Administrative Law -- Judicial Review -- Procedural Due Process in Student Disciplinary Proceedings

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step away from legislation burdened with such difficult problems of constitutionality and policy is commendable.

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Administrative Law—Judicial Review—Procedural Due Process in Student Disciplinary Proceedings

In the recent case of *In re Carter*,[1] the petitioner, having been suspended from the University of North Carolina at Chapel Hill on a charge of cheating on a quiz, appealed to the state courts for judicial review. The trial court ruled that the evidence offered against the petitioner failed to rebut the presumption of innocence, that the conviction was therefore not in accordance with due process, and that to deny petitioner readmission on the evidence presented would be arbitrary and capricious. But because additional evidence had been disclosed at the trial, the court remanded the case to the Board of Trustees to refer to the proper administrative authorities for a review taking account of the new evidence. Petitioner took no exception to this order and made no appeal, but moved before a subsequent term of court that an order be issued to the Board of Trustees to show cause why an order should not be issued reversing the suspension and directing correction of University records accordingly. It was held that until the administrative hearing on remand was held, petitioner had not exhausted her administrative remedies; the motion and order to show cause were dismissed.

On appeal, the North Carolina Supreme Court affirmed the dismissal. Delegation of authority by the Board of Trustees in matters of student suspension was upheld as "proper and constitutional."[2] The decision of the Board of Trustees upholding the student honor council and the Chancellor was held to be "the administrative decision of a State board authorized by the Constitution and statutes of the State to make administrative decisions . . . ,"[3] and the petitioner was thus held to be entitled to judicial review under the state statutes[4] granting review of administrative decisions. The *Carter* case thus establishes beyond doubt the jurisdiction of the

[1] 262 N.C. 360, 137 S.E.2d 150 (1964).
[2] *Id.* at 372, 137 S.E.2d at 158.
[3] *Id.* at 372, 137 S.E.2d at 159.
[4] N.C. GEN. STAT. § 143-306 to -316 (1953).

North Carolina courts to exercise judicial review of student suspensions from the University.

Courts have long acknowledged jurisdiction over suits challenging expulsion of students from colleges and universities.[5] Yet, the basis for their jurisdiction has seldom been clearly articulated. In cases involving private schools, the courts have frequently held the student-school relationship to rest in contract,[6] thus implicitly founding their jurisdiction on the power to determine disputed contractual rights. Where state schools are involved, jurisdiction may be based, as in the *Carter* case, on state statutes granting authority to administrative boards and officers and establishing powers of review.[7]

Until recently it was thought that the fourteenth amendment of the federal constitution did not apply to cases of student discipline. The only case that had specifically considered the question of due process under the fourteenth amendment had denied its applicability to student disciplinary proceedings in a state-supported institution.[8] Two recent federal cases, however, specifically grounded federal jurisdiction in cases of student expulsion from state colleges on the due process clause of the fourteenth amendment.[9] By its terms the fourteenth amendment applies only where state action is involved, and the state action requirement has been applied in the

[5] Booker v. Grand Rapids Medical College, 156 Mich. 95, 120 N.W. 589 (1909); People *ex rel.* Cecil v. Bellevue Hosp. Medical College, 60 Hun 107, 14 N.Y. Supp. 490, *aff'd mem.*, 128 N.Y. 621 (1891); Commonwealth *ex rel.* Hill v. McCauley, 3 Pa. County Ct. 77 (1887). *Contra*, Carr v. St. John's Univ., 17 App. Div. 2d 632, 231 N.Y.S.2d 410, *aff'd*, 12 N.Y.2d 802, 187 N.E.2d 18, 235 N.Y.S.2d 834 (1962); People *ex rel.* Goldenkoff v. Albany Law School, 198 App. Div. 460, 191 N.Y. Supp. 349 (1921); Barker v. Trustees of Bryn Mawr College, 278 Pa. 121, 122 Atl. 220 (1923). In Steir v. New York State Educ. Comm'r, 271 F.2d 13 (2d Cir. 1959), *cert. denied*, 361 U.S. 966 (1960), the majority opinion was that there was no federal jurisdiction over such cases where state schools are involved. The concurring judge and the dissenting judge thought the requisite jurisdiction was present. See generally Annot., 58 A.L.R. 2d 903 (1958); Annot., 50 A.L.R. 1497 (1927); Annot., 39 A.L.R. 1019 (1925).

