

MONDAY, FEBRUARY 14, 1994
4:00 - 5:30 p.m.

CONCURRENT SESSION TWO

Re-Examining the Role of Student Government

Faculty:

William Kauffman
Sandra Schuster

RE-EXAMINING THE ROLE OF STUDENT GOVERNMENT

PRESENTERS:

WILLIAM R. KAUFFMAN
VICE PRESIDENT AND GENERAL COUNSEL
UNIVERSITY OF ALASKA SYSTEM
FAIRBANKS, ALASKA

CO-AUTHOR:

SAUNDRA K. SCHUSTER
ASSISTANT DEAN OF STUDENTS
THE OHIO STATE UNIVERSITY
COLUMBUS, OHIO

**Presented by Stetson University
College of Law at the :**

**15th ANNUAL NATIONAL CONFERENCE ON
LAW & HIGHER EDUCATION**
Clearwater Beach, Florida
February 13-16, 1994

**1994 Annual Law and Higher Education Conference
Stetson University College of Law
February 13-16, 1994**

RE-EXAMINING THE ROLE OF STUDENT GOVERNMENT

**William R. Kauffman
Vice President and General Counsel
University of Alaska System**

**Saundra K. Schuster
Assistant Dean of Students
The Ohio State University**

I. Introduction

From the activism of the 1960s, to the significant expansion of rights of association in the 1970s and 1980s and now the economic realities of the 1990s, the role of student government as a fundamental element of student life in American higher education has and continues to change. What the role of student government has been, is and is likely to be is the focus of this examination. It considers the developments in the law, particularly for public institutions concerning membership and student fees, and draws into question whether the structure that has served us well for many years will change. The purposes of student government and the contributions to student life are featured with predictions of the likely impact of the changing student population and the streamlining of the academic enterprise as consumerism and accountability become the watchwords of the 90s.

II. The Legal Context for Student Government¹

A. Right of Students to Engage in Organized Activities

While in private institutions the right of students to organize in various student organizations is typically based on the grant of authority by the institutional governing body or authorized agents of the institution, the public setting is different. Such authority may arise through:

1. Statutory grants of authority -- Wisconsin, for example, provides specific legislative authority providing for student government and its responsibilities in the university structure. *Student Association of the University of Wisconsin-Milwaukee v. Baum*, 74 Wis.2d 283, 246 N.W.2d 622 (1976), *Oshkosh Student Association v. Board of Regents of University of Wisconsin System*, 279 N.W.2d 740 (Wis.App. 1979).
2. Rights protected by the Constitution -- The more extensive consideration of such authority has been as a result of the assertion of Constitutionally protected freedoms of association and expression.
 - a. *Healy v. James*, 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972), is the seminal case involving the balancing of the competing interests of organizations and institutional regulatory authority. The case arose as a result of the president of Central Connecticut State College's refusal to officially recognize a "local chapter" of

¹ This review of legal principles and cases associated with student government, its establishment, legal status, and operation, focuses extensively on rights and privileges rooted in the United States Constitution or the various state constitutions; hence, the cases are for the most part from public colleges and universities. Where the principles are equally applicable to private colleges and universities, mention of this applicability will be made.

the Students for a Democratic Society on the grounds that the organization's philosophy was antithetical to the school's policies and because he doubted the group's independence from the national organization. The effect of the denial was to deny the group access to college meeting rooms, bulletin boards and the campus newspaper. The Court found the president's reasons to be insufficient to justify nonrecognition. In balancing the interests, the Court held that it is proper for the administration to prohibit activities by students which infringe reasonable campus rules, interrupt classes, or substantially interfere with the educational process; it is proper for the administration to impose discipline and protect its property and require students to adhere to generally accepted standards of conduct; and it may impose a requirement that organizations seeking recognition indicate in advance their willingness to abide by reasonable standards of conduct. The college, however, cannot deny recognition without justification, since such denial abridges the rights of individuals under the First Amendment to free expression and free association. The burden is on the administration to justify any decision denying recognition and the justification for nonrecognition may not be based on mere disagreement with the views of the organization or its expression of views condoning violence; but nonrecognition may be based on unlawful or disruptive activities or activities directed at inciting or producing imminent lawlessness or on the group's reservation of the right to violate valid campus rules with which it disagrees.

b. *Healy* was followed by a host of cases dealing with the right of various organizations to utilize campus facilities. While such cases may speak in terms of recognition, it is the practical effect of recognition, that is the use of facilities and other benefits of recognition or similar status, that is central to the protected interests.

(1.) In *Gay Students Organization of the University of New Hampshire v. Bonner*, 509 F.2d 652 (1st Cir. 1974), the court found that the prohibition of the organization from holding social activities on the campus denied members of the organization their rights of association.

