

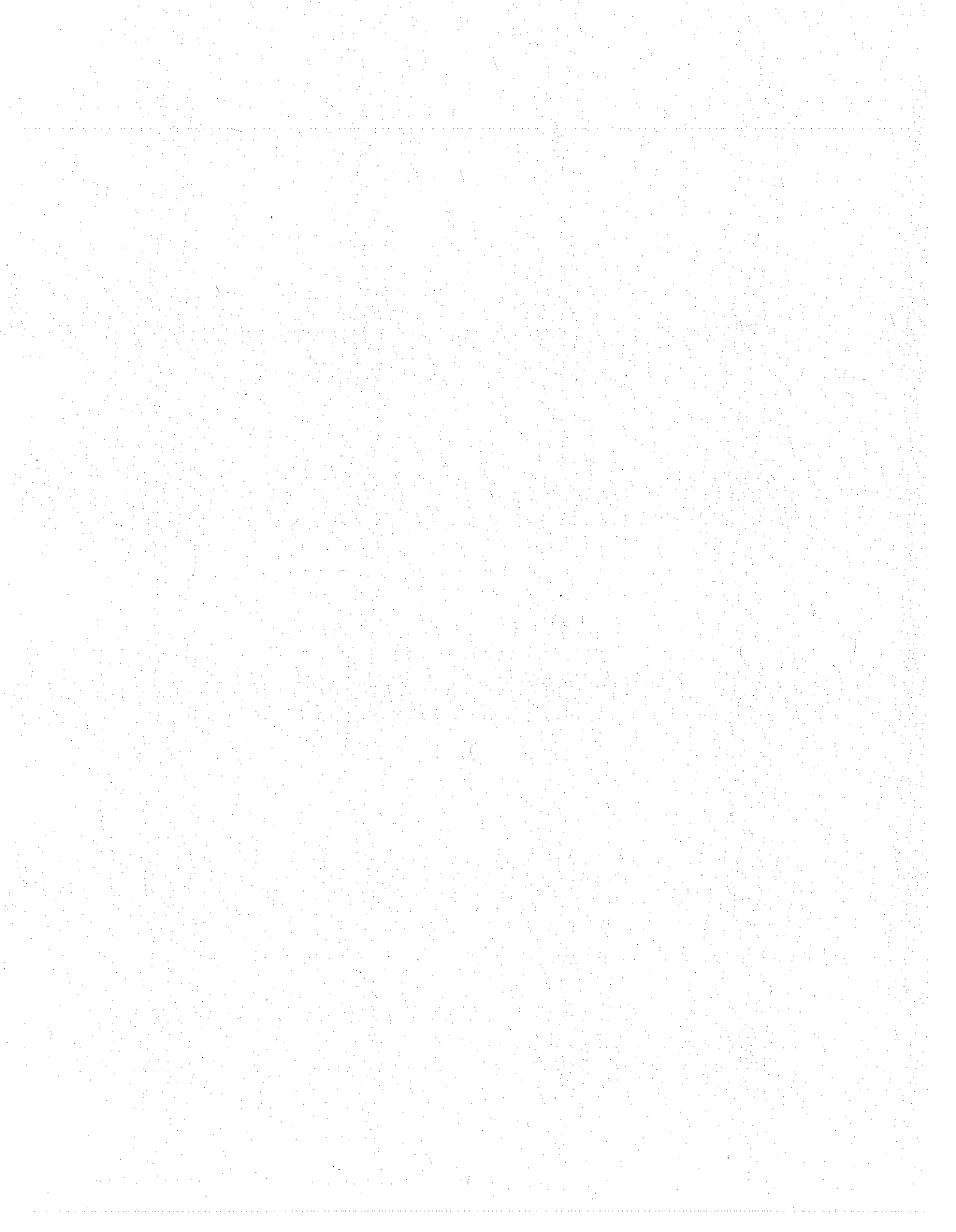
**SPECIAL ISSUES AFFECTING PRIVATE
COLLEGES AND UNIVERSITIES**

Presenter:

CHARLES F. CARLETTA, ESQ.
Attorney at Law
Pattison, Sampson, Ginsberg & Griffin, P.C.
Troy, New York

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AND UNIVERSITIES**

By: Charles F. Carletta, Esq.
Pattison, Sampson, Ginsberg & Griffin, P.C.
22 First Street, P.O. Box 208
Troy, New York 12181-0208

