**Students Have No *Meaningful* Privacy Exception in Their “Dorm” Rooms**

Jason Bewley[[1]](#footnote-2)

Warrantless administrative searches on dorm rooms are as constitutional and important to maintaining an effective learning environment as they are offensive.

Public colleges and universities often conduct warrantless searches of student dorm rooms, to further their purpose as an educational institution. These institutions have a compelling interest not only to protect university property, but also to ensure the safety of the students living on campus and to protect those students from the disruptions caused by violations of university policy.[[2]](#endnote-2)Some go further and argue that the interests of those students potentially impacted by the violations outweigh the interests of the students who are committing the violations.[[3]](#endnote-3)Accordingly, these searches are widely used by universities to further their interests as educational institutions. Indeed, a review of university policies across the country would quickly reveal that most, if not all, universities avail themselves of this tool for the benefit of the university and its student body.

 However, the necessity of these searches often seems to conflict with a student’s Fourth Amendment protections, proscribing unreasonable searches and seizures.[[4]](#endnote-4) The analysis of the relevant cases below will balance these two legally supported principles, and will lead to the conclusion that narrowly tailored campus search policies, with a purpose separate and distinct from criminal law, created to further an institution’s educational interest, are constitutionally permissible.

It is important to note that there have been very few cases dealing with the constitutionality of searches of college dorm rooms.[[5]](#endnote-5) In fact, a California Court of Appeals, considering this issue in 2006, found only 29 cases addressing the issue, of which less than half of those were decided in the last twenty years.[[6]](#endnote-6) There is only one Texas case that deals directly with this issue, one relevant case from the Fifth Circuit, and one Supreme Court case. The remaining cases that address this issue come from other states and jurisdictions, and provide only persuasive authority for future Texas cases.

The court cases that are available on the subject do not provide any explanation as to why there are so few cases. However, the small number of cases is likely due to a number of factors. First, the courts have historically recognized that college and university administrators have specific expertise in managing the day-to-day operations of a university. Indeed, colleges and universities are unique institutions. Accordingly, the courts have given great deference to these institutions in their decision-making capacity. Because it is well known that the courts do give universities great deference, many students and their attorneys may be discouraged from suing.

 Second, most searches that occur on college campuses are purely for internal disciplinary purposes and do not result in criminal prosecution. This provides an important distinction. If a student is criminally charged, his case will already be in the courts and he will almost surely try to suppress the evidence by arguing that the evidence was seized in violation of his Fourth Amendment rights. A motion to suppress would be a starting place for his defense. Alternatively, a student whose violations are addressed solely through the institution, as disciplinary violations, would be forced to initiate a separate action in court if he wanted to argue that his Fourth Amendment rights had been violated. In most cases, students do not want to take on the extra expense, time, and stress to initiate a separate action. Therefore, because the majority of searches result only in internal disciplinary proceedings, and not criminal proceedings, the courts are likely to face this issue less frequently.

Third, while the relevant cases on the subject are few, and the facts are different, the holdings have been mostly consistent, providing universities with a relatively clear picture on how to ensure their actions are constitutional. Colleges and universities develop their policies and procedures with approval from legal counsel and they usually train their staff members accordingly. Therefore, this has likely helped to reduce the number of constitutionally impermissible intrusions.

Fourth, colleges and universities publish their procedures for student viewing, and typically require students to sign contracts/agreements, agreeing to abide by those policies. Therefore, when searches are conducted pursuant to those policies, most students likely accept that the university’s actions were permissible, since they were pursuant to the regulations that the student agreed to.

 ***Review of Relevant Law***

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures.”[[7]](#endnote-7) A search occurs when the government intrudes upon a person, house, paper, or effect, only if the person manifests a subjective expectation of privacy in the object being searched, and society recognizes that expectation as reasonable.[[8]](#endnote-8) Therefore, for the Fourth Amendment to apply, there must be (1) a government actor, who (2) intrudes upon a person, house, paper, or effect; and (3) that intrusion is only a search if the person manifests a subjective expectation of privacy in that thing being searched, and (4) society objectively recognizes that expectation as reasonable.

The core protection of the Fourth Amendment provides a man with the right to retreat into his home and to be free from unreasonable government intrusion.[[9]](#endnote-9) Students living on college campuses are entitled to these same protections.[[10]](#endnote-10) Students do not lose their constitutional rights when they enter the schoolhouse door.[[11]](#endnote-11) The Supreme Court has said that students living in dorm rooms on college campuses have the same privacy interests in their rooms as adults do in their homes.[[12]](#endnote-12) In fact, a student’s dorm room serves as his home away from home, and a student can reasonably expect that once he closes his door, his solitude will not be disturbed by unreasonable governmental intrusion. [[13]](#endnote-13)

Fourth Amendment protection is not limited to protecting against unreasonable searches and seizures by police officers.[[14]](#endnote-14) Instead, it serves as a restriction upon government action ranging from building inspectors to firemen entering privately owned dwellings to extinguish a fire.[[15]](#endnote-15) Indeed, the Supreme Court has clearly stated that the Fourth Amendment “protects the rights of students against encroachment by public school officials.”[[16]](#endnote-16)

