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Privacy of Students and Confidentiality of Student Records

Lawrence R. Caruso

THIS ARTICLE discusses the privacy of students and the legality and confidentiality of student files and records. It is essentially limited to the legal aspects of these problems.

At the outset, it should be emphasized that privacy and confidentiality are not the same thing legally. It is possible, of course, that in a single case a university could be charged with both an invasion of privacy and a violation of confidentiality arising out of a single incident. In order to advise a college* con-

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cerning the legal pitfalls, however, it is best that the two concepts be examined separately, even though they probably will be intertwined when a practical problem arises.

Privacy is a much more recent legal concept than confidentiality. The right of privacy is the right of a person to withhold himself and his property from public scrutiny if he so chooses.¹ It is said to exist only so far as its assertion is consistent with law or public policy. In a proper case, courts of equity will interfere by way of injunction to prevent an injury threatened by the invasion of, or infringement upon, the right of privacy when that injury is spurred by motives of curiosity, gain, or malice.

The recognition and development of the "right of privacy" is perhaps the most dramatic illustration of the influence of legal periodicals upon the courts. Before 1890 no English or American court had ever granted relief expressly based upon the invasion of such a right, although there were cases which in retrospect seem to have been groping in that direction, and at least one judge had used the phrase, "the right to be let alone."² In 1890 Samuel D. Warren and

* The words "college" and "university" are used herein interchangeably, without distinction.

¹ See *Melvin v. Reid*, 112 Cal. App. 285, 297 P. 91 (Dist. Ct. App. 1931).

² Y. SMITH & W. PROSSER, *CASES AND MATERIALS ON TORTS* 1152 (2d ed. 1957).

Louis D. Brandeis published their famous article, *The Right of Privacy*,³ which reviewed a number of older cases involving the publication of letters, portraits, and the like, in which relief had been afforded on the basis of defamation, breach of confidence, or breach of an implied contract. The article concluded that these cases were in reality founded upon a broader principle which was entitled to separate recognition. This principle was stated to be the right of a private individual to be let alone and to be protected from unauthorized publicity in his essentially private affairs.⁴

Subsequent writers generally advocated the existence of the right of privacy and the tort of invasion of privacy.⁵ The courts of New York were the first to consider the doctrine advanced by Warren and Brandeis.⁶ The courts of Georgia, however, were the first to recognize the right of privacy by name,⁷ and today many states give recognition to such a right.

How, then, does this affect a university in its dealings with a student? The right of privacy does not exist because of any particular relationship. It is a right which every person has. A student, in this connection, is no different from any other person; he has a right of privacy which the law will protect from invasion. A university, therefore, may not pry unnecessarily into the personal affairs of its students. It may not reveal to others information concerning its students, unless it has a proper basis for doing so.

As a practical matter, what should a university do or not do to avoid violating a student's right of privacy? In my view, the law permits a university to make inquiry concerning a student, to seek information from him, and, under proper circumstances, to observe him, as long as the information sought has some logical and reasonably substantial relevance to the educational and other purposes of the university. Furthermore, since the right of privacy belongs to the person, he may, in effect, "release" so much of it as he chooses. Consequently, a university might request a fairly significant amount of personal information from a student and subsequently reveal that information to others, provided that the student has given his permission for such a revelation. Even though most college under-

³ Warren & Brandeis, *The Right of Privacy*, 4 HARV. L. REV. 193 (1890).

⁴ *Id.* at 213.

⁵ See, e.g., Ragland, *The Right of Privacy*, 17 KY. L.J. 85 (1929).

⁶ E.g., Schwyler v. Curtis, 15 N.Y.S. 787 (Sup. Ct. Spec. Term 1891), *aff'd*, 19 N.Y.S. 264 (Sup. Ct. Gen. Term 1892), *aff'd mem.*, 77 N.Y. 598 (Sup. Ct. June Term 1893), *rev'd*, 147 N.Y. 434, 42 N.E. 22 (1895).