Phone: (518) 266-1020
Fax: (518) 274-6034

- I. LEGAL IMPLICATIONS OF A PRIVATE COLLEGE'S FISCAL CONTRIBUTIONS TO ITS HOST COMMUNITY
- II. THE ANALYSIS OF A PRIVATE COLLEGE STUDENT DISCIPLINARY SYSTEM

Law and Higher Education
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Legal Implications of a Private College's Fiscal Contributions to its Host Community

I. Overall Considerations

A. Define the Catchment Basin

- Exactly which communities get the benefits?
 - host city, county, school district, fire, water, ambulance, sewer, lighting districts
 - neighboring cities, counties, school districts, etc.

B. Identify where the infusion of new money comes from

- Tuition
 - Local
 - Out of town
- Research Grants
 - State
 - Federal
 - Private corporation/foundation

II. Direct Economic Benefit

A. Spending

1. Goods and Services

- Items the College actually purchases within the catchment area
- begs the question of what doesn't the college purchase within the catchment area and why?

2. Employees

- salaries and benefits to employees (most of whom reside in the catchment area)

3. Students

- expenditures of students on off-campus housing, transportation, food, books, entertainment, clothing, utilities, insurance and miscellaneous supplies.

4. Visitors
 - expenditures of prospective students, academic visitors, students' families, vendors and suppliers to the College
 - hotels, car rentals, restaurants

B. Ripple Effect

1. Goods and Services
 - the college's purchase dollars are used by its vendors to support other (local) goods and services.
 - local sales taxes are generated by these secondary purchases.
2. Employees
 - employees make household purchases, they rent apartments, pay interest to local banks on home and car loans and make general retail purchases.
 - they generate and pay state income taxes, municipal and school property taxes and sales tax.
3. Students
 - generate new cash expenditures with monies brought in from outside the catchment area.
 - sales tax
4. Visitors
 - generate new cash expenditures with monies brought in from outside the catchment area.
 - sales tax
5. Others
 - a. Indirect employment:
Some studies have indicated that as many as 40 to 50 jobs outside the college are supported by each one million dollars spent on local purchases.
 - b. Taxes:
Besides sales, property, income and use taxes generated by employees, students, visitors, etc., the college (and through rippling, its vendors) pay employee taxes to both Federal and State (and City?) governments. The College payroll is a major generator of tax revenues.
 - c. Economic Multiplier Effect:

A concept developed by the U. S. Bureau of Economic Analysis Input-Output System specific to each region of the country and categorized by industries. Some literature for academic medical centers cites multipliers between 1.2 and 3.3.

Example: Student expenditures (in millions)

Direct Impact	Multiplier	Indirect Impact	Total Impact
\$7.1	1.65	\$4.6	\$11.7

III. Social Benefits

- A. Economic stability in the catchment area is generated by:
 - job stability of the college workforce
 - the willingness of people who are secure in their job to spend money
 - the willingness of communities to invest in their infrastructure because of their census (tax base) stability

- B. Influx of people on the faculty and staff who broaden the awareness of the community:
 - fresh ideas for old problems
 - new approaches to achieving the goals of the various not-for-profit agencies in the community; board memberships
 - broader perspectives of children attending local schools

- C. General educational services:
 - senior centers
 - schools
 - Boys/Girls Clubs

- D. Continuing Education
 - night courses for degree granting programs
 - campus lecture series

- E. Recreational programs and facilities:
 - the theatre group, plays, glee club concerts, radio club broadcasts.
 - interscholastic athletic events
 - recreational facilities (on some carefully controlled basis)

IV. Questions and Remedies:

- A. 1. In which governmental subdivision(s) do your

faculty and staff (and students) reside?

- Why not the college's host community/school district?

2. What incentives can the college offer to change that?

- low interest loan guarantees
- closing cost subsidies
- second mortgages
- collaborative efforts with local private elementary and secondary schools

B. 1. Why is it so difficult to deal with the concept that the image of the community is inexorably linked to the image of the college?