[6] See, *e.g.*, Booker v. Grand Rapids Medical College, *supra* note 5; People *ex rel.* Cecil v. Bellevue Hosp. Medical College, *supra* note 5.

[7] See also State *ex rel.* Ingersoll v. Clapp, 81 Mont. 200, 263 Pac. 433, *cert. denied*, 277 U.S. 591 (1928).

[8] State *ex rel.* Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943). In Steir v. New York State Educ. Comm'r, 271 F.2d 13, 22-23 (2d Cir. 1959), *cert. denied*, 361 U.S. 966 (1960), the dissenting judge thought federal courts had jurisdiction of such cases under the due process clause of the fourteenth amendment.

[9] Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961), *reversing* 186 F. Supp. 945 (M.D. Ala. 1960); Knight v. State Bd. of Educ., 200 F. Supp. 174 (M.D. Tenn. 1961).

area of college education.[10] The distinction between public and private educational institutions, so far as application of the due process clause is concerned, may not be made in the future, however, since recent cases have demonstrated a tendency to find state action in the activities of many groups once thought to be private.[11]

Despite their acknowledgment of jurisdiction over cases of student discipline, the courts have generally expressed reluctance to alter the institution's decision, whether the school be public[12] or private.[13] The usual statement is to the effect that the courts will not interfere in the absence of an arbitrary or unusual act or abuse of discretion.[14] While this exercise of judicial restraint is commendable when dealing with academic areas in which the courts have no expertise,[15] and while the determination of educational policy per se is the legitimate concern of the institution and not of the

[10] See, *e.g.*, Guillory v. Administrators of Tulane Univ. of La., 212 F. Supp. 674 (E.D. La. 1962).

[11] See Comment, 42 TEXAS L. REV. 344, 345-49 (1964), and cases cited therein. The writer there concludes that by analogy to the development in other areas where the services in question were impressed with a deep public interest it is entirely possible that the activities of the private colleges and universities will be held to fall within the limits of the fourteenth amendment. *Id.* at 347-48. See also Williams, *The Twilight of State Action*, 41 TEXAS L. REV. 347, 379-80 (1963).

[12] See, *e.g.*, Knight v. State Bd. of Educ., 200 F. Supp. 174, 179 (M.D. Tenn. 1961); Smith v. Board of Educ., 182 Ill. App. 342 (1913); Woods v. Simpson, 146 Md. 547, 551, 126 Atl. 882, 883 (1924); Gleason v. University of Minn., 104 Minn. 359, 362-63, 116 N.W. 650, 652 (1908); Vermillion v. State, 78 Neb. 107, 112-13, 110 N.W. 736, 738 (1907); People *ex rel.* O'Sullivan v. New York Law School, 68 Hun 118, 121-22, 22 N.Y. Supp. 663, 665 (1893); State *ex rel.* Sherman v. Hyman, 180 Tenn. 99, 113, 171 S.W.2d 822, 827-28 (1942), *cert. denied*, 319 U.S. 748 (1943); Foley v. Benedict, 122 Tex. 193, 200, 55 S.W.2d 805, 810 (1932).

[13] See, *e.g.*, DeHaan v. Brandeis Univ., 150 F. Supp. 626, 627 (D.C. Mass. 1957); Kentucky Military Institute v. Bramblet, 158 Ky. 205, 164 S.W. 808 (1914); People *ex rel.* Pratt v. Wheaton College, 40 Ill. 186 (1866); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y. Supp. 435, 439-40 (1928).

