some universities have seriously questioned whether it is appropriate for a college to assume any disciplinary or law-enforcement role at all.


Still, in Board of Curators v. Horowitz, 436 U.S. 78 (1978), the court used language which might indicate that the in loco parentis doctrine has not yet completely died: "The educational process is not by nature adversarial; instead it centers around a continuing relationship between faculty and students 'one in which the teacher must occupy many roles — educator, advisor, friend, and, at times, parent-substitute.'" 436 U.S. at 89 (quoting from dissenting opinion of Justice Powell in Goss v. Lopez, 419 U.S. 565, 594 (1975)).

In the years following the Moore decision, most colleges rescinded disciplinary regulations influenced by in loco parentis considerations:

To those who remember the days when cutting too many classes was cause for suspension and smuggling a girl into a male dormitory could mean expulsion, today's college discipline seems extraordinary lax. In just ten years, most of the rules that once governed student life in loco parentis have simply disappeared.


35. The University of Michigan, for example, does not impose any standards on its students in dormitories aside from those imposed by applicable landlord-tenant law. Sanctions are imposed either by damage assessments or, in severe cases, by evictions that are processed through the state courts. Interview with David Foulke, Director of Security, Housing Division, the University of Michigan, at Ann Arbor, Michigan (Sept. 24, 1977).

Cornell University, as a result of disruptive incidents that occurred on campus in 1966-1967, appointed a Commission on the Interdependence of University Regulations and Local, State and Federal Law. Addressing the issue of whether the University should involve itself in law enforcement, the Commission found that the University should take a more limited role, especially in those cases where the student was already being charged by law enforcement officials.

Adherence to the principle of responsible student freedom and maturity requires . . . that the University explicitly disentangle itself from acting as a substitute mechanism for the law when students are charged with law violation by public officials.

In the past, an informal working relationship between Ithaca and Cornell has permitted public officials to return students apprehended for less serious law violations to the University's jurisdiction, on the expectation that the University will impose through its disciplinary procedures a substitute punishment for court-imposed penalties . . . .

. . . The practice represents, in our judgment, an undesirable application of
As a second justification for the reasonable cause standard, the Moore court asserted that students' special property interest in their dormitory rooms embraces a lesser privacy interest than that of an ordinary lodger or tenant. The court's real-property analysis, however, is difficult to reconcile with Katz v. United States, where the Supreme Court abandoned the "protected areas" analysis of fourth amendment protection:

[T]he effort to decide whether or not a given "area," viewed in the abstract, is "constitutionally protected" deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.

Katz held that the technical classification of one's property interest does not determine the scope of one's privacy interest. While the college may issue rental contracts specifying that students do not possess the legal equivalent of a tenancy, that specification does not alter a student's intention to preserve privacy in the room. It is an unusual student who would give the general public unlimited visitation rights. Furthermore, to whatever extent the protected-area analysis may have continuing vitality, students' rooms are their only home area — where they sleep and store their most personal effects — and the home area is the core value that
the fourth amendment seeks to protect.40 The privacy of a student’s home area deserves undiluted protection.

The final ground on which the Moore court based the reasonable cause standard was a suggestion that students waive objection to such searches by living in the dormitory.41 The reference to “waiver” was unfortunate, in light of the Supreme Court’s holding five years later in Schneckloth v. Bustamonte42 that waiver analysis is inappropriate in fourth amendment cases.43 The Schneckloth Court held that one may relinquish fourth amendment rights by voluntary consent,44 even if one does not know of the right to refuse consent and thus does not make a knowing and intelligent waiver.45 But whether the Moore court meant to find waiver or only consent, its conclusion is cryptic: the

40. Note, A Reconsideration of the Katz Expectation of Privacy Test, 76 Mich. L. Rev. 154, 175-77 (1977) (“The home is an obvious starting point in the search for the minimum content of the fourth amendment, for the wording of the amendment makes clear the great emphasis it places upon the right of the people to be secure in their houses”).

See also Athens v. Wolf, 38 Ohio St. 2d 237, 313 N.E.2d 405 (1974), where the court elaborated upon the student’s reasonable expectation of privacy:

Although few people who have ever resided in a college dormitory would favorably compare those living quarters to the comfort of a private home, a dormitory room is “home” to large numbers of students who attend universities in this state. Because of the very nature of dormitory life, privacy is a commodity hard to come by, however much desired. . . . . . . Appellant is entitled to more than a modicum of privacy in his dormitory room. As regards intrusions by law enforcement officials, we hold that appellant is entitled to Fourth Amendment protection.

38 Ohio St. 2d at 240, 313 N.E.2d at 407-08.


42. 412 U.S. 218 (1973).

43. 412 U.S. at 241, 247. “Nothing, either in the purposes behind requiring a ‘knowing’ and ‘intelligent’ waiver of trial rights, or in the practical application of such a requirement suggests that it ought to be extended to the constitutional guarantee against unreasonable searches and seizures.” 412 U.S. at 241.

44. 412 U.S. at 248-49.

