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## Comment

Earle W. Clifford

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## Comment

## COMMENT

BY EARLE W. CLIFFORD\*

PROFESSOR Monypenny's discussion of "The Student as a Student" is indeed thought provoking. Accordingly, as commentary on that discussion, I wish to consider an alternative status of the student — the student as a colleague — as a further insight into the total complex of the student-institutional relationship.

Two prefatory comments seem to be in order as an introduction to what follows. First, Dean Robert Yegge proposed during our previous discussion that graduate programs designed to prepare student personnel administrators should involve a curricular experience with the law. Without rejecting that thesis completely, my response is that student personnel administrators ought to be better prepared as educators, and hopefully there would be no necessity of their becoming trained in law. The second comment is something of an alert. It is likely that when I am finished with these remarks I will have established a position somewhere between a romantic idealist and a militant dean. This, of course, assumes that such a stance is possible. Let me turn now to my assignment.

The focus of this reaction to Dr. Phillip Monypenny's paper will be on the not-so-hidden, but unfinished agenda of this conference — at least as I see it. For me, these sessions have been unique in this regard. Seldom have I participated in a meeting where the hidden agenda kept surfacing so regularly and still failed consistently to claim center stage. To me, that agenda — the hidden one — involves the nonlegal issues and items that have been identified with reference to student-institutional relationships, rather than the legal aspects of those relationships. Perhaps the classic example of my point is that Terry Lunsford was introduced at the luncheon yesterday with an indication that his topic — "Who Belongs to the University Community?" — did not quite fit elsewhere into our program. It seems to me that the lively discussion which followed his presentation documents that *these are* the central issues. By the end of the afternoon, however, we had managed to survive the threat of too much uncomfortable attention to such concerns.

The papers presented and the panelists' responses are replete with references which suggest that our central focus should be on the student-institutional relationship independent of its legal aspects, as the best prescription for minimizing involvement with the courts.

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\*University Dean of Student Affairs, Rutgers University; A.B. 1950, M.S. 1951, D.S.S. candidate, Syracuse University.

Parenthetically, I take that as a quite proper objective. Let me share with you very briefly the references which document my point.

(1) Professor Beany suggested that attention to the nature and function of the university was the intelligent approach, "justifying [the courts taking] an essentially 'hands-off' policy toward institutions of higher learning . . ."<sup>1</sup>

(2) Edward Schwartz talked, too, about the nature and function of the university and the relationship of the student to it as "the conference that must be held."<sup>2</sup>

(3) Dean McKay discussed the nature of the university and its purposes as "a central proposition," suggesting that rules should be determined *after* goals and with reference to them. In the last paragraph of his paper, Dean McKay refers to "a forward-looking partnership between students and universities in the educational process."<sup>3</sup> This implies an approach to student-institutional relationships to which I will return.

(4) Robert Lutz advised us that the legal approach will not eliminate the problems that confront us; that the real problem is the relationship question itself, independent of the legal aspects; and that that relationship, in his judgment, can no longer be based on an apprenticeship model — at least of the old style.<sup>4</sup>

Professor Monypenny's paper also triggered the preceding comments. In fact, as the anchor man on this relay team let me pick up the baton where he passed it in his concluding remarks.

As an educator rather than a legal expert, it seems to me that educational communities — however difficult to define — rather than the courts should continue to shape the style, content, and diversity of higher education. I agree most enthusiastically with Professor Monypenny that:

[i]t is to questions of just principle rather than to questions of the permissible legal limits of authority that the attention of those who govern institutions should be turned. . . . If the agencies of education act justly, and seem to act justly, the courts will find very few occasions to impose a judicially developed view of justice on them.<sup>5</sup>

Further, let me agree with his expectation of what I consider a dire possibility that:

if the courts take on too many institutional decisions because they appear to be bad, they may develop confidence in their own expertise and routinely set aside decisions in apparently technical fields.<sup>6</sup>

<sup>1</sup> Beany, *Students, Higher Education, and the Law*, 45 DENVER L.J. 511, 514 (1968).

<sup>2</sup> Schwartz, *Comment*, 45 DENVER L.J. 525, 526 (1968).