[14] Robinson v. University of Miami, 100 So. 2d 442, 444 (Fla. App. 1958); Woods v. Simpson, 146 Md. 547, 551, 126 Atl. 882, 883 (1924); Tanton v. McKenney, 226 Mich. 245, 248, 197 N.W. 510, 511 (1924); State *ex rel.* Ingersoll v. Clapp, 81 Mont. 200, 216, 263 Pac. 433, 437, *cert. denied*, 277 U.S. 591 (1928); Vermillion v. State, 78 Neb. 107, 112-13, 110 N.W. 736, 738 (1907); Foley v. Benedict, 122 Tex. 193, 200, 55 S.W.2d 805, 810 (1932).

"We find it to be the unanimous holding of the authorities that the courts will not interfere with the discretion of school officials in matters affecting discipline of students unless there is a manifest abuse of discretion or where their action has been unlawful or arbitrary." State *ex rel.* Sherman v. Hyman, 180 Tenn. 99, 113, 171 S.W.2d 822, 827-28 (1942).

[15] See, *e.g.*, Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932).

courts, a more stringent application of judicial review seems appropriate in the area of student disciplinary proceedings.[16] In the field of punitive discipline it is the court rather than the school that has a special expertise.[17] Evaluating facts to determine whether crime has occurred is the normal function of the courts.[18] If the institution's decision is based on specific incidents, rather than on its total experience with the student, the court is as qualified to review this decision as it is those of a trial judge or jury.[19]

Moreover, adequate protection of the student's interests may necessitate a more rigorous exercise of judicial review, for in disciplinary matters the college is virtually judge in its own cause and thus acts substantially unrestrained by outside pressures.[20] Legislative solutions guarding the student's interests are scarcely to be expected, since the institution has established channels of contact with the legislature while the political influence of students is comparatively quite small.[21] Further, the objection that judicial review will result in a rash of suits seems untenable, since the number of students willing and able to bear the expense and publicity of litigation is likely to remain small.[22]

It is to be expected, however, that growing enrollments and the augmentation in value of education in modern society will result in some increase in adjudications stemming from student disciplinary proceedings. That the subject of student rights in college disciplinary proceedings has acquired increasing significance in recent years is reflected in the work of both courts and commentators.[23] This is scarcely surprising when viewed in light of the current value of education. A college diploma has become a virtual prerequisite to

[16] See Comment, 72 YALE L.J. 1362, 1387-95 (1963).
[17] *Id.* at 1393.
[18] *Id.* at 1394.
[19] *Id.* at 1393.
[20] *Id.* at 1388-89, 1394. See also authorities cited note 11 *supra.*
[21] *Id.* at 1390.
[22] *Ibid.*
[23] *E.g.*, BLACKWELL, COLLEGE LAW (1961); Jacobson, *The Expulsion of Students and Due Process of Law—The Right to Judicial Review,* 34 J. HIGHER ED. 250 (1963); Seavy, *Dismissal of Students: "Due Process,"* 70 HARV. L. REV. 1406 (1957); Van Alstyne, *Procedural Due Process and State Universities,* 10 U.C.L.A.L. REV. 368 (1963); Comment, *The Constitutional Rights of College Students,* 42 TEXAS L. REV. 344 (1964); Note, *The College Student and Due Process in Disciplinary Proceedings,* 1962 U. ILL. L.F. 438; Comment, *Private Government on the Campus—Judicial Review of University Expulsions,* 72 YALE L.J. 1362 (1963); Annot., 58 A.L.R.2d 903 (1958).

success, pecuniary and otherwise. When a student is expelled, barriers are frequently placed in his way which effectively prevent his continuing his education elsewhere. The expelled student "suffers the loss of a status and the destruction of a set of relationships which have unique intrinsic worth."[24] When viewed in this context, the propriety of a stricter judicial review is accentuated.[25]

The necessity of a stricter judicial review is further demonstrated by the total absence of procedural due process accorded to students in many of the recorded cases. It has been held that fair and reasonable notice to the student of the charges against him is not required.[26] Several cases hold that no hearing at all is necessary,[27] while others have found various forms of informal proceed-

[24] Comment, 72 YALE L.J. 1362, 1364 (1963).