While the Fourth Amendment does not expressly state that a warrant is required, the Supreme Court has held that searches conducted without a warrant are “per se unreasonable,” subject to only a few specific and well-delineated exceptions.[[17]](#endnote-17) The test for determining the reasonableness of any warrantless search is balancing the need to search against the invasion that the search entails.[[18]](#endnote-18) Some of the specific and well-delineated exceptions recognized by the Supreme Court include, searches incident to lawful arrest, automobile searches with probable cause, searches with consent, border searches, and administrative searches.[[19]](#endnote-19)

There are generally three ways in which warrantless dorm searches occur on college campuses: (1) through consent, (2) through routine health and safety inspections, pursuant to written policies, and (3) by university staff members, based on probable cause, with a purpose that is separate and independent from law enforcement purposes.

***Consent***

An individual may choose to waive his Fourth Amendment rights, by consenting to a warrantless search.[[20]](#endnote-20) If the government conducts a warrantless search based on consent, they have the burden of proving, by clear and convincing evidence, that consent was freely and voluntarily given.[[21]](#endnote-21) The determination of whether consent was voluntary is a question of fact, which will be analyzed under the totality of the circumstances.[[22]](#endnote-22) Even coercion in its most subtle form would render consent involuntary, and therefore invalid.[[23]](#endnote-23) Courts will not lightly infer the waiver of Fourth Amendment rights.[[24]](#endnote-24) In fact, all reasonable presumptions will serve against the waiver of those rights.[[25]](#endnote-25) In addition, the state is not permitted to condition attendance at a public college or university based upon a student renouncing his constitutional rights.[[26]](#endnote-26)

***Routine Health and Safety Inspections***

Universities retain broad supervisory powers that allow them to create policies to further their function as an educational institution.[[27]](#endnote-27) Universities have a legitimate interest in maintaining an educational atmosphere and in preventing disruptions on campus.[[28]](#endnote-28) Indeed, universities have an “affirmative obligation” to create and enforce reasonable policies to protect campus order and to maintain an effective learning environment.[[29]](#endnote-29) However, these policies must be limited in their application to furthering the institution’s purpose as an educational institution.[[30]](#endnote-30)

Once university staff members are lawfully inside of a student’s room to conduct a routine health and safety inspection, they are permitted to seize items that are in “plain view.”[[31]](#endnote-31) The plain view exception allows police and state actors to seize items if: (1) they were lawfully in the area where the item was seized; (2) the item seized was in plain view; (3) it was “immediately apparent” that the item was incriminating; and (4) there was a lawful right of access to the item.[[32]](#endnote-32)

**Searches by University Staff Members with a Separate and Distinct Purpose**

Universities may conduct individual, warrantless searches of student dorms to find evidence of campus rule violations, if the searches have a separate and distinct purpose from the state’s criminal law.[[33]](#endnote-33) However, warrantless searches of student rooms that do not further the institution’s purpose as an educational institution are unreasonable, and violate the Fourth Amendment.[[34]](#endnote-34)

**Remedies for Unconstitutional Searches**

 College and university administrators, as well as police, should strive to protect the constitutional rights of college students. Simply put, all state actors have an ethical responsibility to protect those rights. In addition, there are remedies available to those whose constitutional rights have been trampled. Those remedies provide some additional motivations for state actors to ensure that their actions are constitutional. The two primary remedies available are the exclusionary rule and civil claims under 42 §1983 Civil action for deprivation of rights.

 Under 42 §1983, citizens have the right to a civil action when they have been deprived of any of their constitutional rights, privileges, or immunities by someone acting under the color of any state law.[[35]](#endnote-35) This statute serves two primary purposes: (1) discouraging state action that deprives people of their constitutional rights; and (2) providing a civil remedy for citizens whose constitutional rights have been trampled.

 In the criminal law context, the exclusionary rule is the available remedy. The exclusionary rule, when applicable, forbids the use of evidence that was improperly acquired.[[36]](#endnote-36) However, the exclusionary rule is not always applicable.[[37]](#endnote-37) In fact, the Supreme Court has stated that the suppression of evidence is the Court’s last resort, not its first, because of its high cost to society.[[38]](#endnote-38) The purpose of the rule is to deter unconstitutional police behavior, and its application is limited to those situations where the benefits of deterrence outweigh the costs.[[39]](#endnote-39) The primary cost that the courts are concerned with is letting guilty, and often dangerous, criminals go free.[[40]](#endnote-40) However, the Courts will apply the exclusionary rule when police conduct has been so culpable that the deterrence is worth the cost, and the behavior was so deliberate that the exclusion of evidence could meaningfully deter the behavior in the future.[[41]](#endnote-41)