45. 412 U.S. at 248-49. The Court restricted the knowing and intelligent waiver standard to cases involving relinquishment of constitutional rights necessary to preserve a fair trial, 412 U.S. at 237. Despite the fact that the Moore court appeared to rely on waiver analysis, it is probably just as well that Schneckloth mooted that analysis. The facts in Moore did not amount to a knowing and intelligent waiver anyway. Moore had signed no contract with a waiver included. Although the search regulation was printed in publications available to the student, 284 F. Supp. at 728, there was no evidence that the student had in fact read the regulation. Furthermore, the regulation did not explain that entry was permitted under a standard of cause less rigorous than that ordinarily applicable under the fourth amendment.
record included a stipulation that there was no consent. While the Schneckloth Court envisioned consent without waiver, one can hardly believe that it envisioned waiver without consent. And even if the facts of Moore did amount to a voluntary consent, that consent would fail as an unconstitutional condition, for the state cannot condition the granting of a privilege — residence in a dormitory — on the forfeiture of a constitutional right.46

B. The Demise of the Moore Doctrine

Although heavily criticized over the years, Moore persisted as the principal decision on the legitimacy of dormitory searches and seizures until two recent district court cases invalidated

46. 284 F. Supp. at 728.
47. Nothing in the opinion suggests any manifestation of voluntary consent by Moore. 284 F. Supp. at 728.
48. See Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), where the court held that the student did not waive procedural due process rights by attending a university with regulations denying such rights. The court noted that “it nonetheless remains true that the State cannot condition the granting of even a privilege upon renunciation of the constitutional right to procedural due process” 284 F.2d at 156. In Commonwealth v. McCloskey, 217 Pa. Super. Ct. 432, 272 A.2d 271 (1970), the court found that a clause in the dormitory lease authorizing the university to check for damages, wear, and unauthorized appliances did not diminish the student’s reasonable expectation of privacy, or operate as a consent to a police search. This aspect of the case is discussed in Note, supra note 40, at 159.
49. See Collier v. Miller, 414 F. Supp. 1357, 1366 (S.D. Tex. 1976), where the court ruled that the University of Houston could not condition admission to its stadium or pavilion on submission to a search. The Collier court relied principally on United States v. Chicago, M., St. P., & P. R.R. 282 U.S. 311, 328-29 (1931).
50. A few years after the Moore court held that a simple showing of reasonable cause was sufficient to justify searching student rooms, that holding was limited to situations where university officials participated in the search and the evidence was to be used only in internal college proceedings. Piazzola v. Watkins, 316 F. Supp. 624 (M.D. Ala. 1970), affd., 442 F.2d 284 (5th Cir. 1971). The case, decided by the same court that decided Moore, involved the same search of student rooms at Troy State University. Another of the students whose room was searched had been convicted of possession of marijuana and was suing in federal court for habeas corpus relief. The court, however, took a different view of the facts. In Moore, the court had concluded that the informers, though unnamed, were reliable, and that there was probable cause for the search. 284 F. Supp. at 729, n.11. In Piazzola, the court ruled that there was not probable cause. Moreover, the Moore opinion emphasized the role of the university officials in the search, while the Piazzola opinion spoke of the university officials as if they were observers. Piazzola made clear that the Moore doctrine did not apply where the search was conducted by police officers, or where the evidence was to be used in a criminal proceeding. The court also ruled that the university’s right to search could not be delegated to the police.
similar searches of student dormitory rooms. The two cases, *Smyth v. Lubbers*, and *Morale v. Grigel*, recognized student fourth amendment rights substantially equivalent to those of other adult citizens.

In *Smyth*, housing officials at Grand Valley State College and local deputy sheriffs conducted a warrantless search of the plaintiffs' dormitory rooms. They acted pursuant to a regulation, probably influenced by *Moore*, that sanctioned such searches whenever college officials had "reasonable cause to believe" that federal law, state law, or college regulations were being violated. The search uncovered a small quantity of marijuana, and consequently the college suspended two of the students, one for two years, and one for a term. The court ordered the college to cancel the suspensions, holding the college's regulation invalid on its face because it permitted searches without warrants and without probable cause. The court rejected any waiver theory, whether based on the residence hall contract or on the plaintiffs' acceptance of the regulations as a condition for admission. In effect, it held that students in dormitories are entitled to the same fourth amendment protection that ordinary citizens enjoy in their homes.

In determining that the fourth amendment standard of reasonableness required the university to have probable cause to search, the court used the balancing analysis that the *Moore* court had shunned, weighing the college's need to search against the violation of the student's privacy. It noted that, "for all practical purposes," dormitory rooms are students' homes, and therefore that students have the same expectation of privacy there as other citizens have in their homes. Furthermore, the

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54. 398 F. Supp. at 781.
55. The contract that the plaintiffs had signed contained a clause whereby they agreed to abide by college regulations. 398 F. Supp. at 782.
56. 398 F. Supp. at 788.
57. 398 F. Supp. at 789.
58. 398 F. Supp. at 785.
59. In determining the extent of the student's privacy interest, the court inquired as to what was the student's "reasonable expectation of freedom from governmental intrusion," relying on the reasonable expectation test posed by Justice Harlan in his concurring opinion in *Katz v. United States*, 389 U.S. 347, 361 (1967).
court observed, protection of the home is the primary objective of the fourth amendment. The court held that the college’s interest in order and discipline could not justify so extraordinary an enforcement tool as searches with less than probable cause. Since a college’s interests in order and security are no greater than the government’s interest in a peaceful community, the college must abide by the same fourth amendment standards.

In holding the warrant requirement applicable, the court dismissed arguments by the college that such a requirement was inconvenient and would force them to turn their evidence over to the police. In the court’s view, the college could readily obtain a search warrant under the applicable state statute without involving the police. The court also hinted that an internal search warrant — one issued by a college judicial body — might be sufficient, though it expressed some doubt as to whether a college disciplinary body was competent to decide “fundamental and sensitive” fourth amendment questions.

