Abstract. Dismissal of a student from the educational program of a school of dentistry has immeasurable impact on the student and results in considerable emotional trauma to the faculty and administration. The legalistic emphasis of today's society has resulted in an increasing amount of litigation subsequent to student dismissals. The U.S. Supreme Court's recent decision in the case of Ms. Charlotte Horowitz has provided helpful guidance regarding what is fair when considering student dismissal for clinical or academic reasons, or both. Inferences from this and related cases are drawn that can assist dental educational administrators in developing sound dismissal procedures for the institutions they manage.

Dismissal of a student from a dental school has immeasurable impact on the student, representing the loss of a substantial monetary investment and potential economic gain. The process results in considerable emotional trauma for the student, the faculty, and the administration. In addition, the magnitude of deprivation and the civil rights emphasis in today's society have increasingly led to lawsuits subsequent to student dismissals.

It is imperative that justice be rendered in all decisions of educators with regard to students. This is best accomplished by developing policies and procedures that are both fair and reasonable or, in legal terms, that provide for due process. Our legal system is the ultimate arbiter of what is just and lawful.

This article describes the current position and attitude of the courts concerning student dismissal, particularly in clinical disciplines such as the health sciences. Attention is focused on the recently decided case of Ms. Charlotte Horowitz as a precedent. Conclusions are drawn that will assist dental educational administrators in formulating appropriate policy and procedure.

Background of Law

As reviewed previously,1 a decision to dismiss a student from a public college or university for academic deficiencies need comport only minimally to the due process clause of the Fourteenth Amendment to the Constitution. The basic requirements for traditional academic dismissal are that the student be advised of academic deficiency in comparison to the established standard, and be notified that he or she is being placed on probation for a specified period. If at the end of the probationary period the grade deficiency has not been resolved, the student may be given a notice of dismissal.

Student dismissal for disciplinary reasons requires different standards.2 In Dixon v. Alabama State Board of Education and subsequent cases the courts have outlined procedures with which disciplinary dismissal should comply. The institution must:

1. Provide a statement of charges, which if proven would justify expulsion based on previously developed guidelines for student behavior published in a student handbook or similar document.

2. Hold a hearing of the charges before an unbiased tribunal. The nature of the hearing can vary according to the circumstances of the case. A full-dress judicial hearing with the right to cross-examine is not required.

The courts have attempted to apply the rule of judicial noninterference in scholastic affairs as much as possible. Their rationale is that they lack expertise to review academic decisions. In Connolly v. University of Vermont,3 the court said:

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faculty's freedom from interference from non-educational tribunals. It is only when the school authorities abuse this discretion that a court may interfere.

Recently the U.S. Supreme Court considered the issue of student dismissal for academic reasons in Board of Curators of the University of Missouri v. Horowitz.4 By a 9-0 vote the Supreme Court upheld Ms. Horowitz's dismissal by the school's faculty and administration. It would seem that the Supreme Court's unanimous judgement suggests a strong reaffirmation of the notion that in academic determinations universities are not subject to judicial oversight. However, Horowitz was a complex case and although there was unanimity in the judgement, the case elicited different opinions.

The Horowitz case is important in that it specifically dealt with the development of clinical skills in the health sciences. It was unusual in that it was not purely academic, in the traditional sense, but contained significant behavioral dimensions that could be considered disciplinary. Justice Marshall recognized this in his opinion. He said that the case's resolution did not turn on the traditional approach of whether the dismissal was "academic" or "disciplinary," but cited the trial record, which included the minutes of the meeting at which it was decided that Ms. Horowitz should not graduate: "This issue is not one of academic achievement, but of performance, relationship to people, and ability to communicate."4

The complex interrelationships of knowledge, psychomotor skills, attitudes, judgement, and communicative skills in the clinically-based health professions make it impossible to classify every decision as academic or disciplinary. Each requires a functional understanding of the clinically-based profession.

Before discussing the Court's rationale in its decision and the implications, it is necessary to summarize carefully the facts in the case of Charlotte Horowitz.

Facts of the Horowitz Case

In August 1971, Charlotte Horowitz began studies at the University of Missouri-Kansas City School of Medicine. She entered with an impressive academic background. Her scores on the Medical College Admission Test (MCAT) were above the 90th percentile in aptitude and the 90th percentile in achievement. She held a bachelor's degree in chemistry from Barnard College and a master's degree in psychology from Columbia University. She had been employed at the National Institutes of Health and had received excellent letters of recommendation from her superiors there. Her career goal was a research position in psychopharmacology. Ms. Horowitz was given advanced standing and was expected to complete the program in two years. Despite an exceptional academic record, including a high rank in examinations given in February and May 1973, she was dismissed by the school for academic deficiency just weeks before her class was scheduled to graduate. The reason for her dismissal stemmed from her clinical performance. Though her doctor or faculty advisor described her work as outstanding, other faculty members found her deficient in attendance, patient rapport, and personal hygiene. In addition, they alleged that she did not respond well to criticism.