***Case Reviews***

In *Grubbs v. State*, the appellant and his roommate lived on campus at the University of Houston.[[42]](#endnote-42) On September 15, 2003, the Resident Assistant On-Call, Shaun Deskins, received a complaint of a marijuana smell emanating from the appellant’s room. RA Deskins instructed another staff member to contact the University of Houston Police Department to have two officers meet him outside the appellant’s room. RA Deskins met the officers in the hallway and then proceeded to knock on the door of the appellant’s room. After receiving no response, RA Deskins used his key to enter the room, while the officers remained in the hallway. Upon entering the room, RA Deskins found the appellant and his roommate inside. Shortly after RA Deskins made entry, the appellant and his roommate walked towards the door of their room, in view of the two University of Houston police officers. The officers asked if the appellant and his roommate minded if they came into the room. The appellant responded, “No, go ahead and come in.” After the officers inquired about whether there was any marijuana in the room, the appellant handed the officers a bag of marijuana and admitted that it belonged to him.

The appellant filed a motion to suppress the evidence, arguing that the Resident Assistant’s entry into his room was unlawful, and that the subsequent entry by the police was unlawful. The court determined that both entries were lawful, and denied the motion to suppress.

First, the court held that the Resident Assistant’s entry was lawful, because the Student Handbook (“Handbook”) provided ample authority for his entry.[[43]](#endnote-43) Specifically, the Handbook stated, “University officials, including residence halls staff, … may enter rooms to fulfill their daily duties, in cases of emergencies, or in cases of reasonable suspicion of activity endangering the individual or the community.” When the appellant signed his housing contract, he accepted the policies outlined in the Handbook and agreed to abide by those policies. The court held that the Resident Assistant was acting pursuant to that policy when he entered the appellant’s room to investigate a possible policy violation and to monitor the safety of those living in the student dormitory.

Second, the court held that the police’s entry was lawful because the officers entered the room upon invitation, when the appellant consented to their entry.[[44]](#endnote-44) In addition, the court found that there was no evidence that the police used any coercive tactics to gain consent. Therefore, the court determined that the police did not violate the appellant’s constitutional rights when they entered his dorm room.

In *Piazzola v. Watkins*, the Chief of Police at Troy Police Department contacted the Dean of Men at Troy State University (“Troy”) to discuss a “drug problem” at Troy.[[45]](#endnote-45) The Dean of Men attended two meetings on February 28, 1968, at the Troy police station. In the second meeting, the police informed the Dean of Men that they had sufficient evidence that specific student rooms contained marijuana. The police informed the Dean of Men that they wanted to conduct a search of the rooms and requested cooperation from the University. Later that same day, Troy police officers and University officials searched six dorm rooms located in two separate residence halls. The police conducted two searches of the appellee’s (Piazzola) room. During the second search, the police found marijuana in the appellee’s room.

The court held that the warrantless searches conducted by the police did violate the appellee’s Fourth Amendment rights.[[46]](#endnote-46) The court acknowledged that universities do retain broad supervisory powers, and that they can create regulations authorizing university staff members to enter and search student rooms.[[47]](#endnote-47) However, the court held that those regulations must be limited in their application to further the university’s function as an educational institution. The court held that regulations that are written or applied to authorize searches for the primary purpose of criminal prosecution are unconstitutional.

In *Washington v. Chrisman*, the Washington State University police saw a student, who appeared to be underage, leaving a dormitory carrying a bottle of alcohol.[[48]](#endnote-48) When the officer approached the student and asked for identification, the student indicated that he would need to retrieve it from his room. The officer followed the student to his room, but remained outside the room, standing in the doorway. From that vantage point, the officer saw marijuana seeds and a marijuana pipe sitting out on the student’s desk, in plain view. The student was read his Miranda rights, and then gave the police written and verbal consent to search the room. Upon conducting a search of the room, the police found additional marijuana. The student was charged criminally and filed a motion to suppress the evidence.

In this case, the Court held that the officer was permitted to seize the marijuana because of the “plain view” exception to the Fourth Amendment.[[49]](#endnote-49) What an officer sees in plain view, he may seize, provided that he is in a place that he is permitted to be.[[50]](#endnote-50) The Court further held that the police had a right to stand in the doorway, because they were monitoring a suspect who had just been placed under arrest, for their own safety and to prevent his escape.

A review of the decision in *Washington*, the lone Supreme Court case addressing the issue, leaves many questions unanswered by the highest court in the land. First, the case primarily addresses search and seizures pursuant to the “plain view” exception for the Fourth Amendment. This provides limited guidance to college and university administrators, because most searches are not “plain view” searches, but instead are routine health and safety inspections, targeted searches, or searches with consent. Second, the case addresses conduct by police officers, instead of university administrators. The person conducting the search is not the litmus test to determining the constitutionality of a search. However, a search conducted by university administrators is more likely to be viewed as having a separate and distinct purpose from the criminal law system, than is a search conducted by police officers.

