

# SEARCHES & SEIZURES

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# STUDENTS & THE BILL OF RIGHTS

## **THE 4<sup>TH</sup> AMENDMENT**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

# APPLICABILITY OF THE 4<sup>TH</sup> AMENDMENT TO UNIVERSITY RESIDENCE HALLS



Regulatory  
Inspections



Law Enforcement  
Searches

# ARE UNIVERSITY DORM ROOMS DIFFERENT FROM HOUSES?

Yes & No



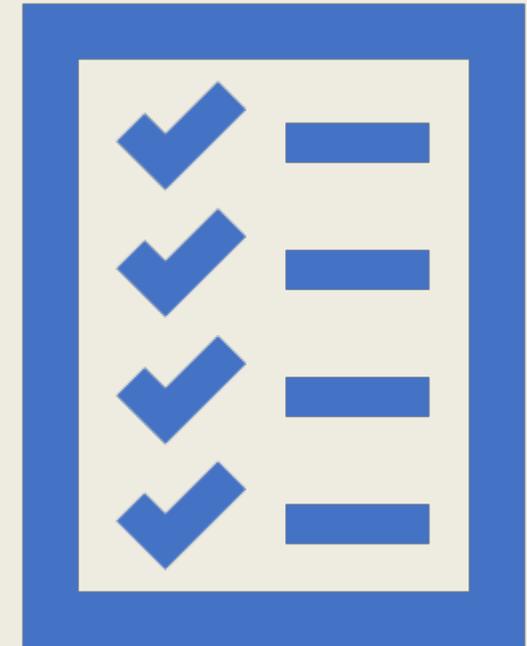
Health & Safety inspections by public university employees are generally allowed.



Searches for law enforcement purposes must abide by the same 4<sup>th</sup> Amendment rules that apply to homes.

# UNIVERSITY OF ALABAMA 2017-18 HOUSING CONTRACT

Occupant agrees to keep premises in clean and sanitary condition and neither commit or permit waste or damage to the premises. **Occupant shall allow UA reasonable access to enter and inspect the premises to ascertain that Occupant is carrying out the terms, conditions, and provisions of this Contract** and to make necessary repairs, improvements, alterations, **and health and safety inspections**, as well as to perform necessary pest control services. The submission of a work order is considered authorization for maintenance personnel to enter an individual's room. **UA reserves the right to enter and inspect living spaces at any time to protect and maintain the property of UA, the health and safety of our occupants, student, and campus community, or whenever necessary to aid in the basic responsibility of UA regarding discipline and maintenance of its physical plant.**



# 4<sup>TH</sup> AMENDMENT PROTECTIONS APPLY TO UNIVERSITY RESIDENCE HALLS



“a student who occupies a college dormitory room enjoys the protection of the Fourth Amendment.”

(Troy State University, Alabama, 1971)



A dormitory room is “a home away from home.”

(New Hampshire Technical Inst., 1976)



“[a] dormitory room is a student's house for all practical purposes, and a student has the same interest in the privacy of his room as any adult has in the privacy of his home, dwelling, or lodging”

(Southern University & A&M College, Louisiana, 1998)

# MOORE V. STUDENT AFFAIRS COMM. OF TROY STATE UNIV. (1968)



Health and safety inspections by public university employees are generally permissible.



“College students who reside in dormitories have a special relationship with the college involved.”



“The college does not stand, strictly speaking, *in loco parentis* to its students, nor is their relationship purely contractual in the traditional sense. The relationship grows out of the peculiar and sometimes the seemingly competing interests of college and student.”



**“A student naturally has the right to be free of unreasonable search and seizures, and a tax-supported public college may not compel a ‘waiver’ of that right as a precedent to admission.”**

# PIAZZOLA V. WATKINS (1971)



A university may have regulations allowing resident assistants to enter dorm rooms for health/safety checks.



**BUT:** “[t]he regulation cannot be construed or applied so as to give consent to search for evidence for the *primary purpose of a criminal prosecution*. Otherwise, the regulation itself would constitute an unconstitutional attempt to require a student to waive his protection from unreasonable searches and seizures as a condition to his occupancy of a college dormitory room. ... *Clearly the University has no authority to consent to or join in a police search for evidence of crime.*”

# DEVERS V. SOUTHERN UNIVERSITY (1998)

University policy:

“The University reserves all rights in connection with assignments of rooms, inspection of rooms *with police*, and the termination of room occupancy.”

“Southern University’s housing regulation, as written, clearly authorizes unconstitutional searches. The search must further an interest that is separate and distinct from that served by Louisiana’s criminal laws.”