[25] It has been urged that the courts may not inquire into a complaint on the part of a student that he has suffered unmerited injuries at the hands of his instructors, so long as the latter aver them to have been disciplinary in character. This is a grave proposition when it is considered that there are tens of thousands of youth continually in attendance at colleges, many of whom are of mature age and any of whom may suffer degradation and irreparable injury to reputation as well as pecuniary loss, by the unjust action of a faculty. . . .

> It can never be safely admitted that the rights of so large and mostly so worthy a body of our citizens, in whose welfare society has such a deep and abiding interest, shall be utterly deprived in this respect of the protection of the law through its ordinary tribunals.

Commonwealth *ex rel.* Hill v. McCauley, 3 Pa. County Ct. 77, 86 (1887).

> Dismissal from college affects a student's life too drastically to be left to even the barest possibility of arbitrary action by college administrators. Expulsion carries with it an ineradicable stigma which usually prevents admission to another institution, with the result that a student's chances for higher education may be gone forever. This is much too high a price to pay for a threadbare legal doctrine that blocks judicial review.

Jacobson, *supra* note 23, at 254-55.

[26] Vermillion v. State, 78 Neb. 107, 110 N.W. 736 (1907); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y. Supp. 435 (1928). *Contra,* Geiger v. Milford Independent School Dist., 51 Pa. D. & C. 647 (1944); Commonwealth *ex rel.* Hill v. McCauley, 3 Pa. County Ct. 77 (1887).

[27] DeHaan v. Brandeis Univ., 150 F. Supp. 626 (D.C. Mass. 1957); People *ex rel.* Bluett v. Board of Trustees, 10 Ill. App. 2d 207, 134 N.E.2d 635 (1956); Smith v. Board of Educ., 182 Ill. App. 342 (1913); White v. Portia Law School, 274 Mass. 162, 174 N.E. 187 (1931); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y. Supp. 435 (1928); Goldstein v. New York Univ., 76 App. Div. 80, 78 N.Y. Supp. 739 (1902). In DeHaan v. Brandeis Univ., *supra* at 627, the court said, "While it might be a better policy to hold a hearing whenever any disciplinary action is contemplated, I hold as a matter of law that the defendant is not required to do so." *Contra,* Knight v. State Bd. of Educ., 200 F. Supp. 174 (M.D. Tenn. 1961); Morrison v. City of Lawrence, 186 Mass. 456, 72 N.E. 91 (1904); Gleason v. University of Minn., 104 Minn. 359, 116 N.W. 650 (1908); Geiger v.

ings to be sufficient.[28] The right of the accused "to be confronted with the witnesses against him"[29] has often been denied in college disciplinary proceedings. It has been said that since honorable students do not like to be known as snoopers and informers against their fellow students, they should not be subjected to cross-examination.[30] Further, although the right to be represented by counsel is now regarded as an essential element of our system of criminal justice,[31] no authority specifically holds accused students entitled to representation by counsel in disciplinary proceedings.[32] The want of procedural due process in a case of expulsion from a state university[33] provoked one commentator to remark, "our sense of justice should be outraged by denial to students of the normal safeguards. . . . It is . . . shocking to find that a court supports [college officials] . . . in denying to a student the protection given to a pickpocket."[34]

Standing in sharp contrast to these cases is the model for procedural due process set forth in *Dixon v. Alabama State Board of Education*,[35] the first case to hold that due process requires notice

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Milford Independent School Dist., 51 Pa. D. & C. 647 (1944); Commonwealth *ex rel.* Hill v. McCauley, 3 Pa. County Ct. 77 (1887). In Knight v. State Bd. of Educ., *supra* at 178, the court felt that

> the rudiments of fair play and the requirements of due process vested in the plaintiffs the right to be forewarned or advised of the charges to be made against them and to be afforded an opportunity to present their side of the case before such drastic disciplinary action was invoked by the university authorities.