***Other Jurisdictions***

In *Devers v. Southern University*, Southern University (“University”) staff and police conducted a dormitory sweep of student rooms and discovered 12 bags of marijuana in Devers’s dorm room.[[51]](#endnote-51) The search was conducted pursuant to a regulation in the University’s Housing Agreement, which Devers was required to sign to live on campus. The policy stated, “The University reserves all rights in connection with assignments of rooms, inspection of rooms with police, and the termination of room occupancy.”[[52]](#endnote-52)

The court held that the regulation was prima facie unconstitutional because it authorized unconstitutional searches.[[53]](#endnote-53) Specifically, the court held that the regulation must further an interest that is separate and distinct from the interests of criminal laws; that it must further the University’s purpose as an educational institution. Because the policy failed to do so, the court held that it was unconstitutional.

In *Medlock v. Trustees of Indiana University*, the Housing Department at Indiana University Bloomington (“Bloomington”) conducted four health and safety inspections each year.[[54]](#endnote-54) The A to Z Guide, which all on-campus students are required to sign to live on campus, authorized these health and safety inspections.[[55]](#endnote-55) Further, the A to Z Guide stated, “[a]uthorized university officials may enter a room or apartment where there is probable cause to believe that violations of university or civil regulations are being committed.” The A to Z Guide also stated that university officials were free to seize illegal materials that were in “plain view” and “that ‘[i]f an extensive search is required (i.e. opening all drawers, luggage, and locked boxes) and the student has not given permission, the university should contact the IU Police Department for a search warrant.’”

Pursuant to that policy, Resident Assistants conducted a routine health and safety inspection of Zachary Medlock’s room.[[56]](#endnote-56) During the search, one of the Resident Assistants noticed a clear plastic tube containing marijuana, sitting on Mr. Medlock’s desk. The Resident Assistant notified campus police, who then confiscated the marijuana. As the Resident Assistants continued to complete the inspection, one of them noticed a 6-foot marijuana plant sitting inside the closet and subsequently notified the officer who had confiscated the marijuana. Mr. Medlock had not closed the closet door, so the plant was in plain view. When the officer arrived in the room, he confirmed that it was a marijuana plant, and then obtained a search warrant. Campus police executed the search warrant and confiscated the marijuana plant and other paraphernalia.

First the court held that the initial health and safety inspection by the Resident Assistants did not violate Mr. Medlock’s Fourth Amendment rights.[[57]](#endnote-57) The court acknowledged that universities have a duty to ensure the safety of their students, and that they are permitted to conduct routine health and safety inspections to satisfy that duty. The court stated that administrative searches that further a purpose separate and distinct from that of the criminal law are legal. The court found that the health and safety inspections conducted at Bloomington were not for the purpose of gathering evidence of criminal activities. Instead, the court found that the inspections were performed to check for violations of University policy. Because the court found that the searches were aimed at furthering a legitimate institutional purpose, the court held that they were constitutional.

Second, the court held that the entry by police did not violate Mr. Medlock’s Fourth Amendment rights.[[58]](#endnote-58) The court recognized that the “plain view” exception to the Fourth Amendment permits police officers to seize evidence of a crime, if the evidence is in plain view in an area where police have a right to be. The court held that the police had a right to be in the room based on probable cause, pursuant to the A to Z Guide, once the Resident Assistants found the marijuana in plain view. The court held that the second entry by police was justified on the same grounds, once the Resident Assistants saw the marijuana plant in plain view, sitting in the closet.

In *Morale v. Grigel,* staff members of the Housing Department at New Hampshire Technical Institute conducted four searches of James Morale’s dorm room, searching for a stolen radio.[[59]](#endnote-59) During the course of the searches, the staff members found some marijuana seeds that belonged to Morale. The University subsequently suspended Morale and he sued, alleging that the searches violated his Fourth Amendment rights.

The court held that the four searches were inextricably bound together and did violate Morale’s Fourth Amendment rights.[[60]](#endnote-60) The court acknowledged that universities have an interest in furthering their function as an educational institution, and that they are permitted to adopt regulations to further those interests.[[61]](#endnote-61) However, the court found that searches for stolen property are not a reasonable exercise of a university’s supervisory authority. Specifically, the court determined that stealing on campus does not disrupt the operation of the university’s academic functions. Further, the court found that the University did not have a separate and clearly distinguishable educational interest in searching for stolen property that was not served by the criminal statutes. Accordingly, the court held that the searches violated the Fourth Amendment.

In *People v. Cohen*, Hofstra University officials were concerned that students were using marijuana in the dorms, so they coordinated for police officers to conduct a survey of the building.[[62]](#endnote-62) During the survey, conducted jointly by police and University officials, a marijuana odor was found to emanate from one of the rooms. Based upon the smell, and information previously provided by an unidentified informant, a search was conducted of the room. Once inside, the police found marijuana and seized the evidence.