- change as a problem
 - at the college
 - in local government
- the college as an inherently bad neighbor
 - interference with local businesses
 - housing code violations
 - zoning issues
 - alcohol, noise and parking

2. What remedies can the college implement to impose stability in the relationship?

- elect a local trustee from within the community
- provide hands on technical expertise by college staff (not students)
- deferred maintenance schedules
- street maintenance about the campus
- traffic and safety analyses
- develop web page for the municipality
- join the Chamber of Commerce
- advertise campus events (educational symposia, etc.) via local media
- attend meetings of local government
- provide incentives for college employees to participate in local government/charities

C. What additional programs have been successfully implemented around the country?

- emergency vehicle back-up
- municipal police training in college facilities

- fire department practice on college buildings to be demolished
- free college credits to municipal police/fire employees
- gifts of real estate, old computers, furniture, etc.
- voluntary creation of a tax on entertainment events on campus to benefit the community

V. Some Examples

A. The Problem:

Municipal Tax Base (in dollars):	\$578,661,498
TOTAL Exempt Property (in dollars):	\$289,330,749
Exempt as percentage:	50%
Amount of college property (in acres):	13 acres
Amount of college exemption (in dollars):	\$75,385,986±
College's percentage of exempt property:	25%
College's exemption of TOTAL tax base:	12.5%

B. College Direct Spending (non-payroll):

Goods and services:	\$1,875,000
Multiplier:	1.65
Total Impact	\$3,093,750

C. Employee expenses:

Number of employees	100
After tax income per employee:	\$19,416 (low)
TOTAL spent by employees:	\$1,941,600
Multiplier:	1.65
TOTAL IMPACT:	\$3,203,640
	(ripple effect of an additional \$1,262,040)

D. Student expenditures

Number of students:	657
Off-campus dollars spent per student:	\$10,806
TOTAL off-campus dollars spent by students:	\$7,100,000
Multiplier:	1.65
TOTAL IMPACT	\$11,715,000
	(ripple effect of an additional \$4,600,000)

VI. References:

1. "Consumer Expenditures in 1989". News, United States Department of Labor, Bureau of Labor Statistics, Publication Number USDL:90-616, Washington, D.C., November 1990.
2. Board of Governors of the Federal Reserve System. Regulation D Reserve Requirements of Depository Institutions (Code of Federal Regulations, Title 12, Chapter II, Part 204), as amended effective December 31, 1987 with updates.
3. United States Department of Commerce, Bureau of Economic Analysis. Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), Washington, D.C., 1986.
4. United States Department of Commerce, Bureau of Economic Analysis. Survey of Current Business, Volume 71, Number 6, June 1991.
5. Several excellent analyses of this type were conducted and published by:
 - The Albany Medical Center, Albany, New York (referencing those published by):
 - Cleveland State University, Cleveland, Ohio
 - The University of Minnesota (Hubert H. Humphrey School of Public Affairs), Minneapolis, Minnesota
 - The University of Wisconsin - Madison, Madison, Wisconsin
 - The State University at Albany, Albany, New York.

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THE ANALYSIS OF A PRIVATE COLLEGE STUDENT DISCIPLINARY SYSTEM

I. Definitions:

- A. Define Student:
 - 1. enrolled
 - 2. non-enrolled person in residence
 - 3. some continuous relationship (see proposed definition in Item VI)
- B. Faculty
- C. Official
- D. Member of the community
- E. College premises
- F. Organization
- G. Judicial body
- H. Judicial advisor
- I. Appellate Board
- J. Supervisor of Systems
- K. College policies (affirmative action, alcohol, signs, etc.)
- L. Cheating
- M. Plagiarism

II. Judicial Authority

- A. Who sets up the judicial bodies, etc.
- B. Written procedural rules (By-laws of the Board) conflicts of interest
- C. Decision final or recommendation to administrator?
- D. Is there a civil arbitration system?
- E. Is mediation available?

III. Proscribed Conduct

- A. Jurisdiction
 - 1. off campus (?)
 - 2. catch all on case-by-case basis
 - 3. (See proposed criteria in Item VII)
- B. Conduct
 - 1. Acts of Dishonesty
cheating, plagiarism, false information, forgery, alteration, misuse
of document, tampering with election of organizations
 - 2. disruption
 - 3. abuse

4. theft
5. hazing (athletic teams, military units, the ski club)
6. failure to comply or identify oneself to college official (Public Safety)
7. key offenses for buildings
8. college rules or policies (residence life [?], sexual harassment)
9. conduct which could be interpreted as a violation of Federal, State or local laws
10. drug offenses
11. alcohol offenses
12. firearms, etc., dangerous chemicals (mace, etc.) dangerous instrumentality
13. obstruction of activities
14. obstruction of traffic
15. disorderly, lewd, breach of peace
16. computer offenses
17. abuse of the judicial system