(2.) *Gay Alliance of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976), resulted in the court's determination that the failure of the university to register the association and thereby grant the privileges associated therewith was a violation of the First and Fourteenth Amendments. The free exercise of protected rights may not be hindered simply because of the fear that exposure to the group's ideas may be harmful to certain students.

(3.) In reversing the district court, the court in *Gay Lib v. University of Missouri*, 558 F.2d 848 (8th Cir. 1977), mandated recognition after determining that none of the purposes of the organization evidenced advocacy of present violations of state law or university rules and regulations and there was no finding that the organization would

infringe reasonable campus rules, interrupt classes or substantially interfere with educational opportunities.

- (4.) Recognition was also ordered based on a similar analysis in *Gay Activists Alliance v. Board of Regents of the University of Oklahoma*, 638 P.2d 1116 (Okla. 1981).
- (5.) *Gay Student Services v. Texas A&M*, 737 F. 2d 1317 (1984), reached the same conclusion as the preceding cases and compelled recognition. It noted that where the university had opened its forum to other similar student groups, it could not close the forum to a homosexual student group without a compelling reason to do so. No such compelling reason was found to exist.
- (6.) In *Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*, 536 A.2d 1 (D.C.App. 1987), the court considered the application of the District of Columbia Human Rights Act to a private religious university. While the court concluded that the Act did not require the university to recognize the group, the university could not deny the tangible benefits of recognition on the basis of the group's sexual orientation. The court found the interest of the District of Columbia in eradicating discrimination based on sexual orientation compelling enough to overcome the university's free exercise claim.

(7.) *Gay and Lesbian Students Association v. Gohn*, 850 F.2d. 361 (8th Cir. 1988), involved the denial of the association's funding request by the student senate. The court concluded that since the final funding decision was that of a university administrator through the power to hear and decide appeals, state action was present for purposes of the constitutional claim and that the First Amendment rights of the gay and lesbian students association were violated when the student senate denied the association's funding request based on the ideas it expressed without any compelling state interest to justify such decision.

(8.) *Healy* and its progeny does not extend to a requirement to recognize or fund alumni groups; however if a college does establish an alumni structure, it must act nondiscriminatorily. *Ad hoc Committee of the Baruch Black and Hispanic Alumni Association v. Bernard M. Baruch College*, 726 F.Supp. 522 (S.D.N.Y. 1989).

B. Right of Students to Refrain from Organization and the Use of Student Activity Fees in Support of those Organizations

The corollary of the freedom to associate is the freedom not to associate. In the public context, there is an increasing trend to challenge the use of student activity fees or compelled membership in, for example, the student government association.

1. Twenty-one years ago, the United States District Court for the district of Nebraska emphasized that public

colleges and universities must retain the freedom and flexibility to put a broad range of ideas in a variety of contexts before their students and it is not for the courts to determine the wisdom or political desirability of a specific chosen route. The court therefore held that the university was not constitutionally prohibited from using mandatory student activity fees to finance noncredit activities, such as a student newspaper, a student association and a speakers program, absent a showing that the university had used the fees in an attempt to support or advance any particular political or personal viewpoint. *Veed v. Schwartzkoff*, 353 F.Supp. 149, (D.Neb. 1973), *aff'd.* 478 F.2d 1407 (8th Cir. 1973), *cert. denied* 414 U.S. 1135, 94 S.Ct. 878, 38 L.Ed.2d 760 (1974).

2. Five weeks later, the Nebraska Supreme Court opined that the imposition of mandatory fees on university students to support the student newspaper, student association and the speaker's program did not violate the constitutional rights of students where it did not appear that only one viewpoint was supported by the fees. *Larson v. Board of Regents of the University of Nebraska*, 204 N.W.2d 568 (Neb. 1973).
3. In *Lace v. University of Vermont*, 303 A.2d 475 (Vt. 1973), students objected on constitutional grounds to the payment of student fees to support the speakers bureau, the campus newspaper, for certain expenses of the president of the student association and for the purchase of certain films. The court found no justiciable controversy without the pleading and proof that the plaintiffs were prevented from making their views known or that the plaintiffs were denied equal and proportionate access to the same student association

funds in order to present views with which they could agree.

4. *Good v. Associated Students of the University of Washington*, 86 Wash.2d 94, 542 P.2d 762 (1975), represents one of the first cases to consider not only the ability of a university to allocate funds to the student government body, but to also assess a student fee and compel membership in the Associated Students of the University of Washington, a separate nonprofit corporation established and authorized by policy of the university board of regents. The court considered the general authority of the regents to manage the affairs of the university and concluded that the authority is generally broad enough to encompass provision of student services and activities through a separate nonprofit corporation. On the question of compulsory membership in ASUW the court held that the university may not mandate membership of a student in ASUW because to do so violates the student's First Amendment rights, specifically noting that the freedom to associate carries with it a corresponding right not to associate. On the question of the fee, the court noted that the fee is mandated by legislative enactment and then balanced "the plaintiff's First Amendment rights against the traditional need and desirability of the university to provide an atmosphere of learning, debate, dissent and controversy." *Id.* at 768. It concluded that students can be required to pay such a fee unless the entity exceeds the statutory purposes for which fees can be used or the entity becomes a vehicle for promotion of one particular political, social, economic or religious viewpoint.