The police argued that the search was justified as being incident to arrest.[[63]](#endnote-63) However, the court held that the search cannot precede the arrest, and then be used as justification for the arrest.[[64]](#endnote-64) Further, the court found that a dorm room is a home and cannot be subject to illegal searches and seizures. The court stated, “To suggest that a student who lives off campus in a boarding house is protected but that one who occupies a dormitory room waives his Constitutional liberties is at war with reason, logic, and law.” Accordingly, the court held that the search violated the Fourth Amendment and was unconstitutional.

In *State v. Kappes*, students living on campus were required to sign a housing contract, agreeing to abide by university regulations.[[65]](#endnote-65) One of those regulations permitted University officials to enter student dorm rooms to inspect for cleanliness and safety, and to conduct repairs and maintenance. During the course of conducting these monthly inspections, University officials noticed a marijuana pipe and marijuana butts sitting in plain view.[[66]](#endnote-66) Campus security, and police were notified and the occupant of the dorm room was arrested.

The court held that the purpose of the searches was to ensure that rooms were being maintained in accord with university policies, not for criminal prosecution purposes, and therefore determined that the University staff members were not state actors.[[67]](#endnote-67) However, the court went on to say that even if they were state actors, the search would still be reasonable under the Fourth Amendment. The court held that the university had an obligation to ensure the health, safety, and welfare of their students and has the authority to inspect its dorm rooms for that purpose. The court further stated that the student agreed to the terms of the inspections when he signed his housing contract. Therefore, the court determined that the room inspections did not violate the Fourth Amendment and were constitutional.

In *State v. Hunter*, Utah State University had received numerous reports of thefts occurring on university property.[[68]](#endnote-68) University administrators conducted a meeting with on-campus students to address the theft issues and indicated that they would be forced to conduct room-to-room inspections if the issues of theft did not stop. The thefts continued to occur, and the Director of Housing decided to conduct a search of the rooms, accompanied by a custodian, a football coach, and a university police officer. The searches were conducted pursuant to campus policies and regulations, authorizing the searches, which students agreed to abide by. During the search, stolen property was found in one of the rooms. The occupant of the room gave a confession, was charged with theft, and then made a motion to suppress the evidence.

In *Hunter*, the court set out to determine if the search was reasonable under the Fourth Amendment. The court stated that the university had an interest, and a contractual duty, to maintain an educational environment.[[69]](#endnote-69) Accordingly, the court stated that a university has the right to take reasonable measures to maintain that environment. Further, the court found that the student consented to the search when he signed his residence hall contract, and agreed to abide by the campus policies that authorized the search. Therefore, the court held that the search was reasonable and denied the motion to suppress.

The court then went on to distinguish this case from one where the university conducted a joint investigation with the police or at the behest of the police.[[70]](#endnote-70) While a campus police officer was involved in this search, the court found that the officer’s involvement was for safety purposes only, and was not sufficient to make the search for law enforcement purposes. The court seemed to rely on these distinctions in determining that there was no circumvention of the student’s constitutional rights.

***Analysis of Relevant Cases***

The number of cases directly dealing with search and seizure on college campuses are few and the facts of each case vary widely. However, there are enough common threads throughout all of the cases to provide university administrators and police officers with a clear picture of the line separating permissible and impermissible searches.

***Common Threads of Permissible Searches***

 The courts consistently permitted routine health and safety inspections, pursuant to reasonable regulations, for the purpose of ensuring the health and safety of the students. As long as the purposes of the searches were to further the educational interests of the institution, and not for criminal prosecution, the searches were consistently deemed to be constitutional.

 The courts also permitted targeted searches of student rooms to search for violations of campus regulations, as long as the searches were conducted pursuant to reasonable regulations, had a purpose separate and distinct from criminal prosecution, and furthered the institution’s educational interests.

 Finally, the courts were willing to permit searches, even by police officers, with the consent of the student. However, the courts held that the university had the burden of proving, by clear and convincing evidence, that the consent was truly voluntary. The courts made those determinations based upon the totality of the circumstances.

***Common Threads of Impermissible Searches***

 A review of the relevant cases provided some consistent patterns by the courts in ruling certain searches to be a violation of Fourth Amendment rights. The courts review the totality of the circumstances surrounding the searches to determine their constitutionality. The courts have consistently held the following types of searches to be unconstitutional. First, targeted searches of student rooms where the purpose is not separate and distinct from criminal prosecution are not permissible. Second, searches of student rooms for purposes that do not further the institution’s educational interests are not permissible. Third, searches that are conducted primarily by the police, with the assistance of university administrators, are not permissible. All of those types of searches are impermissible, even if the student has signed a contract authorizing those types of searches. The courts have held that such policies are unconstitutional and universities are not permitted to require students to consent to unconstitutional searches.

***Counterargument***

There are those who argue that university administrators are not state actors, unless they are acting on behalf of the police and therefore the fourth amendment does not apply. This view would give university administrators far more deference in conducting warrantless searches. At least one court has shared that viewpoint in its analysis.