C. Simultaneous Violation of Municipal Law and Disciplinary Code

1. off-campus criminal conduct not within jurisdiction of Code
2. adjudication prior to, simultaneously with or following municipal process
3. The role of the lawyer

IV. Judicial Policies

- A. 1. Charges and Hearings
 - a. written notice
 - b. investigation
 - c. disposition by consent of DOS and student (the quick fix)
 - d. hearing notice 5-15 days before hearing
 - e. the summer recess problem
2. Hearings
 - a. non-public
 - no student press
 - b. complainant in attendance
 - c. complainant presents case personally assisted by advisor who may not speak (no attorney)
 - d. judicial board may call its own witnesses
 - e. relevancy and/or procedural questions ruled on by Chair of the Board (or by advisor subject to being overruled by Board)
 - f. subpoena (?)
3. Standard of Proof
 - Is it more likely than not that accused student violated the Code?

4. Record
 - Only one verbatim record
property of the college
 5. Evidence
 - a. Must be presented even if no-show by accused
 - b. Hearsay evidence is problematical
 - c. no self-incrimination
 - d. search and seizure
- B.
1. Sanctions
 - a. Warning
 - b. Probation
 - c. Loss of privileges
 - d. Fines (previously established and published)
 - e. Restitution
 - f. Service to the college
 - g. Residence hall suspension (conditions for readmittance)
 - h. Residence hall expulsion
 - i. Suspension (conditions for readmittance)
 - j. Expulsion
 - k. Combinations of the above
 - l. Deactivation of a group
 - m. Record of disposition maintained
 2. Record of student after completion of process
 - a. on file for a specified period of time
 - b. where maintained - separately from transcript
- C. Interim Suspension (emergency only?)
1. prior to hearing
 2. reasons:
 - a. ensure safety and well-being of college community (or preservation of college property)
 - b. ensure student's own physical or emotional safety and well-being
 - c. definite threat of disruption or interference with normal operations of the College
 3. no access to campus or events while suspended
 4. hearing within 5-15 days if requested
- D. Appeals
1. request within 5 days
 2. appeal limited to review of verbatim record of hearing and supporting documents for following reasons:
 - a. original hearing was unfair

- b. decision not based on substantial evidence
 - c. sanctions inappropriate
 - d. new evidence not known to appellant at time of hearing
3. Remedy/Recommendation
- a. affirm
 - b. remand for new hearing
 - c. reverse and end the matter
 - d. sanctions may not be increased on appeal (?)

E. Changes to the Code (bulletin boards, campus media)

V. Interpretation

- A. An administrator designated with final authority on meaning of Code or any process within the Code
- B. Mandatory review of Code every _____ years
- C. Avoid use of words: "due process", "trial", "defendant", "verdict", "prosecutor"

VI. The term "student" includes all persons taking courses at the college, both full-time and part-time, pursuing undergraduate, graduate, or professional studies and those who attend post-secondary educational institutions other than the College and who reside in College residence halls. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the College are considered "students" solely for the purposes of the interpretation of this Code.

VII. The College may exercise jurisdiction for an offense committed off-campus when:

- A. The victim of such offense is a member of the campus community (student, faculty, staff, administrator, contractor); or
- B. The offense occurred at a college sponsored or sanctioned event (Greek houses, athletic events, co-op program); or
- C. The accused student used his or her status as a member of the College community to assist in the commission of the offense (student I.D. card to pass a bad check); or
- D. The offense seriously impairs the pursuit of the College's objectives (armed drug dealer arrested downtown).

VIII. Resources:

References

- 1) Bickel, Robert, The College Administrator and the Courts. (Published by College Administration Publications, Inc.).