Morale v. Grigel, decided shortly after Smyth, also spurned the Moore doctrine. Officials of the New Hampshire Technical Institute, which had no regulation governing searches, searched the plaintiff’s room four times in a two-day period for a stolen stereo and some stolen marijuana. The warrantless search uncovered a pipe and some marijuana seeds, and after disciplinary proceedings, Morale was suspended.

Like the Smyth court, the Morale court balanced the need to search against the invasion of privacy that the search entailed. Citing Smyth, it concluded that a student is entitled to the same privacy in his room that any citizen has in his home. The court also ruled that the Institute did not have any greater powers of search than ordinary law enforcement officers unless it could demonstrate that such powers were vital to some educational interest. The court could discern no such interest:

Defendants have not convinced this court that [the college] has a clearly distinguishable and separate educational interest, nor one

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60. 398 F. Supp. at 786.
64. 398 F. Supp. at 792 n.8.
66. The court’s lengthy findings of fact are set out at 422 F. Supp. at 991-96.
67. 422 F. Supp. at 997.
68. See authorities cited in note 40 supra.
that is not already served by the penal statutes of this state. The presence or absence of stealing on campus does not disrupt or disturb the operation of its academic functions. The only interest to which the Institute could point to justify the search was to shelter its students from the criminal law enforcement authorities. Commendable or not, this is not an interest which justifies an infringement upon constitutional liberties. 69

But unlike the Smyth court, the Morale court did not hold that a dormitory search must be preceded by a showing of probable cause to be reasonable. Morale held that a search was also reasonable if it furthered a legitimate interest of the educational institution "separate and distinct from that served by New Hampshire's criminal law."70 The court suggested that administrative checks of rooms for health and safety hazards or entry during emergencies, such as fire, might satisfy this nebulous legitimate interest test. 71

Smyth and Morale illustrate a trend toward an expansion of students' fourth amendment protection from searches by state universities. While continuing to recognize colleges' inherent right to discipline students, 72 these decisions indicate that college

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69. 422 F. Supp. at 998. Hence, the Morale court, like the Smyth court, did not consider a college's disciplinary and law-enforcement interests cumulatively, a possibility suggested in text at note 20 supra. The failure of these courts to consider the strength of the college's interest in discipline or "an educational atmosphere" may be because colleges no longer enforce disciplinary regulations designed to create such an atmosphere. See, e.g., An End to Expulsions?, supra note 20, at 72.

70. 422 F. Supp. at 998.

71. 422 F. Supp. at 998. However, if the Morale court intended to say that administrative searches such as these were reasonable without a warrant, then it must have overlooked Camara v. Municipal Court, 387 U.S. 523 (1967), where the Supreme Court held that municipal health code inspections were subject to the fourth amendment's warrant requirement.

Morale's reasoning on this point seems to suffer the same problem as Moore. See text at note 20 supra. For instance, a dormitory-room entry to investigate alleged plagiarism or to remove a stereo that was disturbing other students' studies could arguably be justified as supporting a legitimate interest of the educational institution. Yet, it is in such purely disciplinary or "educational" situations that the university's interest is the weakest, and thus the grant of an extraordinary power to search least appropriate. To the extent a university has an interest in its disciplinary regulations that is separate from society's interest in law enforcement, that interest, standing alone, must be considered to be weaker than the law-enforcement interest.

72. In Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969), the court said,

No one disputes the power of the University to protect itself by means of disciplinary action against disruptive students. Power to punish and the rules defining the exercise of that power are not, however, identical . . . . Government officers, including school administrators, must act in accord with rules in meting out discipline.

418 F.2d at 167. Accord, Healy v. James, 408 U.S. 169, 192 (1972); Esteban v. Central Mo.
officials, in carrying out that responsibility, may no longer resort to extraordinary measures not available to traditional lawenforcement officers. But this increased recognition of students' rights of privacy has not yet been completely reflected in colleges' regulations governing searches by their officials. Several state universities have no regulations governing searches or permit searches of dormitory rooms with a showing of something less than probable cause. Unfortunately, the situation may persist long after Moore's interment simply because students rarely use counsel to present their grievances. While students probably do not need counsel at most school disciplinary proceedings, a mechanism should exist to vindicate student rights in those situations where overzealous college officials unreasonably invade the privacy of a student's dormitory room. The usual device for protecting such fourth amendment interests has been the exclusionary rule.

II. Students' Fourth Amendment Rights Merit the Protection of the Exclusionary Rule

It is one thing to say that a search of a college student's room is illegal; it is another to argue that evidence seized in such a


In Healy v. James, 408 U.S. 169 (1972), the Supreme Court reaffirmed the right of the states and the universities to discipline students. The Court held, though, that this disciplinary authority did not keep the first amendment from applying with anything less than its full force. 408 U.S. at 192-93. The Court ruled that a state university had denied recognition as a university organization to a local chapter of the S.D.S. on grounds inconsistent with the first amendment.

Letters of inquiry concerning campus search and seizure regulations were sent to the largest state university in each state. Of the 27 institutions that responded:

3 had no regulation governing searches;
3 allowed searches at the discretion of university officials;
1 required suspicion of violation of a regulation;
1 required that there be "reason to believe" there was a violation of law or regulation;
1 required that there be a clear and present danger of crime — or simply that a regulation was being violated;
1 required a clear indication of a violation of a law or regulation;
5 required authorization of search by a particular university official, and a showing of cause to that official. Of these 5, 2 required reasonable cause, and 3 required probable cause;
9 required probable cause, and that a warrant be obtained, except in exigent circumstances;
3 did not allow any searches by university officials.

(See letters on file with the Michigan Law Review.)