[28] State *ex rel.* Crain v. Hamilton, 42 Mo. App. 24 (1890); State *ex rel.* Ingersoll v. Clapp, 81 Mont. 200, 263 Pac. 433, *cert. denied*, 277 U.S. 591 (1928) (meeting with deans' council); Miller v. Clement, 205 Pa. 484, 55 Atl. 32 (1903) (hearing before committee of board, reviewed by full board); State *ex rel.* Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943) (dean stated substance of testimony against relators to faculty committee).

[29] See U.S. CONST. amend. VI.

[30] State *ex rel.* Sherman v. Hyman, 180 Tenn. 99, 110, 171 S.W.2d 822, 826 (1942), *cert. denied*, 319 U.S. 748 (1943). See also Morrison v. City of Lawrence, 181 Mass. 127, 63 N.E. 400 (1902); State *ex rel.* Ingersoll v. Clapp, 81 Mont. 200, 263 Pac. 433, *cert. denied*, 277 U.S. 591 (1928). In Steir v. New York State Educ. Comm'r, 271 F.2d 13, 20 (2d Cir. 1959), *cert. denied*, 361 U.S. 966 (1960), the concurring judge seemed contemptuous of the idea of requiring cross-examination.

[31] See Gideon v. Wainwright, 372 U.S. 335 (1963).

[32] Geiger v. Milford Independent School Dist., 51 Pa. D. & C. 647, 652 (1944), stated obiter dictum that the right to be represented by counsel if the student so elects is an essential element of a proper hearing.

[33] People *ex rel.* Bluett v. Board of Trustees, 10 Ill. App. 2d 207, 134 N.E.2d 635 (1956).

[34] Seavey, *supra* note 23, at 1406-07.

[35] 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1962). The case has been noted extensively: 14 ALA. L. REV. 126 (1961); 50 GEO. L.J.

and some opportunity to be heard before a student at a tax-supported college may be expelled for misconduct. The court there stated that notice to the student should "contain a statement of the specific charges and grounds which, if proven, would justify expulsion. . . ."[36] A hearing should be held which allows presentation of both sides of the case in considerable detail.[37] While cross-examination is not required, the student should be given the names of the witnesses against him and a report on the facts to which each testifies.[38] He should then be given the opportunity to present his own defense against the charges and to produce oral testimony or written affidavits of witnesses in his behalf.[39] These rudiments of an adversary proceeding, the court concluded, may be preserved without encroaching upon the interests of the college.[40]

All the procedural safeguards of the *Dixon* model, and more, are incorporated into the University of North Carolina at Chapel Hill system of student discipline, which was at issue in the *Carter* case. North Carolina, both on the state and administrative levels, seems to grant to the student the right to due process. On the state level, the statute on which the court in *Carter* based its right to review provides that the courts may reverse or modify the decision of an administrative agency on the ground, *inter alia,* that it is in violation of constitutional provisions.[41] The State Constitution provides that no person ought to be deprived of his life, liberty, or property, "but by the law of the land."[42] The "law of the land" is equivalent to "due process of law."[43] On the administrative level, the Board of Trustees, as the body entrusted with the management of the University,[44] has delegated to the faculty and Chancellor the duty of securing to every student the right of due process and a fair hearing.[45] Various provisions of the Student Constitution and

314 (1961); 75 HARV. L. REV. 1429 (1962); 60 MICH. L. REV. 499 (1962); 38 N.D.L. REV. 346 (1962); 35 TEMP. L.Q. 437 (1962); 15 VAND. L. REV. 1005 (1962).