⁷ Pavesich v. New England Life Ins. Co., 122 Ga. 190, 50 S.E. 68 (1905).

graduate students have not attained their majority, I believe most courts would hold as a matter of law that they are sufficiently mature to grant this permission. This can be particularly important in such matters as requests for information from prospective employers, graduate schools, and the like. Consequently, any university form requesting information from students which subsequently might be revealed to others should contain both a prominent statement to that effect and a statement at the end whereby the student gives his permission for such use of the information. The latter statement should be followed by the student's signature.

The law quite clearly provides that when a person gives up his right of privacy for some purposes, he does not necessarily give it up for all purposes.⁸ Therefore, if a student provides his university with certain requested information and signs the kind of form suggested above, the university should be careful not to extrapolate from this an assumption that the student has given up his right of privacy *in toto*. Even though a university may have such a statement from a student in its files, that statement does not give the university a legal right to pry unnecessarily into the student's affairs or to reveal unauthorized private information to others.

There are but a few reported court decisions involving colleges and the right of privacy. And those decisions which do exist usually involve the college suing an outside organization for violation of the college's own right of privacy — as in the famous Vassar College case of more than half a century ago⁹ and the more recent Notre Dame ("John Goldfarb") case¹⁰ — rather than the kind of problem discussed here. One very recent case, however, is in point. A group of students at a state-supported institution of higher education sued their institution, challenging its rules requiring most stu-

⁸ See, e.g., *Kerby v. Hal Roach Studios*, 53 Cal. App. 2d 207, 127 P.2d 577 (Dist. Ct. App. 1942) where the court said, "The plaintiff's position as an actress and concert singer might have afforded justification for some sorts of publicity regarding her greater than that to which persons not so engaged must submit, but it is in no wise justified the acts done by the defendant here." *Id.* at 211, 127 P.2d at 580.

⁹ *Vassar College v. Loose-Wiles Biscuit Co.*, 197 F. 982 (W.D. Mo. 1912). The court held that Vassar College had no right of privacy that it could preserve by injunction.

¹⁰ *University of Notre Dame du Lac v. Twentieth Century-Fox Film Corp.*, 44 Misc. 2d 808, 255 N.Y.S.2d 210 (Sup. Ct. 1964), *rev'd*, 22 App. Div. 2d 452, 256 N.Y.S.2d 301, *aff'd mem.*, 15 N.Y.2d 940, 207 N.E.2d 508, 259 N.Y.S.2d 832 (1965). One of the unsuccessful claims of Notre Dame in this case was that the motion picture film "John Goldfarb, Please Come Home" invaded the University's right of privacy in violation of a 1961 New York statute. See 29 ALBANY L. REV. 365 (1965); 56 COLUM. L. REV. 1124 (1965); 79 HARV. L. REV. 863 (1966); 40 NOTRE DAME LAW. 330 (1965).

dents to live and eat on campus. The students alleged, among other things, that their rights of privacy were violated by the "communal" living arrangements. A three-judge United States district court held that the students' rights of privacy are not invaded by "communal" living conditions as long as the institution guarantees them freedom from unwarranted searches and intrusions.¹¹ The United States Supreme Court affirmed the district court's decision without opinion.¹²

A serious problem area is the matter of student discipline. Any information contained in files on student discipline which is a matter of public record, such as arrests and convictions, may be revealed to others. Even here, however, a university should be careful to reveal such information only for a legitimate purpose.¹³ When, on the other hand, a university reveals details of its own disciplining of a student, the student might initiate a legal action, charging invasion of his privacy.¹⁴ In my opinion, most of these claims would not succeed. My reason for this belief is the fact that the student would not initiate his action when the university learned of his activities that led to the disciplinary action, but rather when it revealed those activities to others, perhaps many years later. In my view, if there was no invasion of the student's privacy when the university became aware of the information in question (and I will assume, *arguendo*, that there was no such invasion because what usually would be involved would be an infraction of the university's rules, which manifestly is a matter about which the university is competent to inquire¹⁵), I believe that the revelation of such information to others does not create any legal offense by way of invasion of privacy. That is to say, if the privacy was not invaded by the gathering of the information, it probably is not invaded by the revelation of the information for a legitimate purpose.¹⁶ This, however,

¹¹ *Pratz v. Louisiana Polytechnic Institute*, 316 F. Supp. 872, 883 (W.D. La. 1970), *aff'd mem.*, 39 U.S.L.W. 3433 (U.S. April 5, 1971).