5. While *Maryland Public Interest Research Group v. Elkins*, 565 F.2d 864 (4th Cir. 1977), *cert. denied*, 435 U.S. 1008, 98 S.Ct. 1879, 56 L.Ed.2d 390 (1978), focuses on the

appropriate use or limitation on the use of student activity fees without the freedom of association element, the case is listed here because the fee was used to support a public interest research group, a type of organization central to subsequent litigation concerning associational rights. In *Maryland*, the issue was whether the University could preclude the recognized group from using its share of the required activities fee to sue the university. In concluding that the university is not required to "activate" the student group's First Amendment guarantees, only not infringe them, the court found that there was no abridgment of First Amendment privileges by the limitation on the use of the fees. The judgment of appropriate use of the fees was deemed to be primarily that of the university board of regents and its conclusion as to the educational value, or lack thereof, was not an abuse of discretion.

For a similar case concerning the appropriate use of student fees, see *Swope v. Lubbers*, 560 F.Supp. 1328 (1983), where the issue was the use of student fees to support the showing of x-rated movies. There the court found a First Amendment issue to which the "strict scrutiny" standard of review was applicable and concluded the same to be true even though there was not a total ban on the showing of the film but only a refusal to transfer funds for the showing. In *Student Government v. Trustees, University of Massachusetts*, 676 F. Supp. 384 (D.Mass. 1987), the court declined to find the board of trustee's termination of the subsidy of the legal services office as a First Amendment violation even if the action was predicated on the office's suits against the university. The court concluded that the legal services office was not a "forum" therefore the forum analysis does not apply. Additionally, the court

noted that the student activity fee does not belong to the students.

6. In *Erzinger v. Regents of the University of California*, 187 Cal.Rptr. 164 (App. 1982), an action was brought challenging a compulsory registration fee of which a portion was allocated to pay for abortions without a pro rata exception or exemption for the plaintiffs. The court held that the policy did not infringe plaintiff's rights of the free exercise of religion. In so doing, the court noted that the "First Amendment does not prohibit the University from requiring all students, regardless of religion, to pay fees for general student support services; the fact plaintiffs may object on religious grounds to some of the services the University provides is not a basis upon which plaintiffs can claim a constitutional right not to pay a part of the fees." *Id.* at 167.

7. In *Galda v. Bloustein*, 686 F.2d 159 (3rd Cir. 1982), the court returned to the subject of public interest research groups and whether the exaction of a mandatory but refundable fee to support New Jersey PIRG infringed on the constitutional rights of certain students who disagreed with the activities of the organization. In determining that a genuine issue of material fact existed and therefore remanding the case to the district court, the court engaged in an analysis of *Healy and Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), a case concerning mandatory service fees charged to teachers by their collective bargaining agent where the Court held that such an assessment is constitutionally permissible only insofar as it is used to fund the activities directly associated with its representative status, but not political or ideological activities unrelated to collective bargaining.

The issue returned to the Third Circuit in *Galda v. Rutgers*, 772 F.2d 1060 (3rd Cir. 1985), *cert. denied*, *New Jersey Public Interest Research Group, Inc. v. Galda*, 475 U.S. 1065, 106 S.Ct. 1375, 89 L.Ed.2d 602 (1986). This time the court reached the merits of the case and ruled that the university had failed to demonstrate a compelling state interest to justify overriding the First Amendment rights of students to pay the refundable fee to support an independent outside organization engaged in political and ideological activity.

8. No constitutional violation was found in *Turner v. Sayers*, 575 So.2d 1135 (Ala.Civ.App. 1991), where the court found no violation by university officials in the approval of a speaker on abortion at a student sponsored lecture and there was no violation of free speech and association rights of students who opposed abortion by the approval of the expenditure of the student activity fee for the speaker.
9. The characterization of the student activity fund using the First Amendment forum analysis is becoming more important. In *Rosenberger v. Rector and Visitors of University of Virginia*, 795 F.Supp. 175 (W.D. Va. 1992), the court considered a challenge by an unincorporated association recognized as a contracted independent organization with facilities access but for which funding was not approved. The court found the fund to be a nonpublic forum and not a limited public forum, found that the guidelines for denying funds were reasonable and did not result in viewpoint discrimination, found no impermissible burden on the free exercise of religion and found no equal protection denial. A limited public forum is one of three categories of fora identified by the United States Supreme Court in *Perry Education Association v. Perry Local Educator's Association*, 460