[36] Dixon v. Alabama State Bd. of Educ., *supra* note 35, at 158.

[37] *Id.* at 159.

[38] *Ibid.*

[39] *Ibid.*

[40] *Ibid.*

[41] N.C. GEN. STAT. § 143-315 (1953).

[42] N.C. CONST. art. I, § 17.

[43] State v. Ballance, 229 N.C. 764, 51 S.E.2d 731 (1949); State v. Collins, 169 N.C. 323, 84 S.E. 1049 (1915).

[44] N.C. GEN. STAT. § 116-10 (1960).

[45] Among the duties of the faculty and Chancellor in each of the

the Student Judicial Procedures Bill[46] effectuate this delegation of authority.[47]

"Due notice" is guaranteed the student and is defined as notice "seventy-two hours preceding a hearing."[48] Notice is given by summons[49] served by the office of the student Attorney General.[50] The summons must be in writing and must specify, *inter alia,* the nature of the offense.[51] At a preliminary conference with the Attorney General, the student is further informed of the charges against him, the possible penalties, and his rights in relation to the hearing.[52] As a final guarantee of due notice, the student may move to postpone the hearing on the ground that he "has not been fully informed of the particulars of the charge and is unable to adequately defend himself . . . ."[53]

Further provisions establish the right of the accused student to a fair hearing—a right frequently denied by other academic institutions.[54] The hearing is held by a council composed of the student's peers, elected under campus geographical apportionment as specified

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component institutions of the University of North Carolina shall be included the duty to exercise full and final authority in the regulation of student conduct and in all matters of student discipline in that institution; and in the discharge of this duty, delegation of such authority may be made to established agencies of student government and to administrative or other officers of the institution in such manner and to such extent as may by the faculty and Chancellor be deemed necessary and expedient; provided that in the discharge of this duty it shall be the duty of the faculty and Chancellor to secure to every student the right of due process and fair hearing, the presumption of innocence until found guilty, the right to know the evidence and to face witnesses testifying against him, and the right to such advice and assistance in his own defense as may be allowable under the regulations of the institution as approved by the faculty and Chancellor. In those instances where the denial of any of these procedural rights is alleged, it shall be the duty of the President to review the proceedings.

Resolution, Executive Committee of Board of Trustees of the University of North Carolina, April 15, 1957 (on file in the Consolidated University Offices, Chapel Hill, N. C.).

[46] Hereinafter cited as "Procedures Bill." Copies of Procedures Bill and U.N.C. STUDENT CONST. are available from Student Government Attorney General, Chapel Hill, N.C.

[47] See notes 48-53, 55-61, 63-66 *infra.*

[48] U.N.C. STUDENT CONST. art. II, § 7(c).

[49] Procedures Bill, art. III, § 2 (1962).

[50] Procedures Bill, art. III, § 4 (1962).

[51] *Ibid.*

[52] Procedures Bill, art. IV, § 1 (1962).

[53] Procedures Bill, art. VIII, § 3 (1962).

[54] See cases cited note 27 *supra.*

by the Student Legislature.[55] The accused student is to be presumed innocent until proven guilty[56] and is granted the right to a speedy hearing.[57] The right to a fair trial includes the right to disqualify members of the judicial body from sitting in judgment in the particular case.[58] And, in cases involving multiple defendants, the accused student has the right to a separate trial if he so elects.[59]

The right to assistance by a defense counsel is granted,[60] but the counsel must come "from among those students under the jurisdiction of the specific judicial body in which the case arises."[61] The right of the accused student to face his accuser is likewise provided for,[62] and the right to question any testimony[63] assures the privilege of cross-examination. Moreover, the accused student is guaranteed the right to summon material witnesses,[64] and any student refusing to comply with his obligation to serve as such may be charged by the Attorney General with refusing to accept his responsibility under the Honor System.[65]

