TUESDAY, FEBRUARY 16, 1993
4:00 - 5:30 p.m.

CONCURRENT SESSION TWO

Current Legal Issues in Cases Involving
Off-Campus Criminal Offenses:
Special Problems of Urban Campuses

Faculty:

Dr. Roger W. Sorochty
Christy L. Whitfield
Dr. Timothy F. Brooks
CURRENT LEGAL ISSUES IN CASES INVOLVING OFF-CAMPUS CRIMINAL OFFENSES

PRESENTED BY:

Christy L. Whitfield
College Attorney
Pasco-Hernando Community College
Dade City, Florida

Presented at the Stetson University
College of Law Conference:

14th ANNUAL NATIONAL CONFERENCE ON LAW AND HIGHER EDUCATION: ISSUES IN 1993
Sheraton Sand Key Resort Hotel
Clearwater Beach, Florida
February 14-17, 1993
CURRENT LEGAL ISSUES IN CASES INVOLVING OFF-CAMPUS CRIMINAL OFFENSES

Christy L. Whitfield, Esq.
College Attorney
Pasco-Hernando Community College
Dade City, Florida

1. Colleges generally have the legal authority to discipline, suspend or expel students for criminal offenses committed off-campus.

Courts of many jurisdictions have recognized the legal authority of colleges and universities to establish codes of conduct that apply even to acts committed off-campus at events or in settings unrelated to the institution. In nearly every such case known to this author, the court has based the authority to extend disciplinary codes to off-campus conduct upon some expressly stated interest of the college. These stated interests generally fall into one of two major classifications: (1) Protection of the campus community from potential danger to property or persons, e.g., Swanson v. Wesley College, 402 A.2d 401 (Del. Super. Ct. 1979); Wallace v. Florida A&M University, 453 So.2d 600 (1st DCA Fla. 1983); State Board of Education v. Anthony, 289 So.2d 279 (La. Ct. App. 1973); or (2) Enforcement of the ethical, religious or moral expectations of the college, e.g., Sohmer v. Kinnard, 535 F.Supp. 50 (D. Maryland 1982); Kusnir v. Leach, 439 A.2d 223 (Pa. Commw. Ct. 1982). Some cases have not clearly defined the institutional interest to be protected by the imposition of disciplinary codes to off-campus conduct, but instead have made

II. **Under certain circumstances, some public colleges may not have the legal authority to discipline, suspend or expel students for criminal offenses committed off-campus.**

While I have not found any case to support this conclusion, it is my opinion that under certain circumstances, some public colleges may not have the legal authority to take disciplinary action against a student for a criminal offense committed off-campus. My opinion is supported only by the inferences that I believe can be reasonably drawn from the case opinions (many cited above) that recognize and articulate justification for extending disciplinary action to off-campus offenses. Specifically, in circumstances where an institution can show no threat of danger to persons or property connected to the campus community; can show no moral, religious or ethical expectations to be advanced; and can not articulate how the offense interferes with the educational goals or orderly operation of the institution, then I believe that no legal authority exists to discipline that student for the off-campus offense.
Take, for example, a case where an adult male student of a community college is accused by his wife, in the midst of a contested divorce and child custody battle, of kidnapping their four-year old daughter. Assume that law enforcement authorities are notified and criminal charges are filed, and the college administrators learn of the matter. I believe the college could not make a credible argument that this pending criminal offense causes the student to be a danger to others on campus. Further, since community colleges generally operate under open door policies and mission statements that preach inclusion of anyone who wishes to enhance their job skills, or improve their employability, or explore some recreational activity, there seems to be no argument that participation by a student with a criminal history or pending prosecution would be incompatible with the mission of the college, or would violate some ethical or moral standard of the college. To the contrary, in Florida at least, community colleges serve as the "college of last resort" for persons who wish to rise above past mistakes, including criminal behavior. Finally, it is unlikely that the continued participation of the student in the example given above would interfere with educational goals or the orderly operation of the institution, solely because of the existence of the pending criminal charges. Under these circumstances, I believe that the community college would have no legal authority to extend its disciplinary code to the off-campus conduct of the student. And even if it tried, there are a number of legal and practical problems for any institution that might pursue such a disciplinary case.
III. Even where the authority exists, there are still some legal and practical problems in administering a code of discipline for criminal offenses committed off-campus. The following is intended to serve as a "laundry list" of potential pitfalls and concerns, both legal and practical, that arise when an institution undertakes to design and implement a disciplinary code that extends to off-campus conduct. To be sure, many institutions have devised novel and effective ways to cope with these potential problems, but not all methods will work at every institution. I hope that this list will provoke thoughtful and creative discussion about how to deal with these problems.