In *State v. Keadle*, the court gave the university even more deference in conducting warrantless searches. A Resident Assistant (RA), Bob Goldberg, at the University of North Carolina at Chapel Hill was walking the dorm looking for lights left on in vacant rooms.[[71]](#endnote-71) RA Goldberg noticed a light left burning in one of the student’s rooms and keyed in to turn it off, pursuant to University policy. Once inside the room, RA Goldberg noticed a blanket draped over an object sitting on the bed. RA Goldberg lifted the blanket and found a tape deck that he knew had been reported stolen. Once RA Goldberg confirmed that it was the stolen take deck, he contacted the police and they obtained a warrant to seize the item.

The court found that RA Goldberg did not have sufficient contact with the state to make him a state actor.[[72]](#endnote-72) Accordingly, the court held that the Fourth Amendment did not apply to this case. Further, the court held that the exclusionary rule would also not be applicable because its application would not serve as a deterrent against illegal governmental searches, in this case. The court concluded by finding that the search did not even reach the level to invoke the application of constitutional safeguards. While this case does seem to suggest that university staff members are not state actors, this holding seems to be a legal anomaly.

As the case analysis above shows, the majority of courts have consistently held that staff members at public universities are state actors, and therefore the fourth amendment does apply. In addition, *in National Collegiate Athletic Association v. Tarkanian,* the University of Nevada Las Vegas suspended a basketball coach, after the NCAA found that the coach had committed ten NCAA violations.[[73]](#endnote-73) The Court, in addressing whether or not the involvement by the NCAA constituted state action, unequivocally stated that the University itself was a state actor. Specifically, the Court stated, “A state university without question is a state actor.”[[74]](#endnote-74) Indeed, even the dissent fully agreed with that part of the holding. Justice White’s opening sentence in his dissent stated, “All agree that UNLV, a public university, is a state actor…”[[75]](#endnote-75)

An organization entitled Students for Sensible Drug Policy, has proposed another argument against warrantless searches. Specifically, on its website, the organization has suggested that universities should have a landlord-tenant relationship with their students, and should not have special privileges to search dorm rooms. The organization argues that dorm searches should only be conducted if a university has probable cause to believe that university property or a student’s safety is at risk.[[76]](#endnote-76)

However, the courts have also rejected this argument. In *Piazzola v. Watkins*, the court acknowledged that universities do have broad supervisory powers, and that these powers permit them to create and enforce reasonable regulations, allowing them to conduct searches that further the university’s purpose as an educational institution.[[77]](#endnote-77) The court did, however, state that searches cannot be for the purpose of criminal prosecution, and that they must be tied to furthering the institution’s interest as an educational institution.[[78]](#endnote-78)

There are also those who object to warrantless searches on college campuses where attendance at the university is conditioned upon living on campus. They argue that in these cases, the students are forced to live on-campus and therefore are forced to be subjected to various types of warrantless searches that occur on college campuses. Further, they argue that the students did not voluntarily consent to abide by the policies and regulations that authorize warrantless dorm searches.

However, this argument overlooks the fact that the students voluntarily chose to attend the institution that required them to live on campus. And, more importantly, this argument addresses the constitutionality ofrequiring students to live on campus, as opposed to the constitutionality of warrantless dorm searches. Therefore this argument is not applicable to an analysis of campus search and seizure law.

***Recommendations for University Administrators***

While there are still questions left unanswered, a review of the cases above provides university administrators with enough information to create and enforce reasonable regulations to further educational interests, while not encroaching upon Fourth Amendment rights. The following recommendations, based upon holdings from the aforementioned cases, will help a university to ensure its policies and actions are constitutional. The courts look to all of the circumstances surrounding every search and seizure in determining whether the search was reasonable and constitutional. The more safeguards that a university implements to protect a student’s constitutional rights, the less likely the university will be to violate those rights. Universities should not seek to encroach as close to the line as possible, without going over. Instead, they should strive to protect the rights of their students to the fullest extent possible, while still protecting the health and safety of their students and furthering their educational interests. The following recommendations are designed for that purpose.

 The first step is to write clearly defined and narrowly tailored policies and regulations. Students living on campus should be required to sign an agreement by which they verify that they have read the regulations and that they agree to abide by them. The regulations should specifically authorize the various types of searches that the university plans to conduct.

Every university should have a written policy that authorizes routine health and safety inspections.The reason for the policy should be specifically for the purpose of ensuring the health and safety of the students. That purpose should be expressly articulated in the policy manual. Further, the policy should provide as many details about the inspections as possible. Specifically, the policy should outline the frequency of the inspections, describe the staff members who will be conducting the inspections, and explain the process by which the inspections will be conducted.

 In addition, universities should have a written policy that authorizes searches of specific rooms, to search for violations of campus regulations. The purpose of these searches should be strictly for the purpose of finding violations of campus regulations, with the goal of addressing them through the campus disciplinary process. The rationale for these searches is to allow the university to maintain an effective educational environment, and that should be expressly outlined in the policy. The policy should articulate the type of suspicion that is required to conduct these searches. Further, the policy should clearly outline the process by which these searches will be conducted. In addition, the policy should state that the search will be led and conducted by university officials, not the police.