- 2) Kaplin, William A. and Lee, Barbara A, The Law of Higher Education. A Comprehensive Guide to Legal Implications of Administrative Decision Making. Third Edition, Jossey-Bass Publishers: San Francisco, California, 1995.
- 3) Pavela, Gary, The Dismissal of Students with Mental Disorders: Legal Issues, Policy Considerations and Alternative Responses. (Available from College Administration Publications, Inc.).
- 4) The best discussion I've seen on the subject of the rights of the private college and its students regarding discipline is in: Stoner, Edward N. II and Cerminara, Kathy L. Harnessing the Spirit of Insubordination-A Model Student Disciplinary Code, 17 J.C. & U.L. No. 2 at 89-121 (Fall 1990).
- 5) Weeks, Kent M. and Davis, Derek, Legal Deskbook for Administrators of Independent Colleges and Universities, Second Edition, Center for Constitutional Studies, Baylor University and the National Association of College and University Attorneys, 1993.
- 6) Young, D. Parker and Gehring, Donald D., The College Student and the Courts. (Published by College Administration Publications, Inc.).

Cases and Statutes

Esteban v. Central Missouri State College, 277 F. Supp. 649 (W.D. Mo. 1967). Although campus judicial proceedings are not bound by the Federal Rules of Evidence, the student is entitled to the opportunity for advance inspection of any affidavits or exhibits the college intends to submit at the hearing, the opportunity to present their own version of the facts, by personal statements as well as affidavits and witnesses, the right to hear evidence against them and question (personally, not through counsel) adverse witnesses, etc.

Fed. R. Evid. 801(c).

In re Winship. 397 US 358 (1970).

Slaughter v. Brigham Young University, 514 F.2d 622 (10th Cir. 1975), cert. denied, 423 U.S. 898 (1975).

Black's Law Dictionary, 1428 (6th Ed. 1990).

"It rests with that evidence which, when fairly considered produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto." Black's Law Dictionary 1344 (4th Ed. 1968).

Gideon v. Wainwright, 372 U.S. 335, 344-345 (1963), "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him." And citing Powell v. Alabama, 287 U.S. 45, 68-69 (1932) "The right to be heard would be in many cases, of little avail if it did not comprehend the right to be heard by counsel."

Gabrilowitz v. Newman, 582 F.2d 100 (1st Cir. 1978).

Fisher v. United States, 425 U.S. 391 (1976).

Purutani v. Ewigleben, 297 F. Supp. 1163 (N.D. Cal. 1969).

U.S. Constitution, 5th Amendment. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

U.S. Constitution, 6th Amendment. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." This clause is applicable to the states through the Fourteenth Amendment. See also: *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968): "the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment guarantee."

Benton v. Maryland, 395 U.S. 784 (1969). The Double Jeopardy Clause of the Fifth Amendment ("[N] or shall any person be subject for the same offense to be twice put in jeopardy of life or limb") is applicable to the state through the Fourteenth Amendment.

U.S. Constitution, 6th Amendment "...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him." *Pointer v. Texas*, 380 U.S. 400, 403 (1965): "The Sixth Amendment's right of an accused to confront witnesses against him is a fundamental right and is made obligatory on the states by the Fourteenth Amendment." And citing *Alford v. United States*, 282 U.S. 687, 692 (1931) the right of cross-examination is "one of the safeguards essential to a fair trial."

Griffin v. Illinois, 351 U.S. 12, 19(1956). "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate an appellate review as defendants who have money enough to buy transcripts." See also: *Douglas v. California*, 372 U.S. 353 (1963).

Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).

In re Civil Rights Cases, 109 U.S. 3 (1883), conduct that is exclusively private is not violative of the Fourteenth Amendment.

Rendell-Baker v. Kohn, 457 U.S. 830 (1982).

Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

20 U.S.C. §1232g Family Educational Rights and Privacy Act.

Goss v. Lopez, 419 U.S. 565, 574 (1975), "the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause."

Healy v. James, 408 U.S. 169, 187-188 (1972). "The college, acting here as the instrumentality of the state, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent."

Osteen v. Henley, 13 F.3d 221, 225 (7th Cir. 1993). "Even if a student has a constitutional right to consult counsel...we do not think he is entitled to be represented in the sense of having a lawyer who is permitted to examine or cross-examine witnesses, to submit and object to documents, to address the tribunal, and otherwise to perform the traditional functions of a trial lawyer."

Militana v. University of Miami, 236 So. 2d 162 (Fla 3rd DCA 1970). Notice of charges and an opportunity to be heard are certainly essential to due process and required when a student is dropped from school for disciplinary reasons; however, such is not required when the dismissal is for academic failure.

Gaspar v. Bruton, 513 F.2d 843 (10th Cir. 1975).

Carr v. St. John's University, New York 17 A.D. 2d 632 (2d Dept. 1962).