U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). It is property "which the State has opened for use by the public even if it was not required to create the forum in the first place." *Perry* at 45, citing *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981). A nonpublic forum is, however, one which is not "by tradition or designation a forum for public communication." *Id.* at 46. The significance of the distinction relates to whether a heightened scrutiny of a compelling state interest applies or only one of reasonableness. Note: At least in the Fifth Circuit, a university campus is deemed to be a limited public forum. *Hays County Guardian v. Supple*, 969 F.2d 111 (5th Cir. 1992), cert. denied, ___ U.S. ___, (1992). The case also upheld the university's financial support of the student newspaper.

10. *Carroll v. Blinkin*, 957 F.2d 991 (2nd Cir. 1992), is the most recent of the decisions concerning funding of public interest research groups and represents one of the more complete analyses of the student fee/association cases. At issue was the allocation of a mandatory student fee to New York Public Interest Research Group. The court concluded that the university could constitutionally allocate activity fees to the group despite some students disagreement as long as the group spends a sum equivalent to the contribution on the campus. The group may not, however, define its membership as including all fee payments; instead, membership is to be granted only to those who seek it. The court concluded that "the promotion of extracurricular life, the transmission of skills and civic duty, and the stimulation energetic campus debate . . . are substantial enough to justify the infringement of appellants' First Amendment right against compelled speech that occurs when SUNY Albany transfers a portion of the activity fee to NYPERG." *Id.* at 1001.

11. *Smith v. Regents of the University of California*, 844 P.2d 500 (Cal. 1993), cert. denied, ___U.S.___ (1993), takes the *Carroll* decision one step further and bans the use of mandatory student activity fees for on-campus political or ideological activities. The California Supreme Court held that the university is empowered to collect a mandatory student activity fee but that the Regents would be required to provide refunds to students objecting to the use of the fees for political and ideological activities and ordered further proceedings to determine whether the student senate expended mandatory fees in passing and publishing political resolutions. For many years, payment of the fee entailed automatic membership in the Associated Students of the University of California, but this was dropped shortly after the litigation began. In applying a strict scrutiny analysis, the court concluded that while the university may in general support student groups with the mandatory fee, it is because the use of the funds is germane to the university's educational mission. At some point, however, the educational benefits may become incidental to advancing of the group's political and ideological interests and therefore the funding process ceases to be narrowly drawn to avoid unnecessary intrusion on freedom of expression. The court found the existing test for partisan political groups to be ineffective, since it had permitted funding for groups supporting nuclear freeze initiative, a proposed Equal Rights Amendment, gay rights legislation, abolition of the death penalty and replacement of the current governmental form with a socialist regime.

Recognizing the traditional and some times far ranging types of activities for which student activity fees have been used even directly on the campus itself, with the

student government association itself being first and foremost, the good news about *Smith*, if there be any, is that it is only the law of California. It is apparent, however, that in recent years, more cases challenging the use of student activity fees have been filed and the courts are continuing to narrow the permissible range. As pressure continues to be exerted for political correctness, it is likely that attempts will be made to expand *Smith* beyond its California borders.

C. Requirements of Nondiscrimination

Student government organizations, as agents or representative of the university, must be mindful of the various laws and regulations concerning nondiscrimination. While many of the principles of nondiscrimination are imposed by virtue of the public character of the institution, private institutions and their organizations may be subject to state or local laws on the subject, or to various Federal nondiscrimination provisions by virtue of their acceptance of Federal financial assistance, such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*; and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Of course to the extent that the student organization is an employer in its own right, other nondiscrimination provisions may apply.

1. In *Joyner v. Whiting*, 477 F.2d 456 (4th Cir. 1973), the court indicated that equal protection forbids racial discrimination in extracurricular activities of a state supported institution. Citing *Healy, supra*, the court observed that even if the student newspaper is not technically a state agency, a campus organization claiming First Amendment protection can be required to comply with valid campus rules and the state, acting

through the president, has the authority to promulgate and enforce rules against discrimination.

2. As previously noted, while a public institution is not required to recognize alumni groups, once it chooses to do so, it must do it in a nondiscriminatory fashion. *Ad hoc Committee of the Baruch Black and Hispanic Alumni Association v. Bernard M. Baruch College*, 726 F.Supp. 522 (S.D.N.Y. 1989).
3. In *Frank v. Ivy Club*, 120 N.J. 73, 576 A.2d 241 (1990), the private eating clubs that serve Princeton University, a private university, were found to be subject to the state law against discrimination because they were involved in a "symbiotic" relationship with the university, which was subject to the state law.