74. See note 10 supra.
search should not be considered in a college disciplinary proceeding. Several lower court decisions suggest that the exclusionary rule does not apply to college disciplinary proceedings. Moore, for example, implied that the rule was not applicable, although its holding that the search was valid made any detailed inquiry into the problem unnecessary. Ekelund v. Secretary of Commerce, a case that involved a search at the Merchant Marine Academy, and Morale v. Grigel also said that the exclusionary rule should not apply to disciplinary hearings. Only Smyth v. Lubbers has held that illegally seized evidence must be excluded from college disciplinary hearings.

Yet careful analysis of the privacy interests violated by warrantless dormitory searches and of the exclusionary rule's objectives reveals that Smyth was correct: the rule should apply. This Section reviews three independently convincing reasons to allow the exclusionary rule's protections to embrace the victim of a dormitory search. First, the reasons for which the Supreme Court has recently chosen not to apply the rule in other settings do not fit the college context. Second, the civil-criminal distinction pronounced in Ekelund and Morale is an overly simplistic rule, only superficially supported by precedent. Finally, even if the civil-
criminal distinction were useful, Supreme Court decisions reveal that college disciplinary proceedings impose sufficient quasicriminal deprivations to warrant application of the exclusionary rule.

A. The Limits of the Burger Court's Limitations on the Exclusionary Rule

The Supreme Court under Chief Justice Burger has sought to limit the applicability of the exclusionary rule. In three decisions, United States v. Calandra, United States v. Janis, and Stone v. Powell, the Burger Court refused to apply the rule in noncriminal settings. Examination of these three decisions, however, indicates that their reasons for not applying the exclusionary rule are not appropriate to cases such as Morale and Smyth.

Historically, the Supreme Court has justified the use of the exclusionary rule on two grounds: (1) the preservation of judicial integrity — protecting the courts from becoming partners in

80. But see Israel, Criminal Procedure, the Burger Court, and the Legacy of the Warren Court, 75 Mich. L. Rev. 1320, 1402 (1977), challenging the widely held belief that the Burger Court has narrowed criminals' rights under the Constitution.
81. 414 U.S. 338 (1974). Federal agents searched Calandra's place of business pursuant to a warrant. They discovered a card that may have been a loansharking record and also seized the company records. Later, a grand jury was convened to investigate violations of federal loansharking laws. Pursuant to Fed. R. Crim. P. 41(e), Calandra moved for suppression and return of the evidence, claiming defects in the affidavits supporting the warrant. The district court entered an order for suppression and return of the evidence, and further held that Calandra did not need to answer grand jury questions, on the ground that they were based on evidence obtained from an unlawful search and seizure.
82. 428 U.S. 433 (1976). Cash and wagering records were seized by Los Angeles police officers executing a warrant obtained from a state court. The warrant was then quashed, but the IRS later used the evidence in a tax assessment proceeding against Janis. The taxpayer sued for a refund and won when the evidence was suppressed. The Supreme Court reversed, holding that the fourth amendment exclusionary rule did not apply to evidence seized by state law enforcement officials when it was used in a civil proceeding brought for or against the federal government.
83. 428 U.S. 465 (1976). Two prisoners had been convicted of murder in state courts, partly on the basis of evidence obtained in searches under a vagrancy statute that they alleged to be unconstitutional. Their convictions were affirmed on direct appeal. Later they petitioned the federal courts for habeas corpus, raising their fourth amendment claims for the first time. The Supreme Court held that where the state had afforded the prisoner a full and fair opportunity for litigating his fourth amendment claim in a state court, the federal court should not consider the claim in ruling on the petition for habeas corpus.
84. "The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts, which are charged at all times with the support of the Constitution . . . ."
illegal government conduct — and (2) the deterrence of illegal searches and seizures. 85 Both seem to be sound expressions of, or perhaps surrogates for, the privacy interest that is protected at the cost of excluding relevant evidence. The Burger Court, however, has insisted that deterrence is the overriding justification for the rule. 86

To explain its recent constriction of the exclusionary rule's scope, the Court applied the familiar balancing test. In Calandra, which held that the fourth amendment exclusionary rule would not be extended to grand jury hearings, the Court found the cost of applying the rule to be high and the deterrent effect low. 87 The costs of a grand jury exclusionary rule included the usual risks of obscuring the truth and freeing the guilty as well as an additional risk of unduly restricting the grand jury's investigative efforts. 88 The Court found these costs to outweigh the marginal deterrence benefits, concluding that such a rule would deter only police conduct directed solely at obtaining an indictment from the grand jury. 89 Assuming that police are primarily concerned with convictions and not indictments, any incentive that officers may have to violate fourth amendment rights had already been substantially negated by the exclusion of illegally obtained evidence from trial. 90 The deterrent effect of keeping evidence from the grand jury was therefore negligible. 91

The Court again used a balancing test in United States v. Janis, 92 but its inquiry was curiously concentrated on the deterrence side of the cost-benefit balance. 93 It virtually ignored the low cost of applying the rule. 94 Since Janis asked only that evidence be excluded from a civil tax proceeding to assess a wagering excise tax, the exclusion only would have lowered tax revenues; it would not have freed a guilty party. 95 Nevertheless, the Court

87. 414 U.S. at 351-52. See note 81 supra.
88. 414 U.S. at 342-46.
89. 414 U.S. at 351.
90. 414 U.S. at 351.
91. 414 U.S. at 351-52.
93. 428 U.S. at 448-49.
94. 428 U.S. at 437-38. See note 82 supra.
95. The tax proceeding could not have established Janis's guilt anyway. Only his prosecution for local gambling law violations could have done so, and the seized evidence
decided that no matter how insignificant the social cost of applying the rule, it should not be applied where there is no appreciable deterrent benefit. The Court found that excluding the evidence in Janis would not appreciably deter illegal searches by state police officers, because the tax proceedings were outside their “zone of primary interest” — bringing criminal offenders to justice.