Despite these procedural safeguards in the University's system, the need for judicial review endures. While the system itself seems adequate, the possibility of error in the application of the system remains. Where such error is alleged in cases of student discipline, the courts should review the proceedings much as an appellate court does those of a trial tribunal. Whether the *Dixon* model marks a new trend in cases involving state-supported schools and whether the requirements of procedural due process will be applied to private

[55] U.N.C. STUDENT CONST. art. II, § 3(b), (c).
[56] U.N.C. STUDENT CONST. art. II, § 7(a).
[57] Procedures Bill, art. X, § 1 (1962). *Cf.* U.S. CONST. amend. VI.
[58] U.N.C. STUDENT CONST. art. II, § 7(h); Procedures Bill, art. IX, § 1 (1962).
[59] Procedures Bill, art. IV, § 1(g); art. XII, § 2 (1962).
[60] U.N.C. STUDENT CONST. art. II, § 7(d); Procedures Bill, art. IV, § 1(c) (1962).
[61] U.N.C. STUDENT CONST. art. II, § 7(d). *Quaere* whether an accused student could constitutionally be denied counsel by a member of the bar if he desired it? "It is advisable, although probably not mandatory, that, if [the student] . . . requests the privilege of being represented by counsel selected and employed by him, it be accorded him." Address by Ralph F. Lesemann, National Conference of University Attorneys, Ann Arbor, Mich., April 17, 1961.
[62] Procedures Bill, art. IV, § 1(k) (1962).
[63] U.N.C. STUDENT CONST. art. II, § 7(g).
[64] U.N.C. STUDENT CONST. art. II, § 7(e); Procedures Bill, art. XI, § 7 (1962).
[65] Procedures Bill, art. XI, § 7 (1962).

institutions remain to be seen. Whatever the trend in the rest of the country, *In re Carter* indicates that the North Carolina courts stand ready to remedy any deprivation of due process in the application of the student disciplinary system of the University.[66] As to defects in the system itself, the courts are unlikely to insist that the University establish a microcosm of the common law. They may nevertheless find that the present system in the University lacks some fundamentals of due process to which the student is entitled.[67]

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Constitutional Law—Extension of the Privilege Against Self-Incrimination

The petitioner in *Malloy v. Hogan*[1] was on probation from a sentence imposed after he pleaded guilty to a gambling charge. He was brought before a referee conducting an inquiry into alleged gambling activity in Connecticut and asked questions about the circumstances surrounding his prior arrest, among which were:

> (1) for whom did he work on September 11, 1959; (2) who selected and paid his counsel in connection with his arrest on that date and subsequent conviction; (3) who selected and paid his bondsman; (4) who paid his fine; (5) what was the name of the tenant in the apartment in which he was arrested; and (6) did he know John Bergoti.[2]

After refusing to answer each question "on the grounds it may tend to incriminate me," he was adjudged in contempt[3] and imprisoned until he would cooperate. He applied for a writ of habeas corpus on the ground that the due process clause of the fourteenth amendment granted a privilege against self-incrimination.[4] A lower state court denied the writ, and the highest state court affirmed.[5]

[66] For example, deprivation of due process may result as in *Carter*, where the trial judge found the conviction based upon evidence insufficient to rebut the presumption of innocence.

[67] For example, the courts might find the denial of counsel by a member of the bar to deprive the student of due process. See note 61 *supra*.

[1] 378 U.S. 1 (1964).

[2] *Id.* at 12.

[3] The referee had the same power to commit a witness for contempt as a judge of superior court. CONN. GEN. STAT. § 52-434 (Supp. 1963).

[4] U.S. CONST. amend. V, provides: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." See generally Claflin, *The Self-Incrimination Clause*, 42 A.B.A.J. 935 (1956).

[5] Malloy v. Hogan, 187 A.2d 744 (Conn. 1963).