D. The Student Government Association As An Entity

The organizational structure of the student government association may vary depending upon the nature of the institution and the source of the authority for the organization to exist. From establishment by state statute in Wisconsin (*Student Association of the University of Wisconsin-Milwaukee v. Baum*, 74 Wis.2d 283, 246 N.W.2d 622 (1976), *Oshkosh Student Association v. Board of Regents of University of Wisconsin System*, 279 N.W.2d 740 (Wis.App. 1979), to a nonprofit corporation (*Good v. Associated Students of the University of Washington*, 86 Wash.2d 94, 542 P.2d 762 (1975)), to unincorporated associations authorized by the boards of trustees or the administration, the nature of the organizational entity may vary and the consequences of that variation may be significant depending upon the entity's grant of authority.

1. In *University of South Florida Student Government v. Trundle*, 336 So.2d 488 (Fla.App. 1976), the student

government association, an unincorporated association was found to be a part of the university and therefore an instrumentality of the state.

2. Similarly in *Kaye v. Board of Regents of the University of Wisconsin System*, 463 N.W.2d 398 (Wis.App. 1990), an unincorporated association established pursuant to the Wisconsin statute was determined to be a "state agency in the executive branch" and hence could not employ an attorney without the approval of the governor.
3. In *Undergraduate Student Association v. Peltason*, 359 F.Supp. 320 (1973), the court concluded that the Undergraduate Student Association of the University of Illinois at Champaign has standing to challenge the constitutionality of a statute dealing with the revocation of scholarship aid for misconduct.
4. In *Associated Students, San Jose State University v. Trustees of the California State University and Colleges*, 128 Cal.Rptr. 601, 56 Cal.App.3d 667 (1976), the student government association, authorized and established by statute, was subject to having its budget rejected by the president when he reasonably concluded that it was not in conformity with the policy of the campus. Similarly, in *Student Government v. Trustees, University of Massachusetts*, 676 F. Supp. 384 (D.Mass. 1987), the court found that the student activity fees do not "belong" to the students of the state university under Massachusetts law.
5. As an entity deriving its powers from the Board of Regents, the student association in *Arizona Board of Regents v. Zappia*, 577 P.2d 735, 118 Ariz 449 (Ariz.App. 1978), had no greater authority than the Board and since the Board was a state agency subject to securing legal

services from the attorney general, the association could not hire counsel to represent it. Additionally, the association lacked the capacity to sue the Board of Regents.

6. The authority of the association is, as several of the cases noted above indicate, often acquired by the delegation of authority, either by statute, governing board action or administrative action. Certain types of authority cannot be delegated. For example, in *Hand v. Matchett*, 957 F.2d 791 (10th Cir. 1992), the court concluded that degree revocation authority could not be delegated by the governing board. Other times, any authority not limited by law or policy of the governing board may be delegated as, for example, provided by Kansas statute permitting delegation "to any officer, employee, student, faculty committee, student-faculty committee, or student committee any part of such authority or any of such duties." K.S.A. 76-725.

7. For student government associations at public institutions, a consequence of the public status may be being subject to the state's open meeting and/or open records laws, laws found in all fifty states. Because of the variations in the state laws, the determination of applicability is fact sensitive.
 - a. In *Student Bar Association Board of Governors, of the School of Law, University of North Carolina v. Byrd*, 239 S.E.2d 415 (N.C. 1977), the court reviewed the North Carolina open meetings law and concluded that the law is not applicable to meetings of the law school faculty. A contrary result was reached in *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983), where the court determined that a subordinate body covered

by the open meetings law included any body established by a policy of the Board of Regents; hence, tenure committees were deemed to be open and so would student government bodies under the same analysis.

- b. Both the records of the student Organization Court and its meetings were judged to be subject to the Georgia open records and open meetings laws in *Red & Black Pub. v. Board of Regents*, 427 S.E.2d 257 (Ga. 1993). In an analysis not dissimilar to *Geistauts, supra*, the court found dispositive the actions of the Organization Court on behalf of the Board of Regents. On the open records issue, the only question was whether there was an exception to the applicability of the state law. The court found that the Family Education Rights and Privacy Act is not such an exception.