In Stone v. Powell, the Supreme Court considered the wisdom of applying the exclusionary rule to habeas corpus review of a state-court criminal proceeding. It first enumerated the costs of applying the exclusionary rule: obstructing the truth-finding process and occasionally freeing someone guilty of a serious crime because of a minor error by a police officer. On the deterrence side of the balance, the Court found that state law-enforcement officials are generally unconcerned with the outcome of federal habeas corpus proceedings, which often occur years after the state trial. It decided that since such proceedings are outside their zone of primary interest, the deterrent effect of the exclusionary rule would be insignificant.

In each of these three Supreme Court decisions, the balance of interests tipped against the exclusionary rule. But the balancing process does not inevitably work against the exclusionary rule; all three decisions acknowledged that the balance favors the rule in a criminal trial. Moreover, the Court has stopped short

had already been properly excluded from the criminal proceeding. 428 U.S. at 438.

96. 428 U.S. 458. The court believed that the “intersovereign” nature of the search militated against any deterrent effect. In making this point, the Court assumed that the state officers did not customarily help federal officers enforce wagering laws, and since they had no responsibility to the federal officials, the state officers could not possibly be deterred by excluding the evidence from the federal tax proceeding. 428 U.S. at 456 n.31. The court conceded that this assumption was rebuttable if Janis could show federal participation in the investigative action or an agreement between state and federal officials to exchange evidence. Rebutting this assumption is obviously a difficult burden for the victim of the search, as the relevant information is in the hands and minds of the law-enforcement officials. Justice Stewart, in his dissent, severely attacked the assumption, finding a pattern of “mutual cooperation and coordination, with the federal wagering tax provisions buttressing state and federal criminal sanctions.” 421 U.S. at 461-62.


98. 428 U.S. at 490-91.

99. 428 U.S. at 493. The Court also pointed out that there was little need for consideration of the exclusionary-rule claims when, due to Mapp v. Ohio, prisoners already had a full opportunity to litigate those claims in state court when they were originally tried for their offenses. 428 U.S. at 492-95. The Court’s argument assumed that state courts would be as sympathetic and competent in considering fourth amendment claims as were federal courts. 492 U.S. at 493 n.35.

of denying that the rule would ever apply in noncriminal settings.\textsuperscript{101} It has been quite willing to balance the interests case by case, looking closely at the deterrent effect and the cost of that deterrence. Analysis of college disciplinary hearings must therefore evaluate them by the balancing test of \textit{Calandra}, \textit{Janis}, and \textit{Stone}. But of the three cases\textsuperscript{102} that have considered the issue since \textit{Calandra}, only \textit{Smyth v. Lubbers} actually jiggled the scales.\textsuperscript{103}

Finding that the exclusionary rule applied to college disciplinary proceedings, the \textit{Smyth} court carefully studied the rule's deterrent effect. In the college setting, the rule may well be the only effective deterrent, since students ordinarily do not have the means to bring a damage suit, and the good-faith defense makes recovery of damages under 42 U.S.C. § 1983 unlikely.\textsuperscript{104} Even the \textit{Morale} court acknowledged that not applying the rule would leave the aggrieved student almost without a remedy.\textsuperscript{105} Moreover, the rule is an effective check against overzealous local police officers, who often have a substantial interest in the disciplinary proceeding's outcome. College officials and local police often pursue a program of cooperative enforcement of laws and regulations.\textsuperscript{106} If evidence seized illegally by local police officers were not excluded from a college proceeding that has authority to expel the student,\textsuperscript{107} those officers could use such hearings to

\textsuperscript{101} Instead the court has applied the intrasovereign-intersovereign distinction in noncriminal cases. See text at note 96 supra.


\textsuperscript{103} 398 F. Supp. at 794.


\textsuperscript{105} 422 F. Supp. at 101.

\textsuperscript{106} Moore, \textit{Morale}, Smyth, and \textit{Ekelund} are all examples of this cooperative enforcement. \textit{See Note, Admissibility of Evidence Seized by Private University Officials in Violation of Fourth Amendment Standards}, 56 Cornell L. Rev. 507, 513-15 (1971), detailing the cooperation between police and college officials at Cornell University.

\textsuperscript{107} Of course, there will be instances when the exclusionary rule will not be an
accomplish law-enforcement objectives with evidence not admissible in local criminal hearings. 108 And the recurrent pattern of cooperation between college officials and local law enforcers documents the prevalence of this variation of the “silver platter” doctrine 109 whenever the rule is not applied.

The social costs of applying the exclusionary rule to college disciplinary hearings are inadequate to tip the balance. College tribunals often examine minor criminal violations, but they rarely investigate severe offenses. While the cost to society of allowing a student who has violated a school regulation to remain enrolled is not insignificant, it is dwarfed by the heavy price that the exclusionary rule is usually thought to exact: freeing those guilty of violent, despicable crimes.

Overall, application of the exclusionary rule to college disciplinary proceedings fares well under the Burger Court’s balancing test. 110 In many dormitory-search situations, the costs of the rule would be outweighed by the benefits, even if one restricts the judicially recognizable benefits to deterrence, as the Burger Court would. While the balance may not tip toward the exclusionary rule in every college disciplinary proceeding, Morale’s broad holding that the rule should never apply is unjustified.