Ms. Horowitz was initially placed on probation in July 1972, at the conclusion of the first year of her two-year degree program, on the basis of deficiencies occurring in the course of her pediatrics' rotation. The dean's letter placing Ms. Horowitz on probation specified:

Your relationship with others has not been good and represents a major deficiency. You need to improve your relationships with others rapidly and substantially. This involves keeping to established schedules, attending carefully to personal appearance, including hand washing and grooming, participating appropriately in the activities of this school, and directing criticism and suggestions maturely to your doctor and to the faculty member who is in charge of a curriculum block as you have criticisms and suggestions.2

In December 1972, the Council on Evaluation, a body of faculty and students that meets on a periodic basis to evaluate students, recommended that she not be allowed to graduate but continue on probation and that in order to remain a student beyond June 1973 she be required to show radical improvement in "clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism."4 At this time the dean advised Ms. Horowitz that she could appeal the decision if she requested examination by seven physicians who were authorities in their respective fields. Ms. Horowitz agreed to be so examined.

In the trial, testimony was given regarding the dean's briefing of the seven examiners concerning the procedures to be followed at the tests, placing primary emphasis on "matters that did not deal with academic or scholastic achievement, but rather matters like her personal appearance, her grooming, something about interpersonal relationships, and only minimally about her clinical performance."4 One examiner expressed concern that the dean's mind had already been made up but the dean gave assurances that the recommendations would be seriously considered. Two examiners recommended she be allowed to graduate on schedule, two others recommended she be dropped from school, and three recommended that she not be allowed to graduate on schedule, but that she be continued on probation.

In May 1973 the Council on Evaluation denied Ms. Horowitz the right to graduate and, noting that her performance on the recent surgery rotation was "low-satisfactory," recommended she be dismissed. The council delayed making its recommendation official until receiving reports on other rotations. When a report from the emergency rotation also proved to be negative, the council reaffirmed its recommendation that she be dropped from school. The decision
was affirmed by a faculty coordinating committee and the dean, who notified her in July that she was no longer a student in the medical school. Ms. Horowitz was never given an opportunity to appear before the council, the coordinating committee, or the dean. In fact, she was not informed of the time or place of any of their meetings; nor was she given copies of the formal evaluations or other evidence that the council and committee considered. When notified of the decision, she appealed to the Provost, who, after review, sustained the decision.

Charlotte Horowitz brought action against the Board of Curators of the University of Missouri under 42 US Code 1953 (1976). The statute provides:

Every person who under the color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person with jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.

She contended that she had not been accorded due process prior to her dismissal as guaranteed by the Fourteenth Amendment to the Constitution, which states in part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Federal District Court that heard the case conducted a full trial, concluded that Ms. Horowitz had been afforded all the rights guaranteed her by the Fourteenth Amendment, and dismissed her complaint. This decision was reversed by the Eighth Circuit Court of Appeals. The Supreme Court granted review to "consider what procedures must be afforded a student at a state educational institution whose dismissal may constitute a deprivation of 'liberty' or 'property' within the meaning of the Fourteenth Amendment."

The Supreme Court's Decision and Reasoning

To be entitled to the procedural protections of the Fourteenth Amendment, Ms. Horowitz must have proven that her dismissal from school deprived her of either a "liberty" or "property" interest. She never alleged deprivation of "property" interest but rather argued her dismissal deprived her of "liberty" by substantially impairing her opportunities to continue her medical education or return to employment in a medically related field.

The Court of Appeals had reversed the District Court's ruling and held she had been deprived of "liberty." In so doing, they cited the Supreme Court's ruling in "Board of Regents v. Roth" in which the court recognized that an action of the state that "imposed...a stigma or other disability that foreclosed...freedom to take advantage of other employment opportunities" was a deprivation of liberty that could not be accomplished without notice and a hearing.

In a subsequent, related case the Supreme Court elaborated upon circumstances under which termination might infringe a protected liberty interest. In "Bishop v. Wood" the Supreme Court upheld the dismissal of a policeman without a hearing, rejecting the theory that the mere fact of dismissal, without publicizing the reasons for the action, could amount to a stigma infringing one's liberty.

The Supreme Court did not rule on Horowitz based on the presence or absence of a liberty or property interest or any other interest constitutionally protected against deprivation without due process. Rather, the Supreme Court said that assuming a liberty or property interest, Horowitz was awarded at least as much due process as the Fourteenth Amendment requires. The school fully informed her of the faculty's dissatisfaction with her clinical progress and the danger that this posed to timely graduation and continued enrollment. They said the ultimate decision to dismiss Horowitz was careful and deliberate and the procedures were sufficient. The Supreme Court agreed with the district court that Horowitz:

was afforded full procedural due process by the school. In fact, the court is of the opinion, and so finds, that the school went beyond constitutionally required due process by affording the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the respondent in her medical skills was correct.