E. Private Colleges and Universities

Subject to the various Federal and state statutes that are specifically applicable to private colleges and universities, the relationship between the institution and the student continues to be largely one of contract. As such, the institution has broad latitude to establish the conditions for its relationship with the student. See, e.g., *Carr v. St. John's University, New York*, 17 A.D.2d 632, 231 N.Y.S.2d 410, *aff'd*, 12 N.Y.2d 802, 187 N.E.2d 18 (1962), *Holert v. University of Chicago*, 751 F. Supp. 1294 (N.D.Ill. 1990). In the absence of state involvement in activities of students at private institutions, courts limit their inquiry into challenged university actions to whether the university substantially complied with its published guidelines or rules regarding procedures and disciplinary proceedings. *Mu Chapter of Delta Kappa Epsilon v. Colgate University*, 578 N.Y.S.2d 713 (1992). Subject to the phrase "for the most part,"

the rule continues to be as stated in *Jones v. Vassar College*, 299 N.Y.S.2d 283, 287-88 (1969): "Private colleges and universities are governed on the principle of academic self regulation, free from judicial restraints . . . It is the privilege of a college, through its Student Government Association, to promulgate and enforce rules and regulations for the social conduct of students without judicial interference." This authority to adopt rules and enforce them through a recognition policy establishing responsibility for the organization for the acts of its members withstood a challenge based on rights of association in *Psi Upsilon of Philadelphia v. University of Pennsylvania*, 591 A.2d 755 (Pa.Super. 1991).

F. Special Rules and Procedures Concerning Student Government

While the university and the student government have wide latitude to adopt rules and procedures governing the operation of the student government association, the university and the association must be mindful of constitutional considerations in establishing those rules and procedures.

1. In *Sellman v. Baruch College of the City University of New York*, 482 F.Supp 475 (S.D.N.Y. 1979), the court considered an action to declare void a provision of the Baruch College student government constitution requiring candidates for elective office to be registered for at least 12 credits and to maintain at least a 2.5 grade point average. In looking at the student government association, the court concluded that while there is a degree of autonomy from the college, it is nonetheless a creature of the state and as such, state action was present. The court continued to determine if a fundamental right was infringed; it concluded that there was not, but opined that the rules still must be reasonable to be valid. In this case, the court found that

the rules served a legitimate purpose of limiting elective office to those with sufficient ties to the institution.

2. At issue in *Chapman v. Thomas*, 743 F.2d 1056 (1984), were rules prohibiting door-to-door solicitation in residence halls, with the exception for the three highest student government positions. In upholding the rule, the court noted that the exception furthered the university's interest in promoting student participation in student government.
3. In *Alabama Student Party v. Student Government Association of the University of Alabama*, 867 F.2d 1344 (11th Cir. 1989), the court considered a challenge to campus regulations restricting distribution of campaign literature to three days prior to the election and then only at residence halls or outside campus buildings, prohibiting distribution of campaign literature on election day and limiting open fora of debates to the week of the election. In a somewhat conclusory opinion evidencing great deference to the university officials and using several public school cases as the rationale for permitting the regulation, the court upheld the rules and concluded that they were reasonably related to the university's legitimate interest in minimizing the disruptive effects of campus electioneering.

G. Liability

It is axiomatic that student government associations and the individual members of the association can incur liability for their actions. Unincorporated associations may be liable in tort for the wrongful acts of its members acting collectively in the business or activity for which the association is organized and is responsible for torts of its members or employees which the association encourages or subsequently ratifies. *Rothman*

v. *Gamma Alpha Chapter of Pi Kappa Alpha Fraternity*, 599 So.2d 9 (Ala. 1992). Special statutes, such as Dram Shop Acts, may increase the duty of care owed to participants in activities. It is not the purpose of this section to detail the many areas in which liability can occur, but to simply affirm that student government associations face the same exposure as does the host university with the liability typically being passed to the university.

III. Changes In the Structure and Identity of Student Government

A. Historical Overview

- Student self government originated during medieval times in Europe as a result of the pressing social and economic needs in order to provide protection for students since they had no political or civil rights.
- Student self government in the United States developed as a result of applying democratic principles to the education forum.
- Hindered by the period of *in-loco-parentis*.
- Re-born by Thomas Jefferson whose vision of the college experience was one that would create a well-rounded individual. He believed that a critical component of higher education was to teach students responsibility and self-discipline. Therefore, he believed the basic function of a student government organization was to provide training in citizenship. (Fleischman, 1982, p. 40).

B. Where Have We Come From There?

- Over the past two decades the number of students attending college has increased by 50% and the characteristics of those attending college have changed dramatically. There is an increase in the number of minority students and women; more students are attending part-time and holding down jobs while attending school; fewer students complete a degree in four years.
- "Through the mid 1960's student governments dealt primarily with student social events, financial management of campus activities, orientation programs for new students, the student handbook, public relations, recruitment of new students and the college calendar. Matters that were considered inappropriate for discussion and action by student governments were college fiscal policies and procedures, academic discipline, academic regulations, evaluation of instruction, and curriculum planning and evaluation." (Fleischman, 1982, p. 40).
- During the "student revolution" period of the mid 1960's student governments became greatly concerned about social and political issues. Students felt the governance groups were out of touch with the concerns and needs of the student body and were powerless to effect change within the institution.
 - a. Students began to demand a voice in the "real" governance of their colleges, in areas such as institutional policies, budgetary items, course offerings and long-range planning.
 - b. The structure and function of student government organizations began to change

dramatically. New channels for meaningful student participation were opened up.