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108. "[T]he college proceedings certainly performed all the functions of a criminal action." 398 F. Supp. at 787.

109. See Elkins v. United States, 364 U.S. 206 (1960). The exclusionary rule will also be an effective deterrent for the college employees involved in a search. When a criminal goes free because of the exclusionary rule, he often disappears into a large community, and has no further contact with the police officer who improperly seized the evidence. Colleges and universities, however, are more intimate communities, and those who improperly searched a student’s room, such as resident advisors and head residents, may even live on the same hall as the accused student. If the college is unable to discipline the student because the evidence was illegally seized, these employees will have to suffer the continued presence of the undisciplined student near their living quarters. In addition, since college disciplinary proceedings are well within the “zone of primary interest” of a college official, exclusion of illegally seized evidence, under the Janis rationale, would serve as an effective deterrent. See note 96 supra and accompanying text.

110. Some commentators have argued that the balancing test — and especially the confusing way in which it was applied in Janis — is a step on the road towards overruling the exclusionary rule. Note, Constitutional Criminal Procedure — Applicability of Exclusionary Rule to Intrasovereign Civil Suits, 51 Tul. L. Rev. 717 (1977); Note, 8 Tex. Tech. L. Rev. 689, 698 (1977). But see Israel, supra note 80, at 1408.
B. The Frailty of the Civil-Criminal Distinction

Language in the Morale and Ekelund opinions indicates that those courts read the Supreme Court’s decisions in Calandra, Janis, and Stone as establishing a civil-criminal distinction for applying the exclusionary rule; the two district courts deduced that the rule does not apply in civil cases. A close reading of Janis, however, discloses that the Court carefully avoided drawing a simple civil-criminal distinction, and for good reasons. The distinction draws no nourishment from the

111. 422 F. Supp. at 1000-01.
112. 418 F. Supp. at 106.
113. Two respected fourth amendment scholars have stated that the amendment’s protection has been inapplicable to civil proceedings since Murray v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272 (1855). J. Landynski, Search and Seizure and the Supreme Court 52 n.13. (1966); N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 89 (1937). Murray involved an action for ejectment. The main issue in the case was whether a particular “distress warrant” (a summary means of executing a levy on a debtor’s land) conformed to due process.

To read Murray as limiting the fourth amendment protection to criminals is to read it too narrowly. Although there is some language in the decision to the effect that the fourth amendment does not specifically affect civil debt proceedings, the Court decided only that the term “warrant” in the fourth amendment did not include a “distress warrant” and thus no oath or affirmation was required: “[T]his article [fourth amendment] has no reference to civil proceedings for the recovery of debts, of which a search warrant is not made a part.” 59 U.S. at 285-86. Lasson cites three other cases as establishing the civil-criminal distinction in fourth-amendment jurisprudence: Blackmer v. United States, 284 U.S. 421 (1932); American Tobacco v. Werckmeister, 207 U.S. 284 (1907); and Fong Yue Ting v. United States, 149 U.S. 698 (1893). These cases in fact gave little consideration to the issue, and their holdings did not establish such a broad principle.

Fong Yue Ting upheld the constitutionality of an act providing for the deportation of Chinese laborers. Dicta in the decision hinted that the fourth amendment would not be applied to such deportation proceedings, but that conclusion was based on the fact that the deported person was not deprived of any constitutional interest because of his alien status, rather than on the fact that deportation was not a criminal proceeding. 149 U.S. at 730.

In American Tobacco, the defendant objected to a writ of replevin on fourth amendment grounds. The court rejected the fourth amendment claim summarily, without any discussion of a distinction between civil and criminal proceedings.

In Blackmer, the Court held only that a levy on property to satisfy the owner’s liability was not a search or seizure within the constitutional prohibition. The court did not reach the question of a civil-criminal distinction.

114. 428 U.S. at 455-56 n.31. “Respondent remains free on remand to attempt to prove that there was federal participation in fact. If he succeeds in that proof, he raises the question, not presented by this case, whether the exclusionary rule is to be applied in a civil proceeding involving an intra-sovereign violation.”

115. This Note is by no means the first legal commentary attacking the civil-criminal distinction. See, e.g., LaFave, Administrative Searches and the Fourth Amendment: The Camara and See Cases, 1967 Sup. Ct. Rev. 1; Note, Rationalizing Administrative Searches, 77 MIns. L. Rev. 1291 (1973); Note, Administrative Search Warrants, 69 MIns. L. Rev. 307 (1974).
history of the fourth amendment which is rooted in the colonists' grievances against the King's writs of assistance. The King unleashed these writs upon the colonists primarily to enforce customs and revenue laws, not to facilitate criminal investigations. Thus, the amendment's purpose was to restrain all invasions of privacy incident to government investigations, whether civil or criminal. Notably, the fourth amendment, unlike the other Bill of Rights provisions from which defendants' rights arise, contains no reference to crimes at all; surely the Framers foresaw no civil-criminal distinction in its application.

Logic as well as history may explain the Court's hesitancy to establish a civil-criminal distinction in applying the exclusionary rule. Pursued to its extreme, such a distinction suggests that government should be deterred at great social cost from invading the privacy of rapists, murderers, and kidnappers, but not from invading the privacy of students with loud stereos, homeowners with dirty basements, or taxpayers suing for refunds. If anything, common sense would seem to dictate the opposite standard: few exclusions in criminal proceedings, many in civil contexts where fourth amendment rights can be protected at less cost to society.