<sup>3</sup> McKay, *The Student as Private Citizen*, 45 DENVER L.J. 558, 570 (1968).

<sup>4</sup> See Lutz, *Comment*, 45 DENVER L.J. 574 (1968).

<sup>5</sup> Monypenny, *The Student as a Student*, 45 DENVER L.J. 649, 658 (1968).

<sup>6</sup> *Id.* at 654.

At one point, however, in his description of Goldman's four approaches to the limitation of discretion, Professor Monypenny indicates that the contract doctrine is "cherished" by administrators. I suspect he knows my views on this point, but it may be in order to suggest that there *are* administrators who have abandoned that stance, at least in disciplinary proceedings, with somewhat the same degree of enthusiasm that marked the unlamented passing of the *in loco parentis* doctrine. The reason for rejection in both instances, it seems to me, was in part an emerging perception by student personnel administrators that their role in the university community was broader than a housekeeping-management one, and, in fact, involved an educational dimension. Under such a philosophy, the "contract" doctrine is at least unnecessary and probably irrelevant.

Let me add a fifth perception of the relationship of the university to its students which, I think, is more distinctively a concept drawn from the academic rather than the legal community. Dr. Peter Armacost, President of Ottawa University, former Program Director of the Association of American Colleges, and a member with me of the final drafting committee on the *Joint Statement on Rights and Freedoms of Students*, suggests in an unpublished paper that "the most desirable formulation of the student-college relationship is that of the student as a junior colleague in a community of scholars." I believe that Professor Monypenny on a previous occasion may have also addressed himself to such a concept of student-institution relationship.

Because students are likely to have an unnecessary affective hang-up with the "junior" adjective, and because it seems to me that the "junior" is excess baggage (if merit and competence will, in any event, decide the "junior-senior" distinction), my own preference is to consider the relationship simply in the "colleague" context. Let me explicitly add, however, that this is not to suggest an "equality" among colleagues — any more than there is an equality among those attending this conference or among colleagues on our several campuses. It is intended, however, as a suggestion that we consider extending the rights, privileges, and responsibilities of that relationship to students.

As Armacost points out in some detail in his paper, there are, quite obviously, important implications of such a proposal. From my point of view and biases, the first and most critical of these is the resulting definition that the relationship between a college or university and its students is primarily an educational one. The pursuit of shared educational objectives becomes the basis for association with an academic community. And, because students are likely to respond more positively to the colleague role than to that of a "foster

child," for example, this approach to student-college relationships may be substantially more conducive to the development of that elusive ideal — an "academic community."

Second, the "colleague" approach is undergirded by a sense of mutual respect which is a normal affective stance toward others involved in such a relationship. To paraphrase Professor Beaney on this point, this would be the climate or relationship resulting from the efforts of reasonable men to treat other reasonable men in a just manner.

Third, real criteria — differences in experience and ability — rather than artificial assumptions of immaturity and irresponsibility become the yardstick for evaluations that credit or discredit the contribution of the individual student as he participates as a colleague in the institution's decisionmaking process.

Fourth, implementation of the colleague approach in the policy making area results in *all* issues affecting the community being the concern of *all* members of that community. It results, too, in the development of a process to effectively involve them in any issue in which they have a stake. It becomes just as important, for example, for faculty colleagues to participate in discussions about student social life as for students to be involved in curricular matters.

Fifth, if students are in fact to be colleagues, then rules and regulations defining expectations of student conduct need to be reexamined. Consideration might even be given to the establishment of standards applicable to *all* members of the community. Whatever the outcome, however, such reexamination should begin with a clear definition of institutional goals, and the resulting regulations should be required to pass the test of being both reasonable and relevant in terms of those goals.

Let me conclude this response to the topic "The Student as a Student," now amended to "The Student as a Colleague," by suggesting that our choice appears to be whether we develop a "colleague" status and relationship with judges and courts in the shaping of the destiny of higher education, or whether we relate to students in that status in real, not artificial, terms. My experience with students has taught me that ultimately you cannot fool them and ultimately you *can* trust them. Because students *are* where the action is, and because they have a personal stake in higher education not dissimilar to my own, let me cast a vote for students as colleagues.