- As the social turmoil of the 60's gave way to a more placid period student governments no longer needed to serve the purpose of representing a coalition of concern and rebellion. Many student government organizations found themselves with little to do.
- "In the late 1970's several student governments ceased to exist after national political and social issues of interest to students seemed resolved and a sense of purpose lessened. However, student groups with special interests or with well identified constituencies continued to flourish and became the basis for a new coalition of organizations." (Rentz, *et al.*, p. 274). Students have become increasingly interested in protecting their rights and participating in groups representing a single class of people or those organized around one issue.
- Throughout the 1980's and to the present time, "Student government organizations have maintained a relatively quiet existence, characterized by an absentee profile, low morale, little support from the student body and even less support from the faculty and administration." (Chiles and Pruitt, 1985, p. 21).

C. Factors Impacting the Role of Student Government

- Courts have consistently stated that the granting of recognition by an institution does not imply support, agreement, or approval of the organization's purpose.
- "There is a danger that student governments or boards may make political judgments and attempt to evaluate a group's purpose, thereby violating constitutional rights. It is better

not to put students or committees in the position of recognizing groups of a controversial nature. . . unless they are trained and advised by university officials regarding legal issues." (Barr, 1988).

- Since the 60's, when student government organizations demanded more autonomy from university administrators, student governments have been given extensive freedom, including policy making and fiscal control within previously established (often poorly monitored) guidelines. However, within the past five years there has been a slowly growing trend toward increasing supervision as a result of disastrous misuse of student funds by student government groups.
- "At institutions where part of the lump sum is allocated to student governments for further distribution to qualified groups, the institution should not attempt to influence the students' decisions. If student governments allocate fees to activities of a controversial nature, the students themselves can express opposing opinions and influence leaders to finance other points of view." (Lauren, 1984).

D. The University's Role Regarding Student Government Operations as "Learning Opportunities" Within the Institution:

- The university can impose minimum academic standards for student government officers. *Sellman v. Baruch College of the City University of New York*, 482 F.Supp. 475 (S.D.N.Y. 1979).
- Student government campaigns constitute a forum reserved for an intended learning experience. Therefore, the university can establish guidelines for student government election campaigns. *Alabama Student Party v.*

Student Government Association of the University of Alabama, 867 F.2d 1344 (11th Cir. 1989).

E. **Universities Must Consider the Increasing Number of "Stakeholders" Who Become Involved with Issues of Student Government**

- "There are many 'stakeholders' in the process -- students, faculty, the president, the governing board, various public groups and student affairs staff. The success of a student government system at an institution may depend on how much congruence there is among these stakeholders about issues of freedom and control." (Sandeen, 1989, p. 63).
- "There will always be some tension on the freedom-control issue . . . too cozy a relationship between the student political or editorial leader and the campus administrator may be intellectually or morally compromising for the student. For the administrator, such coziness may become almost parental at times, lacking the objectivity needed for good education." (Sandeen, 1989, p. 65).

IV. Current Role of Student Government On Campus

- The current status of student government on campuses varies from being virtually non-existent to highly visible representative associations that take responsibility for such items as involving students directly with the board of trustees.
- The student governments of the 60s and 70s were marked by autonomy from the university administration. The organizations had been free to set policies and spend money on activities as they saw fit. However, during the past two decades student governments have become larger and more complex. As a result of the increasing size of the student body,

the fiscal responsibilities have increased as well. Many student government organizations are responsible for managing million dollar budgets.

- "The national mood is that public servants must be perfect. We're going to be expected to supervise students more than we have. If university funds are involved, legally and ethically, we can't simply turn it over without adequate supervision and monitoring." (Pavela, in *The Chronicle of Higher Education*, April 22, 1992).
- The most significant change to occur over the past two decades is the increasing supervision and involvement by the administration in the functions of student government as a result of increasing pressure for accountability and concerns regarding institutional liability.