C. The Quasi-Criminal Character of College Disciplinary Hearings

Even if fourth amendment jurisprudence could properly be

117. See J. LANDYNISKI, supra note 113; N. LABSON, supra note 113, at 51-78.
118. The fifth, sixth, and eighth amendments all appear on their face to deal with procedural protections for those accused (and, under the eighth amendment, convicted) of criminal offenses.
119. The civil-criminal distinction applies to the nature of the proceedings in which a fourth amendment issue is raised, and not to the function of the person making the search or seizure. Evidence illegally seized by private persons has always been admissible, as the fourth amendment applies only to federal and, through the fourteenth amendment, to state action. See Burdeau v. McDowell, 256 U.S. 465 (1921); Sackler v. Sackler, 16 N.Y.2d 40, 255 N.Y.S.2d 83, 203 N.E.2d 481 (1964).
120. Of course, supporters of the view might reply that we are interested not only in the invasion itself, but also in the consequences of that invasion. They might then say that the invasion of the murderer's privacy is more egregious because he — and not the noisy student — will be hanged because of the invasion. However plausible this analysis may be, the Supreme Court implicitly rejected it when it chose to look only to the exclusionary rule's deterrent value, and not to the possible loss of judicial dignity in acting on ill-gotten gains. See text at notes 84-86 supra. Privacy is privacy, no matter whose privacy is at stake.
interpreted to embrace a civil-criminal distinction, that distinction would be a fluid one, incapable of rigid, formalistic application. Courts have regularly applied the exclusionary rule to proceedings that, though civil in form, were criminal in substance. Extension of such analysis to college disciplinary proceedings, which may often impose severe, quasi-criminal sanctions, requires that they, too, apply the protective restraints of the exclusionary rule.

The Supreme Court’s most noteworthy recapitulation of the need to look beyond formal classifications was *One 1958 Plymouth Sedan v. Pennsylvania*, where the Court employed the exclusionary rule in an automobile forfeiture proceeding, due to the proceeding’s quasi-criminal character. The Court compared the potential criminal and civil penalties faced by the violator. Observing that the defendant would only suffer a maximum penalty of $500 for possessing or transporting untaxed liquor under the criminal law, the Court concluded that the civil penalty of forfeiture of his car, valued at $1000, was a more severe punishment. The Court then noted that, for purposes of applying the exclusionary rule, whether an ostensibly civil proceeding is quasi-criminal hinges upon two inquiries: (1) whether its object is to penalize the commission of an offense against the criminal law,

121. The Supreme Court once flirted with this view, see Frank v. Maryland, 359 U.S. 360 (1959), but has since retreated, see Camara v. Municipal Court, 387 U.S. 823 (1967); See v. City of Seattle 387 U.S. 541 (1967). However, the more lenient standard of probable cause for administrative searches enunciated in *Camara* and *See* suggests that the distinction still lingers, at least in a diluted form.

122. In the years before the Warren Court spoke to the issue, the rule was used in a variety of settings in lower federal courts: United States v. Five Thousand Six Hundred Eight Dollars & Thirty Cents, 326 F.2d 359 (7th Cir. 1964) (forfeiture proceedings); Rogers v. United States, 97 F.2d 691 (1st Cir. 1938) (proceeding to enjoin the collection of federal wagering taxes); Lassoff v. Gray, 207 F. Supp. 843 (W.D. Ky. 1962) (equitable action to revoke a state gambling license); Ex parte Jackson, 263 F. 110 (D. Mont. 1920), appeal dismissed, Andrews v. Jackson, 267 F. 1022 (9th Cir. 1920) (deportation hearing); United States v. Wong Quong Wong, 94 F. 832 (D. Vt. 1899) (action to recover customs duties on imported liquor); Carlisle v. State, 276 Ala. 436, 163 So. 2d 596 (1964) (wrongful death action); Lebel v. Swincicki, 354 Mich. 427, 93 N.W.2d 281 (1958) (negligent driving action). See Annot., 5 A.L.R.3d 670, 678-83 (1966).

123. 380 U.S. 693 (1965). In *Plymouth Sedan*, state liquor enforcement officers searched an automobile without probable cause or warrant and found 31 cases of liquor lacking Pennsylvania tax seals. The state filed an action for forfeiture of the automobile and offered the liquor as evidence. 380 U.S. at 694-95.

124. The Court had applied the rule to forfeiture proceedings in the progenitor of all fourth amendment jurisprudence, Boyd v. United States, 116 U.S. 616 (1886).

125. 380 U.S. at 700-01.

126. 380 U.S. at 700.
and (2) whether the penalty levied is as severe as that for the associated criminal offense. 127

These inquiries suggest that the exclusionary rule would often be appropriate in college disciplinary proceedings. First, students are typically disciplined for offenses such as theft, assault, vandalism, and possession of illicit substances. 128 While most of these violations are relatively minor, they are every bit as criminal as the violation in *One 1958 Plymouth Sedan*. Second, colleges frequently impose rather severe financial penalties on offending students; suspension, for example, often involves forfeiture of any tuition already paid and of the student's dormitory leasehold interest. Suspension may also cripple a student's ability to continue his education or to obtain a job. 129 Thus, like criminal proceedings, college disciplinary proceedings can seriously damage a person's reputation and livelihood. 130

127. 380 U.S. at 700-01. The Court also noted that where the goods to be forfeited are intrinsically illegal, such as smuggled narcotics, the defendant cannot use the fourth amendment to regain them in a forfeiture proceeding. 380 U.S. at 698-99. This principle is not discussed in the ensuing material, as it is largely hypothetical; few students will attempt to use the fourth amendment to get their marijuana back. Those who do try are unlikely to succeed.