As the above cases have indicated, it is common for university police officers to be present, outside the room, while the search is taking place. The policy should explain that campus police will be present, but that their role is primarily for security purposes. University administrators should educate their campus police officers about this policy and should be responsible for ensuring that this actually occurs in practice. In addition, it is important that the decision to search the rooms is initiated by university administrators and not by police officers. This will help the university to prove that searches are separate and distinct from law enforcement purposes.

Further, in some cases university staff members will find evidence of illegal activity, while searching for campus policy violations. In these cases, it is best that most of these issues be addressed solely through the campus disciplinary process, except when to do so would put the university or its students is jeopardy of harm or legal liability.

 The second step is to take extra precautions to ensure that students are informed of these policies. In addition to providing students with a copy of these policies when they sign their housing contracts, these policies should be posted on the universities’ websites. Universities should also have hard copies available for pick-up at a designated office. University officials should conduct floor meetings at the beginning of each semester, whereby students are informed of these policies in advance.

The third step is to ensure that all searches are carried out in accordance with written policies. If the search policies are constitutional, and university administrators carefully adhere to those policies, then the searches themselves will be constitutional. Because these searches are often conducted by Resident Assistants and Hall Directors, this step will require much training. Universities should utilize their legal counsel to provide training to all staff members who are authorized to conduct these searches. Staff members should be informed of the policies, the reasons behind the policies, and the consequences of not adhering to the policies.

Finally, if an institution chooses to utilize targeted searches of student rooms, the university should be able to articulate that it has taken other less intrusive means to address the issue and that those means were ineffectual. This factor goes to the totality of the circumstances and provides evidence to the court, that the university was genuinely interested in maintaining an educational environment, and only utilized the targeted searches when necessary.

University administrators who adhere to the recommendations outlined above can have confidence that their actions will not violate the constitutional rights of their students. As the analysis above shows, the courts have consistently held that warrantless searches of student dorm rooms are constitutionally permissible, if they have a purpose separate and distinct from criminal prosecution, and are designed to further the institution’s interest as an educational institution.

***Concluding Analysis***

Based on the analysis above, it is clear that warrantless searches and seizures of student dorm rooms are constitutional, if they are narrowly tailored as described above. Despite the fact that they seem to be offensive to the very protections provided by the Fourth Amendment, they are important to further the interests of educational institutions and are constitutionally reasonable.

