

THAT'S MY ROOM! BALANCING PRIVACY, THE 4TH AMENDMENT, & SAFETY RESPONSIBILITIES IN RESIDENCE HALLS

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The responsibility to provide a safe and healthy environment that undergirds and supports the academic mission is at the foundation of all educational philosophies of Student Affairs. For example, the DePauw University Residence Life and Housing website states the following:

Residence Life and Housing aims to work with residents in a model of “shared governance” to create a positive and inclusive community in our living units. The success of a residential community depends on the willingness of each resident to accept responsibility for him/herself as a member of the community. All members of the residential community are expected to help maintain a clean, safe living environment.

Shared governance allows for greater independence and inclusivity and is a much more reasonable approach in a college or university setting. However, policies and procedures are necessary to assure that the environment is aligned with and supports the educational mission. These policies and procedures are created and implemented in order to honor and respect the legal considerations regarding the right to privacy, to enhance a residential community that is ‘conducive to study,’ optimizes the safeguarding of personal and university property, and allows for the needs and values of individual members of the campus community to be recognized.

While most policies and procedures are designed to support the student’s right to privacy, and provide an environment ‘conducive to study,’ and carrying out necessary academic endeavors, student affairs professionals are challenged in balancing these rights with the ongoing need to maintain safety and discipline in the residence halls. The Fourth Amendment states:

“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 person or thing to be seized.”(The Fourth Amendment to the United States Constitution)

So, what are the challenges student affairs professionals face and their related practical implications? The following case study will help illuminate some of these issues for us as we work to keep students safe and healthy in the face of internal and external threats to that safety.

Ron and the Three-Way Stop (a fictional case study)

Ron Collins is a student at Lincs College and lives in a suite with two others, Bill Jones and Anthony Williams, in a university-owned apartment on campus. Ron and his suite mates are friends, science majors and make good grades. Two of them come from the same town and have never had any problems while at Lincs College.

Betsy Collins is also a student and apartment manager for the Doane Apartments where Ron and his mates reside. On Monday, January 19, 2009, Betsy gets wind of a project that Ron, Bill and Anthony have been working on in their room that allegedly involves exploding devices. Betsy informs her supervisor, Dale Cook, who is an area director and is also a part-time police officer for Lincs College. Betsy and her supervisor, Dale, decide that they will conduct an inspection of the apartment.

When they arrived at the suite, they identified themselves and were granted entry by Jill, Ron's girlfriend. Betsy and Dale informed Jill they were conducting an inspection to which she replied "Fine, come on in. Ron will return shortly." Upon entering the apartment they saw a "stop" sign on the wall and a "3-way" sign as well. Jill was asked which room of the suite belonged to Ron and she pointed to the room on the right with the door ajar. On the desk in Ron's room they observed a can of Drano, a ½ gallon liquor bottle, copper wire, super glue and high intensity BBs among other items. Dale and Betsy checked all three rooms in the suite and took plenty of notes. As they prepared to leave, Ron and his suite mates came through the door. Ron asks, "What's going on, what are you guys doing here?" Area Director Cook tells the three of them that they should be in the Dean's office promptly at 4:00pm. Cook and Collins then left.

Questions for Discussion of Ron and the Three Way Stop Case Study

Was the search of Ron's room legal? Was the search of the suite legal?

Were his rights or those of his suite mates violated?

Did the appropriate parties conduct the search?

What potential complications exist for staff? For Lincs College?

Does the community caretaking exception apply in this case?

Was consent for the search granted?

Was a warrant required for this search?

Certain conditions and circumstances dictate the appropriateness of searches and seizures in a residential environment.

“The search of a students’ residential living space or home is permissible if the health, safety or welfare of the community would be compromised or there exist ‘a reasonable suspicion’ that a crime has been, is being, or will be committed.”
(en.wikibooks.org/wiki/Foundation_of_Education_and_Instructional_Assessment)

While police may not search people or their property without a warrant, they may search people or their property with their consent.

Police officer can use the community caretaking function exception and conduct a search if the following four items are true:

1. Reasonable belief that an emergency exists presenting an imminent threat to life
2. The officer takes immediate action
3. The officer’s actions are unrelated from detecting or investigating a crime
4. The officer’s action must be reasonable and no broader than needed to address the emergency (dig.csail.mit.edu/2007/s9/s9Rules.html)

What are some of the premises or principles we should consider in developing policies and procedures that help us avoid the many obstacles and pitfalls prevalent in the work of student affairs professionals? In an excellent article entitled “Search, Seizure And The Expectation Of Privacy” by Regina Ruosso Wilmes, she details the following conditions:

Educational Mission - If the purpose of a search is to “further the educational mission,” then that search may be considered legal.

Contractual Relationship - If a student signs a housing agreement that states that searches are permitted under certain circumstances, then the court may interpret that as a waiver of Fourth Amendment rights.

Safety, Health and Emergencies - Searches conducted to ensure the safety and health of students are considered permissible.

Police versus College Administrators - There are different standards of behavior for police officers and for college administrators. Police officers must have a warrant to conduct a search, unless the resident has given permission to search their living unit. Police officers may not conduct searches that further the educational mission, as this role is reserved for college administrators.

Permission - The least complicated way (in a legal sense) of gaining access to a student's living unit is to ask and receive the student's permission.
(reslife.net/html/administrative_0701a.html)

Ms. Wilmes also suggest the following guidelines for use in developing policies and procedures related to “searches in residential living units.” (reslife.net/html/administrative_0701a.html)

1. Searches by housing administrators should only be done for the purpose of "furthering the educational mission."
2. Law enforcement officers and/or government agents should do searches done for the purpose of furthering a criminal investigation after they have obtained the permission of the occupant and/or a proper warrant. Make sure that the person giving permission to search is actually an occupant of that living unit.
3. Any clause in a housing agreement that gives administrators the authority to search students' living units should have a rationale that supports the educational mission and should be reasonable. Seek legal counsel to help determine whether the language of the housing agreement is "reasonably construed."
4. Routine searches (inspections) by administrators to determine compliance with housing regulations and safety/health standards are generally permissible. Such inspections should be planned and residents should be notified in advance.
5. Any official, whether it be a police officer or a college administrator should identify themselves before entering a student's living unit.
6. Searches of individual units that are conducted in response to report of an actual violation are more likely to be considered reasonable. Random searches of individual rooms that are not the result of an observed or reported violation are not likely to be supported.
7. Although administrators at private institutions may have more freedom from Fourth Amendment standards, the guidelines above should be utilized to help prevent searches that are unreasonable. Although a constitutional challenge may not be a concern, officials at private institutions could be accused of "unprivileged trespass" and subject to civil action. (**About the Author** Regina Rousso Wilmes has held a variety of positions in both Housing and Student Affairs at Emerson College, the University of Cincinnati, Semester at Sea and Temple University.)