a) Definition of the term "student."
b) Definition of the geographic area.
c) Definition of included crimes or offenses.
d) Consistent application of process (how do you find out about these offenses?)
e) Timing of disciplinary hearing - before conviction?
f) Admission of students with past criminal convictions.
g) Charges brought or resolved after graduation.
h) Discovery of facts - access to evidence.
i) Interference with the criminal justice system.
j) Increased due process requirements.
k) Loyalty to the institutional mission
CURRENT LEGAL ISSUES IN CASES INVOLVING OFF CAMPUS CRIMINAL OFFENSES: SPECIAL PROBLEMS OF URBAN CAMPUSES

PRESENTED BY:

Timothy F. Brooks
Dean of Students
University of Delaware

Presented at the Stetson University
College of Law Conference:

14th ANNUAL NATIONAL CONFERENCE ON LAW AND HIGHER EDUCATION: ISSUES IN 1993
Sheraton Sand Key Resort Hotel
Clearwater Beach, Florida
February 14-17, 1993
CURRENT LEGAL ISSUES IN CASES INVOLVING OFF CAMPUS CRIMINAL OFFENSES: SPECIAL PROBLEMS OF URBAN CAMPUSES

BACKGROUND

Many colleges and universities have been forced to deal with the issue of negative student behavior in the community surrounding the institution. Town Gown relationships have been a rallying cry for long term residents and elected officials in cities and towns that support institutions of higher education. There have been a variety of responses to student problems. Primarily, ordinances have been developed by cities and towns to curtail negative student behavior. These ordinances tend to limit the number of unrelated individuals who can live in local housing and have very strict noise controls. In addition, a number of municipalities have gone to legislating very severe penalties for alcohol abuse and related criminal offenses.

In an effort to ameliorate this situation, a number of colleges and universities across the country have adopted "Off Campus Judicial Systems" to control negative student behavior. Many private universities historically have taken disciplinary action against students for off campus behavioral problems. However, the public sector is now looking more and more closely at this issue.

ISSUE

Colleges and Universities that are considering developing judicial systems to control off campus student behavior are looking at a number of legal problems. They tend to focus on the issues of double jeopardy and jurisdiction.

DISCUSSION

It is generally held that a college or university has the right to impose that a public college or university has the right to impose discipline for off campus crimes committed by students. The most often cited case which appears to allow universities to impose discipline off campus is Krasnow v. Virginia Polytech Institute, 551 F. 2nd 591 (4th Circuit 1977). This case indicates that criminal conduct by students off campus can be "detrimental to the university" and therefore the institution can take action in response to criminal violations.
Other cases that should be reviewed by institutions considering off-campus judicial systems are the following:


The above cases all deal with the issue of double jeopardy. It is clear that taking campus action after municipalities have already found a student guilty of a crime is not double jeopardy.

Institutions that decide to impose disciplinary sanctions against students for off campus behavior must also be concerned about procedural safeguards. Any off campus judicial system must clearly meet the requirements of the Due Process Clause of the Fourteenth Amendment. The institution must develop procedures to ensure a fair and equitable off campus disciplinary system.

CONCLUSION

It is clear that Krasnow v. Virginia Polytec Institute allows colleges and universities to take disciplinary action against students who commit criminal offenses off campus. The discipline that is taken against these students must be intended to protect legitimate university interest and educational goals. Any off campus disciplinary procedure must be developed in a manner so that it will meet the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The University of Delaware has developed a system that meets these parameters. After being implemented three years ago, it has reduced dramatically the number of off-campus crimes being committed by students.