¹² *Pratz v. Louisiana Polytechnic Institute*, 39 U.S.L.W. 3433 (U.S. April 5, 1971).

¹³ *Cf., e.g., Melvin v. Reid*, 112 Cal. App. 285, 292, 297 P. 91, 93 (Dist. Ct. App. 1931), where the court said: "We believe that the publication by respondents of the unsavory incidents in the past life of appellant after she had reformed . . . was not justified . . . and was a direct invasion of her [right of privacy] . . ." This was so even though the incidents revealed were a matter of public record.

¹⁴ It is always possible, of course, that a single incident may both give rise to a university disciplinary action and become a matter of public record. *See, e.g., United States v. Wefers*, 314 F. Supp. 137 (D.N.H. 1970).

¹⁵ *Cf. Knight v. State Bd. of Educ.*, 200 F. Supp. 174, 179 (M.D. Tenn. 1961).

¹⁶ This is not to deny that there may be circumstances where one does not invade another's privacy in acquiring certain information about him, but would invade his privacy if that information subsequently were revealed to others. But in my opinion the circumstances described in the text do not fall into this category.

relates only to charges of invasion of privacy. When we discuss the question of confidentiality below we will examine this factual situation again.

Apart from a right of privacy, a student could possibly claim a right of confidentiality as a basis for prohibiting unauthorized disclosures of his files and records to third parties. In contrast to the right of privacy, which accrues to every person, the right of confidentiality arises from some legally recognized relationship. Thus, the university might arguably be under a legal duty to not disclose information received in confidence from a student.¹⁷ Courts have not as yet recognized such a right between the university and the student; but the right of confidentiality, although older than the right of privacy, is still in its nascent stages. At present the only confidential communications for which tort law provides protection are those involving trade secrets¹⁸ and those between physician and patient.¹⁹

Whether a duty of confidentiality should be imposed upon the university may well be decided through an analysis similar to that now employed in the physician-patient area. In the latter area, courts did not have to break new ground in fashioning principles upon which to bottom a duty of confidentiality. Rather, they simply adopted the canons underlying the evidentiary privilege between physician and patient in regard to the exclusion of testimony in a judicial proceeding.²⁰ These canons may be stated in terms of four general conditions which must be satisfied before the evidentiary privilege is recognized,²¹ or, with respect to tort law, before a duty

¹⁷ See Meigs, *The Confidential Nature of Students Records*, 2 PROCEEDINGS OF THE ANNUAL CONF. OF THE NAT'L ASS'N OF COLLEGE AND UNIV. ATT'YS 14 (1962).

¹⁸ See 2 R. CALLMANN, UNFAIR COMPETITION, TRADEMARKS, AND MONOPOLIES § 51, at 344-46 (3d ed. 1968); RESTATEMENT OF TORTS § 757 (b), comment *j* at 13 (1939).

¹⁹ For examples of cases which, in their holdings or dicta, have recognized a tort action for breach of the confidential physician-patient relationship, see *Hague v. Williams*, 37 N.J. 328, 181 A.2d 345 (1962); *Felis v. Greenberg*, 51 Misc. 2d 441, 273 N.Y.S.2d 288 (Sup. Ct. 1966); *Clark v. Geraci*, 29 Misc. 2d 791, 208 N.Y.S.2d 564 (Sup. Ct. 1960); *Berry v. Moench*, 8 Utah 2d 191, 331 P.2d 814 (1958); *Smith v. Driscoll*, 94 Wash. 441, 162 P. 572 (1917). *Contra*, *Collins v. Howard*, 156 F. Supp. 322 (D. Ga. 1957); *Quarles v. Sutherland*, 215 Tenn. 651, 389 S.W.2d 249 (1965).

²⁰ See *Hague v. Williams*, 37 N.J. 328, 181 A.2d 345 (1962). For a discussion of this privilege, see 8 J. WIGMORE, EVIDENCE § 2380 (J. McNaughton rev. ed. 1961). Generally, the physician-patient privilege bars a doctor from testifying in court about information secured by him during his examination and treatment of the patient. The privilege was not recognized at common law, and thus it exists in America only by virtue of statute. Today over two-thirds of the states have such a statute. *Id.* See, e.g., N.J. STAT. ANN. § 2A:84A-22 to 2A:84A-22.7 (1970).