“The state, in operating a public school system of higher education, cannot condition attendance at one of its schools on the student’s renunciation of his constitutional rights.”

**REGULATORY  
INSPECTION V.  
LAW  
ENFORCEMENT  
SEARCH**

- Considerations:
  - Did university officials take action at the behest of or as part of a joint investigation with the police?
  - Did university officials attempt to delegate their right to inspect rooms to the police, which would result in the circumvention of traditional restrictions on police activity?



## **TEXAS V. RODRIGUEZ (2017)**

“Resident assistants searched the dorm room of ... Rodriguez, found drugs, and ... called the police. The police then entered the room and seized the drugs.”

“the officers’ physical intrusion into a constitutionally protected area was a search within the meaning of the Fourth Amendment. And because it was done without a warrant, consent, or special needs, the fruits of that search were rightly suppressed.”

## **TEXAS V. RODRIGUEZ (CONT.)**

- “They found marijuana in the first trunk they looked through. The RAs contacted ... the resident director, who told them to do a more thorough search. The RAs subsequently found a matchbox containing what they believed to be ecstasy pills in the bottom of a basket full of fingernail polish and a pipe inside a sock that had tape wrapped around it. The RAs laid the pill box and the pipe on the floor and took cell phone pictures of the items. The resident director contacted the Howard Payne Police. [A] Howard Payne Officer ... responded, and [the RD] took him up to the room. [The] Officer ... entered the room and looked around.”

## **TEXAS V. RODRIGUEZ (CONT.)**

- “[The] Officer ... acknowledged that he did not have a warrant and that ‘[i]t would have been easy enough to obtain a warrant.’ He also stated that there were no exigent circumstances, and that he did not ask for consent before entering the room to investigate and photograph the contraband.”

# TEXAS V. RODRIGUEZ (CONT.)

- Private-Party-Search Doctrine
  - “In ... private-party-search cases, the property is simply seized by a private person—legally or not—and turned over to the police without the police having entered a protected area.”
  - “In these cases the police make no search at all as the property is seized by a private party without any intrusion on an expectation of privacy by law enforcement.”
  - “We decline to extend the private-party-search doctrine to a residence, in this case, a college dorm room. [Resident] retained her expectation of privacy in her room even though school officials had already entered the room pursuant to the housing agreement.”



# TEXAS V. RODRIGUEZ (CONT.)

- Plain View Doctrine
  - “the officer cannot claim that the items were in plain view because he did not have a right to enter [the] dorm room.”
  - “For a plain-view seizure to be lawful, the officer must have had lawful authority to be in the location from which he viewed the item, and the incriminating nature of the item must be immediately apparent.”



# TEXAS V. RODRIGUEZ (CONT.)

- Authority to consent to entry
  - “consent given to university officials in rental agreement cannot be shared with or delegated to police.”





## **MASSACHUSETTS V. NEILSON (1996)**

“While searching the defendant’s bedroom [for a prohibited cat], the [school] officials noticed a light emanating from the closet.

The officials, fearing a fire hazard, opened the closet door.

There, they discovered two four-foot tall marijuana plants, along with lights, fertilizer, and numerous other materials for marijuana cultivation and use.”

## **MASSACHUSETTS V. NEILSON (CONT.)**

- “The officials stopped their investigation at that point, and requested the assistance of the ... campus police, who have powers of arrest. ... The police arrived at the suite, entered the bedroom, and observed the marijuana plants and other apparatus. They took photographs of the evidence and then, with the help of the college officials, removed it from the room. At no time did the police seek, obtain, or possess a warrant for the search.

# MASSACHUSETTS V. NEILSON (CONT.)

- “when police are involved and the evidence obtained is to be used in a criminal proceeding, ***courts generally require probable cause and a warrant, absent express consent or exigent circumstances.***”
- “While the college officials were legitimately present in the room to enforce a reasonable health and safety regulation, the sole purpose of the warrantless police entry into the dormitory room was to confiscate contraband for purposes of a criminal proceeding. ***An entry for such a purpose required a warrant where, as here, there was no showing of express consent or exigent circumstances.***”



# TAKEAWAYS DISCUSSION / QUESTIONS

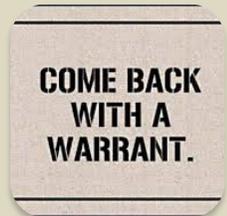
## Takeaways



Students at public universities enjoy full protection of the 4<sup>th</sup> Amendment.



Regulatory Inspections **do not** implicate the 4<sup>th</sup> Amendment.



Law Enforcement searches **do** implicate the 4<sup>th</sup> Amendment.