1. Author has served in the field of higher education in positions ranging from Director of Housing and Residence Life to Assistant Dean of Students.  In addition, Author has taught doctoral level classes for the past five-years.  Author has a Ph.D. in Higher Education from the University of North Texas, and a J.D. in Law from Texas A&M University School of Law. [↑](#footnote-ref-2)
2. The Notes, *The Legality of University-Conducted Dormitory Searches For Internal Disciplinary Purposes*, 1976 DUKE L.J. 770, 785 (1976). [↑](#endnote-ref-2)
3. *Id.* [↑](#endnote-ref-3)
4. *Id.* [↑](#endnote-ref-4)
5. Elizabeth O. Jones, The Fourth Amendment and Dormitory Searches, 33 J.C. & U.L. 597, 603 (2007). [↑](#endnote-ref-5)
6. *Id.* [↑](#endnote-ref-6)
7. Terry v. Ohio, 392 U.S. 1, 8 (1968). [↑](#endnote-ref-7)
8. Kyllo v. United States, 533 U.S. 27, 27–28 (2001). [↑](#endnote-ref-8)
9. Silverman v. United States, 365 U.S. 505, 511 (1961). [↑](#endnote-ref-9)
10. Devers v. S. Univ., 97-0259 (La. App. 1 Cir. 4/8/98); 712 So. 2d 199, 204. [↑](#endnote-ref-10)
11. *Id.* [↑](#endnote-ref-11)
12. *Id.* at 205. [↑](#endnote-ref-12)
13. *Id.* at 205. [↑](#endnote-ref-13)
14. New Jersey v. T.L.O., 469 U.S. 325, 335 (1985). [↑](#endnote-ref-14)
15. *Id.* [↑](#endnote-ref-15)
16. Id. at 334. [↑](#endnote-ref-16)
17. Katz v. United States, 389 U.S. 347, 357 (1967). [↑](#endnote-ref-17)
18. Camara v. Mun. Court of City &Cnty. of San Francisco, 387 U.S. 523, 536–537 (1967). [↑](#endnote-ref-18)
19. Warrantless Searches and Seizures, 37 Geo. L.J. Ann. Rev. Crim. Proc. 39, 40 (2008). [↑](#endnote-ref-19)
20. Grubbs v. State, 177 S.W.3d 313, 318 (Tex. App. —Houston [1st Dist.] 2005, pet. denied). [↑](#endnote-ref-20)
21. *Id.* at 317. [↑](#endnote-ref-21)
22. *Id.* at 318. [↑](#endnote-ref-22)
23. Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973). [↑](#endnote-ref-23)
24. Piazzola v. Watkins, 442 F.2d 284, 288 (5th Cir. 1971). [↑](#endnote-ref-24)
25. *Id.* [↑](#endnote-ref-25)
26. *Devers*, 712 So. 2d at 206. [↑](#endnote-ref-26)
27. *Piazzola*, 442 F.2d 284 at 289. [↑](#endnote-ref-27)
28. Morale v. Grigel, 422 F. Supp. 988, 997 (D.N.H. 1976). [↑](#endnote-ref-28)
29. Moore v. Student Affairs Comm. of Troy State Univ., 284 F. Supp. 725, 729 (M.D. Ala. 1968). [↑](#endnote-ref-29)
30. *Piazzola*, 442 F.2d 284 at 289. [↑](#endnote-ref-30)
31. United States v. Roberts, 612 F.3d 306, 312 (5th Cir. 2010). [↑](#endnote-ref-31)
32. *Id.* [↑](#endnote-ref-32)
33. Medlock v. Trustees of Indiana Univ., 1:11-CV-00977-TWP, 2013 WL 1309760, 4 (S.D. Ind. Mar. 28, 2013). [↑](#endnote-ref-33)
34. Morale, 422 F. Supp. 988 at 997. [↑](#endnote-ref-34)
35. 42 U.S.C.A. § 1983 (West) [↑](#endnote-ref-35)
36. Herring v. United States, 555 U.S. 135, 139 (2009). [↑](#endnote-ref-36)
37. *Id.* at 141. [↑](#endnote-ref-37)
38. Hudson v. Michigan, 547 U.S. 586, 591 (2006). [↑](#endnote-ref-38)
39. *Herring*, 555 U.S. 135 at 141. [↑](#endnote-ref-39)
40. *Id.* [↑](#endnote-ref-40)
41. *Id.* at 144. [↑](#endnote-ref-41)
42. *Grubbs*, 177 S.W. 3d 313 at 316. [↑](#endnote-ref-42)
43. *Id.* at 319. [↑](#endnote-ref-43)
44. *Id.* at 321. [↑](#endnote-ref-44)
45. *Piazzola*, 442 F.2d 284 at 286. [↑](#endnote-ref-45)
46. *Id.* at 290. [↑](#endnote-ref-46)
47. *Id.* At 289. [↑](#endnote-ref-47)
48. Washington v. Chrisman, 455 U.S. 1(1982). [↑](#endnote-ref-48)
49. *Id.* at 7. [↑](#endnote-ref-49)
50. *Id.* at 6. [↑](#endnote-ref-50)
51. *Devers*, 712 So. 2d at 201. [↑](#endnote-ref-51)
52. *Id.* at 204. [↑](#endnote-ref-52)
53. *Id.* at 206–07. [↑](#endnote-ref-53)
54. Medlock, 2013 WL 1309760 at 1. [↑](#endnote-ref-54)
55. *Id.* at 5. [↑](#endnote-ref-55)
56. *Id.* at 1–2. [↑](#endnote-ref-56)
57. *Id.* at 4. [↑](#endnote-ref-57)
58. *Id.* at 5. [↑](#endnote-ref-58)
59. *Morale*, 422 F. Supp. 988 at 992–995. [↑](#endnote-ref-59)
60. *Id.* at 997. [↑](#endnote-ref-60)
61. *Id.* at 998. [↑](#endnote-ref-61)
62. People v. Cohen, 292 N.Y.S.2d 706, 708 (Dist. Ct. 1968). [↑](#endnote-ref-62)
63. *Id.* at 710–711. [↑](#endnote-ref-63)
64. *Id.* at 713. [↑](#endnote-ref-64)
65. State v. Kappes, 550 P.2d 121, 122 (1976). [↑](#endnote-ref-65)
66. *Id.* at 122–123. [↑](#endnote-ref-66)
67. *Id.* at 124. [↑](#endnote-ref-67)
68. State v. Hunter, 831 P.2d 1033, 1034–1035 (Utah Ct. App. 1992). [↑](#endnote-ref-68)
69. *Id.* at 1036-37. [↑](#endnote-ref-69)
70. *Id.* at 1037–38. [↑](#endnote-ref-70)
71. State v. Keadle, 277 S.E.2d 456, 457–458 (1981). [↑](#endnote-ref-71)
72. *Id.* at 459. [↑](#endnote-ref-72)
73. Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 180-81 (1988). [↑](#endnote-ref-73)
74. *Id.* at 192. [↑](#endnote-ref-74)
75. *Id.* at 199. [↑](#endnote-ref-75)
76. STUDENTS FOR SENSIBLE DRUG POLICY, [www.ssdp.org](http://www.ssdp.org) (last visited 6/25/2013). [↑](#endnote-ref-76)
77. *Piazzola*, 442 F.2d 284 at 289. [↑](#endnote-ref-77)
78. *Id.* [↑](#endnote-ref-78)