²¹ 8 J. WIGMORE, *supra* note 20, § 2285, at 527.

of confidentiality is imposed: First, does the communication originate in confidence? Second, is the element of confidentiality essential to the full and satisfactory maintenance of the relationship between the parties? Third, is the relationship one that must be fostered? Fourth, is the injury to the relationship caused by disclosure greater than any benefits which may be gained from that disclosure?

If reasonable grounds can be mustered to support an affirmative response to each of the above regarding the student-university relationship, then perhaps a university could be legally bound not to reveal any information received in confidence from a student. Such a duty, however, need not be absolute. Exceptions have been made to the physician's duty not to make unauthorized disclosures. In certain instances doctors have been found legally justified in disclosing confidential information. The test distilled from the cases is whether there is an overriding public or private interest to justify such disclosure.²² There is no reason why this defense could not be available in the student-university situation. A university would then be immune from liability where it proves an overriding interest in favor of disclosure. An example of such an interest might be security investigations made by the federal government. It would be necessary, however, for a university to be extremely careful in this kind of situation. The university would have to assure itself of the identity of the person requesting the information. It would also have to assure itself that the information requested could serve an overriding legitimate purpose, and it would have to be careful not to reveal any information beyond that which is requested and may be necessary. In some situations, however, a university can obviate any problems arising from a duty of confidentiality by making it clear to the student before he gives the information to the university that the university intends to receive it in a nonconfidential manner, and that the student should not give the information to the university unless he intends that its disclosure to the university be nonconfidential. In such a situation there should be something in the university's files clearly to indicate that the student so intended.

A rather difficult problem, of course, is presented by student dis-

²² See, e.g., *Hague v. Williams*, 37 N.J. 328, 181 A.2d 345 (1962) (public interest in just and honest result justifies disclosure of infant patient's pathological heart condition to insurer to whom the parents applied for life insurance on infant); *Simonsen v. Swenson*, 104 Neb. 224, 177 N.W. 831 (1920) (physician justified in disclosing the dangerous and contagious nature of patient's condition to prevent the spread of disease).

cipline, where the consent procedure probably would not be workable and where information secured very probably is intended to be in confidence.²³ In my opinion, such information in the student's records is legally protected against disclosure by the university because it is confidential information, even though, as I stated above, to reveal it may not be an invasion of privacy. As a practical matter, the university should refuse (absent a court order) to divulge any confidential information in a student's record without the express consent of the student involved. The student may give this consent at any time. Thus, if confidential information is requested from a university concerning events that occurred long before the request, the university may still at that time secure the consent of the student (or the former student) involved.

A rather different facet of the problem concerns information about a student received from a nonstudent who may desire that such information be kept confidential from third parties — and especially from the student himself. Letters of recommendation are the best example of such information. The files relating to the student belong to the institution, not to the student. Thus, the student has no right of general review of his files. Therefore, the choice lies with the institution as to whether or not it will allow the student to review his own file, and, if so, whether it will remove certain material before he is allowed to review the file. In any event, persons who are asked to write letters of recommendation, or similar material, should be clearly informed whether or not their letters will be kept confidential from the student. If they are to be confidential, the college must scrupulously keep them so.

A special problem is presented by the reporting of changes in draft status. If a draft registrant seeks deferment on the grounds that he is a student, it is his responsibility to provide his local draft board with proof of his college enrollment. The college is under no