129. See Smyth v. Lubbers, 398 F. Supp. at 797. Not all schools impose as heavy penalties as did Grand Valley, however. See note 35 supra for the practice of the University of Michigan. Compare the practice at the University of Texas at Austin, where a wide variety of penalties are authorized for violation of a regents' rule, university regulation, or administrative rule:

(1) admonition;
(2) warning probation;
(3) disciplinary probation;
(4) withholding of official transcript or degree;
(5) expulsion and a bar from readmission;
(6) restitution;
(7) suspension of rights and privileges;
(8) suspension of eligibility for official athletic and nonathletic extracurricular activities;
(9) failing grade;
(10) denial of degree;
(11) suspension from the university;
(12) expulsion from the university;


130. Of course, this same line of argument suggests the exclusionary rule should not apply in proceedings involving only violations of simple academic regulations or in
Interestingly, the balancing test of Calandra, Janis, and Stone\textsuperscript{131} and the quasi-criminal test of One 1958 Plymouth Sedan may sometimes disagree over the applicability of the exclusionary rule. For instance, if a college disciplined a tenant for damage to a fixture in his room, the proceeding would probably not be classified as quasi-criminal.\textsuperscript{132} A court using the balancing test, however, might decide that the exclusionary rule would be appropriate in a damage assessment proceeding; the rule would effectively deter college officials from seizing damaged fixtures by thwarting any efforts either to punish the student or to recover damages. Yet the social cost of applying the rule, due to the minor nature of the offense, is relatively low.

The fact that the Court did not use the Plymouth Sedan theory in Janis,\textsuperscript{133} arguably a quasi-criminal case, indicates that the Court may now prefer the balancing test over the quasi-criminal inquiry. This preference is a desirable one, for the Calandra-Janis-Stone analysis, which balances the costs of applying the rule against its deterrent value, seems a more robust analytical tool. Although the quasi-criminal cases are useful precedent for the application of the exclusionary rule to many college cases, future cases may more profitably be analyzed under the balancing rationale of Calandra, Janis, and Stone.

\textbf{III. Conclusion}

This Note has contended that a state university, like other governmental agencies, should comply with the fourth amendment’s warrant and probable cause requirements. Moreover, when a college seeks to discipline a student for nonacademic misconduct, it should not consider evidence obtained by violating the fourth amendment.\textsuperscript{134} Unfortunately, the rules and regulations of several state colleges do not yet reflect fourth amendment imperatives.\textsuperscript{135} In drafting regulations that conform to these imperatives, damage-assessment proceedings. In these situations, the proceeding does not concern criminal activity, and sanctions are relatively minor — usually a lower grade or a damage assessment.

\textsuperscript{131} See Section III.A. supra.
\textsuperscript{132} See note 130 supra.
\textsuperscript{133} 428 U.S. 433 (1976). The court did cite One 1958 Plymouth Sedan in developing the history of the exclusionary rule. 428 U.S. at 477 n.17. Justice Stewart, however, advanced the quasi-criminal argument in his dissent. 428 U.S. at 463.
\textsuperscript{134} Of the 27 state universities answering inquiries, however, only nine applied some form of the exclusionary rule.
\textsuperscript{135} See note 73 supra and accompanying text.
tives, college officials must keep in mind the unique features of campus life. Since law enforcement is not the primary duty of dormitory staff, since disciplinary hearing officers are not normally lawyers, and since students do not usually have access to lawyers who could apprise them of their fourth amendment rights, colleges should simplify their search and seizure regulations to make them comprehensible to those without legal backgrounds. The regulation should clearly articulate the student's fourth amendment rights and set forth remedies to enforce them. A regulation meeting those needs might take this form:

§ 1. No employees of [the university] may enter an occupied dormitory room unless:
   a) the employee possesses a valid search warrant,
   b) one of the students living in the room expressly consents to the entry, or
   c) there is a fire or other emergency creating imminent danger to life or property.

§ 2. Evidence obtained by an entry not authorized by § 1 may not be considered in a disciplinary decision.

The regulation applies to entries as well as searches, recognizing that students have a privacy interest in their entire room and not just in their closets and drawers. For simplicity's sake, the regulation substitutes the word "emergency" for the legal term of art "exigent circumstances," a phrase that is ambiguous to most students and college officials (and, for that matter, to lawyers and judges). Furthermore, section 2 of the regulation asks the college disciplinary authority only to determine if the entry violated section 1 and thus obviates any need to step into the quagmire of constitutional balancing. The proposed regulation envisions that maintenance, housekeeping, health, and safety inspections by university officials, since they are as much for the student's benefit as the school's, can be accommodated by the consent provision. If not, then the university may inspect the rooms between terms, when the room is vacant and the new student has not yet moved in.

136. The proposed regulation is largely preventive; it is designed to safeguard fourth amendment rights in a proceeding that involves no attorneys and is not likely to be appealed to a traditional court of law. As a result, application of its "lay" language may not always coincide perfectly with the rigors of the fourth amendment. However, the regulation at least forces colleges to proceed in a more careful manner before invading the privacy of a student's room. In a search situation where formal vindication of fourth amendment rights is not likely, that may be the only feasible protection for the privacy interests that the amendment was designed to secure.
Of course, colleges might adopt any of a multitude of variations upon this regulation, and students still have the option of vindicating their privacy interests through formal action in federal courts. The proposed regulation, however, will eliminate the need for frequent and costly judicial intervention in dormitory affairs, and ensure respect for the "new" fourth amendment rights that students enjoy under Smyth and Morale.