A. Roles Student Government Plays in the Life of the University

1. Vehicle for educational processes:

student evaluations/impact on promotion and
tenure
accountability regarding program planning
curriculum planning
research on the quality of life for students
organization as a learning lab
ethical and responsible decision process
appoint members to student judicial boards

2. Leadership with campus safety issues:

crime watch, escort services
campus involvement regarding violence

3. Participation in campus/local and state affairs:

policy development regarding students
participation in hiring faculty & administrators
voter registration
lobbying efforts
political rallies
public forums
community services

4. Provide services to students through the allocation of funds:

fiscal planning and decisions
shuttle bus service
student legal services
student organization funding
student medical services
student publications

5. Provide official channel of communication:

between student body and university
administration
between student body and local and state
government

6. Provide leadership development:

career training
internship opportunities
manage or coordinate special events
facilitate participation of students on university
committees
create volunteer corps

- "Regardless of the student government format or visibility on a particular campus, it is a viable way to bring student opinions and concerns into the policy making offices and committees on the campus." (Rentz, *et al.*, 1988, p. 274).
 - University administrators have an obligation to view student government organizations as talent development. According to Astin "Students learn by becoming involved," involvement has both quantitative and qualitative features, the amount of learning or development is directly proportional to the quality and quantity of involvement; and education effectiveness of any policy or practice is related to its capacity to induce student involvement. (Astin 1985, pp. 135-136).
- B. As a result of complacency on the part of students, institutions are managing more and more without significant student involvement. Institutional decisions are made in the most convenient manner, without the input of students.

V. Issues Into the Next Decade

A. The Increasing Diversity of the Student Body

- Results in an environment where students find few issues that bring them all together. The organizational structure of student government groups will need to change to reflect this growing diversity of opinion and concerns of the "new student body."
- Directions in which the student body will continue to change:

Increase in: minority students
 women
 part-time students

students with full or part-time jobs
international students
older students
returning students
transfer students
commuter students
high risk students

Decrease in: full-time students
traditional age students
four year curriculum

The broad-based, ideological student government organization has been pushed into the background with the current emphasis on career orientation and pragmatic causes. The broadly representative body has been replaced by special interest groups , or single purpose organizations. (Boyd, 1985, p. 47). Institutions must create systems that will guide, empower and educate students. Consider:

- Assimilation and/or separation will no longer serve the needs of underrepresented groups of students.
- Programming efforts and student government sponsorship of events must reflect the institutional diversity.
- The needs of marginalized and underrepresented student groups must be identified and addressed.

B. The Changing Campus Demographics

- Will result in the "new learners" demanding new delivery systems and experiences. Student government organizations can, once again, become instruments of social change.

- The excessive pressures of scholarship and credentials will result in calls by students for more personalization, for greater involvement and for more socialization functions to serve as a counterbalance. (Handlin, 1970, p. 104).

C. Greater Scrutiny of Student Government Operations

- As a result of incidents of significant fiscal irresponsibility on the part of student leadership, there is increased scrutiny of the operations of student government organizations.
- The entire scope of higher education is under increasing scrutiny and assessment. Responding to external expectations is likely to require a greater partnership between the institution and its students.

D. Institutional Resource Constraints

- As institutional resource constraints become more critical there will be increasing student concerns and public expectations about the way in which dwindling resources are allocated. Students will demand voting representation on governing boards.

E. Regulatory Intervention

- Growing regulatory intervention will result in the institutions taking a different approach to policy development. Student involvement will be critical.

F. Changing Nature of the Student Body

- **The changing nature of the student body will result in a more "consumerism" approach to universities. Students will be more sophisticated and therefore expect a greater level of accountability for the way in which their educational dollars are spent.**

CASE STUDY

The governing board at a public university has granted the student government association the authority to allocate almost \$3 million per year to various student organizations and to intercollegiate athletics. The athletic allocation has been about a third of the total allocation for the past several years. When the institution is placed on probation by the National Collegiate Athletic Association for the illegal recruitment of athletes, the student government association becomes upset with the lack of integrity in athletics and decides to cancel funds for the program. Supporters of the athletic program demand that the institution compel the students allocate the money. The student government refuses. (Sandeem, 1989).

What role should the university take?

References

- Astin, Alexander. How College Affects Students. San Francisco: Jossey-Bass, 1991.
- Barr, Margaret, Student Services and the Law, San Francisco, Jossey-Bass, 1988.
- Boyd, Robin, (1985), Analyzing Student Government: Strategies for Representing Special Interest Groups, Programming, 18 (4), 47-51.
- Chiles, R. & D. Pruitt. (1985). Student Associations: Viable Partners In Institutional Governance?, Programming, 18 (1), 21-24.
- Fleischman, Beth. (1982). The Changing Faces of Student Government, Programming, 14 (8), 39-44.
- Handlin, O. & A. The American College and American Culture. New York, McGraw-Hill Book Company, 1970.
- Rentz, A. & G. Saddlemire. Student Affairs Functions in Higher Education. Springfield: Charles C. Thomas, Publisher, 1988.
- Sandeen, Art, & D. C. Roberts (ed). Freedom and Control in Campus Activities, Who's in Charge, Designing Campus Activities to Foster a Sense of Community. New Directions for Student Services, N.48. San Francisco: Jossey-Bass, Winter, 1989.