²³ For example, a student charged with an infraction of the rules is often called into the Dean's office for an initial conference. In the past, such a meeting might have disposed of the entire matter, and any information given by the student about himself or others could have been kept in confidence. Today this is no longer the case. With a possible trend toward "open" disciplinary hearings, it may be that less of this information will be confidential in the future. See *French v. Bashful*, 303 F. Supp. 1333, 1338-39 (E.D. La. 1969), *appeal dismissed*, 425 F.2d 182 (5th Cir.), *cert. denied*, 400 U.S. 941 (1970). See also REPORT OF THE ABA COMM'N ON CAMPUS GOV'T AND STUDENT DISSENT 25 (Feb. 1970). This report, in its entirety, should prove interesting to all persons concerned with colleges and universities. The members of the commission that prepared the report were William T. Gossett (Chairman), Morris B. Abram, Mary I. Bunting, Lawrence R. Caruso, Ramsey Clark, Samuel Dash, Theodore M. Hesburgh, Edward H. Levi, Glen A. Lloyd, John A. Long, Bayless A. Manning, Jerome J. Shestack, Richard E. Wiley, Logan Wilson, and the late Whitney M. Young, Jr.

obligation to supply information about the student's academic standing. Most colleges, however, willingly do so because it helps the student to establish a basis for deferment. The problem arises when there is a change in the student's academic standing. Many students claim that the college may not report such changes in academic standing to the draft board, and that if the college does so it has breached a confidential relationship. It is known that colleges in at least 11 states have failed to report such changes to the draft boards.²⁴

In my opinion, not only is the reporting of changes in academic standing to the draft boards not a breach of a confidential relationship, but the college has a legal obligation to so report. Initially, the college reports the student's academic standing to the draft board at the student's own request for the purpose of securing a deferment for him. This report is accomplished by the completion of Government Form 109 by the college. The instructions accompanying that form require the college to report to the draft board "when a student is no longer enrolled, is not eligible to continue, or has graduated." Thus, the college voluntarily takes on — at the student's request — an obligation to report changes in his academic standing.

It is stated above that the files relating to the student belong to the institution, not to the student. That is my opinion, and I believe it is the majority view. Nevertheless, there are some who hold to the contrary. For example, I understand from the press that early in 1970 Goddard College, in Plainfield, Vermont, refused to disclose to the Federal Bureau of Investigation requested information concerning two of its current students and one former student. Goddard College is reported to have held that a student's records belong to the student and are merely held in custody for him by the institution.²⁵ I do not agree with that conclusion in the usual situations. There is nothing, however, to prevent a college and a student from voluntarily agreeing to such an arrangement, and in that case Goddard's position would be correct. Even then, however, the records would be subject to subpoena.

There are certain parts of a student's record that, in my opinion, never need to be treated as confidential. These would include the fact that the student has attended the university; the dates of his attendance; whether or not he received a degree, and, if so, the degree or degrees he received and the dates when they were conferred. On the other hand, details of his academic record, and certainly de-

²⁴ 5 *Chronicle of Higher Education* No. 15, at 2 (January 18, 1971).

²⁵ Akron (Ohio) *Beacon J.*, (*Parade Magazine Supp.*) Feb. 22, 1971, at 18, col. 2.

tails of any disciplinary actions, are normally to be treated as legally confidential.

This is but a rather sketchy review of some of the legal aspects of the privacy of students and the confidentiality of student records, but it is hoped that it will be of some practical value to attorneys representing colleges and universities faced with these problems. This is particularly important today with the sharp increase in student activism, in public and governmental concern about that activism, and in everyone's concern that his legal rights not be invaded.

APPENDIX

SELECTED BIBLIOGRAPHY ON THE RIGHT OF PRIVACY

In the last 80 years, scores of articles have been written on the right of privacy. This brief bibliography, set forth in chronological order, represents an effort to select a few of those articles which might be of interest to college administrators.

* * *

1. Warren & Brandeis, *The Right of Privacy*, 4 HARV. L. REV. 193 (1890).
2. Larremore, *The Law of Privacy*, 12 COLUM. L. REV. 693 (1912).
3. Ragland, *The Right of Privacy*, 17 KY. L.J. 85 (1929).
4. Moreland, *The Right of Privacy To-Day*, 19 KY. L.J. 101 (1931).
5. Green, *The Right of Privacy*, 27 ILL. L. REV. 237 (1932).
6. Kacedan, *The Right of Privacy*, 12 BOSTON U.L. REV. 353 (1932).
7. Harper & McNeely, *A Re-examination of the Basis for Liability for Emotional Distress*, 1938 WIS. L. REV. 426.
8. Nizer, *The Right of Privacy*, 39 MICH. L. REV. 526 (1941).
9. Feinberg, *Recent Developments in the Law of Privacy*, 48 COLUM. L. REV. 712 (1948).
10. Nimmer, *The Right of Publicity*, 19 LAW & CONTEM. PROB. 203 (1954).
11. Note, *Torts — Right of Privacy — Application and Scope of the Right*, 33 N.D.L. REV. 104 (1957).

