

Nash v. auburn university

[Entertainment](#), [Movie](#)



Statement of Facts

Nash v. Auburn University involved a challenge by two first-year graduate students to a one year suspension imposed for cheating on examinations. At the suspension hearing the students sought to examine the school's witnesses directly rather than through an intermediary hearing panel member, who would pose the students questions to the witnesses.

Questions

Mid-State says that Landry enrolled at the university and therefore has waived any further protections than those granted him in the rules and regulations. Is this position well taken? Yes it is the school's argument is that the penal code and an academic "criminal" code differ crucially in a way bearing directly on the right of confrontation. Penal code enforcement rests upon well trained professionals such as police officers and public prosecutors.

Landry asserts that he is entitled to have his lawyer present during any procedures designed to exact him. Is this position reasonable? Yes, to be charged with cheating on a final examination seems little different from being charged with defrauding one's creditor. Any conviction of the offense may lead to grievous sanctions such as suspension or expulsion for the student, jail time for the criminal defendant.

Landry states that he has the right to cross examine the witnesses against him. Is he correct? No, in rejecting their constitutional claim that this indirect process denied them their right to confront opposing witnesses, the

trial court repeated that the Dixon standards did not require this opportunity and that the Supreme Court did not expand the rule of Dixon, indeed the students had received “ more than the Constitution requires” even though “ in almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses”.

The Eleventh Circuit in its decisions repeated the District Court’s “ explanation” for restricting the right of cross-examination. Landry maintains that the dean of students is biased against him because of statements the dean has made to the effect that Landry is a menace and should be removed from the university. Is Landry’s objection allowable? Yes, familiarity may breed contempt rather than friendship, in a closed environment, in which accuser and accused are very often acquainted; cross-examination is the best way to expose bias or enmity, if either exists.

Knowing that he may face tough questioning a potential accuser may hesitate to report misconduct on mere suspicion. Such caution can only improve the reliability of any accusation and as with any other procedural safeguards that have generated plausible concerns, the right of confrontation seems not to have caused systemic breakdown at the numerous schools permitting cross-examination.

Put simply, the accused student fails to receive fair treatment when members of the panel alone are allowed to confront the witness. The civil law parallel of the inquiring magistrate assumes an experienced examiner, who is already well-informed about the matter from the investigatory report.

The typical disciplinary panel consists of students and faculty members, usually their first attendance at a hearing and unfamiliar with the events triggering the charge, and unlikely to have within the group a trained interrogator.

Would it make any difference to Landry if the university in question were a private rather than a public university? Yes, in private school cases, courts have refused to venture beyond these narrow constitutional bounds. In the few reported decisions assessing the student's right to confront an opposing witness, the courts have denied that the right existed.

For reasoning the schools lead off their argument by asserting that discipline is an integral part of the learning experience and that teachers, not courts, should determine how best to design a student's education. This is kind of a throwback to the *in loco parentis* view of higher education. Absent of excessive physical force or neglect, parents may discipline children in any way the thing will be effective, even if experts would strongly disagree with their choice.

By analogy, colleges as surrogate parents should enjoy the same latitude in deciding how to impose discipline upon their student, "Children". Even if modern educators no longer accept such a surrogate role, many teachers still view the goal of the disciplinary process as enlightening and inducing better conduct by the accused student, not as requiring the accuser to prove that misconduct occurred. Adherents of this position contend that once the disciplinary procedure become "confrontational", it loses its educational value.

Works Cited

1. Carper, Donald L., et al. Understanding the Law 5th. Ed. Mason, Ohio:
Thomson/West, 2008.