12. Davis, *What Do We Mean by "Right to Privacy"?*, 4 S.D.L. REV. 1 (1959).
13. Graney, *Manner of Publication Determinative of Action for Invasion of Privacy*, 9 BUFFALO L. REV. 362 (1960).
14. *Tort — Missouri — Invasion of Privacy — Oral Communications*, 25 MO. L. REV. 205 (1960).
15. Note, *Offenses and Quasi Offenses — Right of Privacy — Duration of Consent*, 36 TUL. L. REV. 164 (1961).
16. *Torts — Right of Privacy — Duration of Implied Consent*, 8 WAYNE L. REV. 348 (1962).
17. Franklin, *Constitutional Problem in Privacy Protection: Legal Limitations on Reporting of Fact*, 16 STAN. L. REV. 107 (1963).
18. Patterson, *Privacy: A Summary of the Past and Present*, 35 PA. B. ASS'N Q. 52 (1963).
19. Note, *Right to be Let Alone*, 17 U. FLA. L. REV. 597 (1965).
20. Comment, *Administrative Inspections and the Right of Privacy: The Frank Compromise*, 11 VILL. L. REV. 357 (1966).
21. Karst, "The Files": *Legal Controls Over the Accuracy and Accessibility of Stored Personal Data*, 31 LAW & CONTEMP. PROB. 342 (1966).
22. Comment, *Eavesdropping, Informers, and the Right of Privacy: A Judicial Tightrope*, 52 CORNELL L.Q. 975 (1967).
23. Note, *Right to Privacy: Social Interest and Legal Right*, 51 MINN. L. REV. 531 (1967).
24. Pollak, *Right to Be Let Alone*, 38 PA. B. ASS'N Q. 399 (1967).
25. Comment, *Unreasonable Private Searches and Seizures and the Exclusionary Rule*, 16 AM. U.L. REV. 403 (1967).
26. Fried, *Privacy*, 77 YALE L.J. 475 (1968).
27. Slough, *Privacy, Freedom and Responsibility*, 16 KAN. L. REV. 323 (1968).
28. Comment, *Dormitory Student's Fourth Amendment Right to Privacy: Fact or Fiction?*, 9 SANTA CLARA L. REV. 143 (1968).
29. Comment, *Torts — Limitations on the Rights of Privacy — Privilege to Report Matters of Public Interest*, 21 S.C.L. REV. 92 (1968).
30. Caruso, *Legal Aspects of Privacy and Confidentiality of Student Files and Records*, 4 COLLEGE COUNSEL 26 (1969).
31. Wallenstein, *Marijuana Possession As an Aspect of the Right of Privacy*, 5 CRIM. L. BULL. 59 (1969).

32. Pipe, *Privacy: Establishing Restrictions on Government Inquiry*, 18 AM. U.L. REV. 516 (1969).
33. Armstrong, *College Searches and Seizures: Privacy and Due Process Problems on Campus*, 5 CRIM. L. BULL. 537 (1969).
34. Meldman, *Centralized Information Systems and the Legal Right to Privacy*, 52 MARQ. L. REV. 335 (1969).
35. Caruso, *Privacy and Confidentiality of Student Records — A Legal View*, 45 COLLEGE & U. 645 (1970).
36. *Torts: Protection of Individual Privacy from Electronic Surveillance*, 23 OKLA. L. REV. 223 (1970).
37. *Privacy and Political Freedom: Application of the Fourth Amendment to "National Security" Investigations*, 17 U.C.L. A.L. REV. 1205 (1970).
38. *Applicability of the "New" Fourth Amendment to Investigations by Secret Agents: A Proposed Delineation of the Emerging Fourth Amendment Right to Privacy*, 45 WASH. L. REV. 785 (1970).