In "Geos v. Lopez," the Supreme Court had held that due process requires, in the expulsion of a student from a public school for disciplinary reasons, "that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." In its ruling the court of appeals held that the dismissal had been "effected without the hearing required by the Fourteenth Amendment." The court of appeals apparently had in mind a hearing such as required in "Greenhill v. Bailey," another case of academic dismissal. Greenhill held that the student must be accorded an opportunity to appear personally to contest the allegations of academic deficiency. We stop short of requiring full trial-type procedures in such situations. A graduate or professional school is, after all, the best judge of its student's academic performance and their ability to master the required curriculum. The presence of attorneys or imposition of rigid rules of cross examination at a hearing for a student...would serve no useful purpose, rewitholding that the dismissal in question may be of permanent duration. But an "informal give and take" between the student and the administrative body dismissing him...would not unduly burden the educational process and would, at least, give the student the opportunity to characterize his conduct and put it in what he deems the proper context.

The Greenhill case, upon which the court of appeals depended, was a somewhat different case; the medical school not only dismissed a student for academic reasons but also sent a letter to the Liaison Committee of the American Association of Medical Colleges suggesting that the stu-
dent either lacked "intellectual ability" or had insufficiently prepared his course work. The Supreme Court specifically noted in Greenhill that "there has been a distinction between cases concerning disciplinary dismissals, on the one hand, and academic dismissals on the other" and emphasized it did not want to "blur that distinction." In the Supreme Court's opinion, the publicizing of an alleged deficiency in the student's intellectual ability removed the case from the typical instance of academic dismissal and called for greater procedural protection.

In Horowitz the Supreme Court said there is a significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. The difference calls for less stringent procedural requirements in the case of an academic dismissal and a hearing is not required.

The author of the Supreme Court decision, Justice Rehnquist, went on to say that since the issue first arose 50 years ago, state and lower courts have recognized distinct differences between decisions to suspend or dismiss a student for disciplinary purposes and similar actions taken for academic reasons. In Barnard v. Inhabitants of Stoughton, the Supreme Judicial Court of Massachusetts said, "Misconduct is a very different matter from failure to attain a standard of excellence in studies. A determination as to the fact involves investigation of a quite different kind. A public hearing may be regarded as helpful to the ascertainment of misconduct and useless or harmful in finding out the truth as to scholarship." Similar conclusions have been reached by other courts in Mahavongsan v. Hall and Gaspar v. Bratton.

Justice Rehnquist continued that reason clearly supports the perception of these opinions. A school is an academic institution, not a courtroom or administrative hearing room. In Goss, the Supreme Court felt that suspension of students for disciplinary reasons sufficiently resembled traditional judicial and administrative fact-finding to call for a hearing before the appropriate school authority. While recognizing that school authorities must be afforded the necessary tools to maintain discipline, the Supreme Court concluded:

"It would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinary officer with the student in order to inform him of his dereliction and to let him tell his side of the story to make sure an injustice is not done.

Requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect.

Even in the context of a school disciplinary proceeding, however, the Supreme Court stopped short of requiring a formal hearing since, "further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process."

The decision to dismiss Ms. Horowitz, the Supreme Court stated, rested on the academic judgement of the school officials that she did not have the necessary clinical ability to perform adequately as a physician and was making insufficient progress toward that goal. Such a judgement is by its nature more subjective and evaluative than the typical, factual questions presented in the average disciplinary decision. Like the decision of an individual professor as to the proper grade for a student in his course, the determination to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adaptable to the procedural tools of judicial or administrative decision making.

Under such circumstances, the Supreme Court affirmed the historic judgement of educators and declined to formalize the academic dismissal process by requiring a hearing. "The educational process is not that adversarial; instead it centers around a continuing relationship between faculty and students; one in which the teacher must occupy many roles—educator, advisor, friend, and at all times, parent-substitute." This is especially true, the Supreme Court said, as one advances through the varying regimens of the educational system and the instruction becomes more individualized and more specialized.

Ms. Horowitz contended that she was not dismissed because of "clinical incompetence," an academic inquiry, but for disciplinary reasons similar to Goss and therefore, as in Goss, a hearing must be conducted. In support of this contention she held that the school evaluated her with regard not only to clinical performance but personal hygiene and attendance. The Supreme Court held that the record leaves no doubt she was dismissed for academic reasons. Personal hygiene and timeliness, it held, may be as important a determinant of whether a student will make a good physician as the student's ability to record a case history or diagnose an illness.

In reversing the district court on the procedural due process issue, the court of appeals failed to reach the substantive due process ground advanced by Ms. Horowitz. Substantive due process means "was the actual decision right and fair?" This is in contrast to the issue of correct procedure in arriving at the decision. When the case was carried to the Supreme Court, Ms. Horowitz urged that it be remanded to the court of appeals for consideration of this additional claim. In this regard, lower courts have held that academic dismissals can be enjoined if "shown to be clearly arbitrary or capricious." Legally, arbitrary means "without an adequate determining principle" or "without rationality"; capricious can be defined as "with unfounded motivation" or "on a whim." Ms. Horowitz alleged that the school applied more stringent standards in evaluating her performance than those of other students because of her sex, religion, and physical appearance. The Supreme Court agreed with the district court that no showing of arbitrariness or capriciousness had been made in this case.
Although the Supreme Court's decision was unanimous, several justices wrote additional opinions to that of Justice Rehnquist. Of particular note is the opinion of Justice Marshall cited earlier. He stated that the case did not turn on whether the dismissal of Ms. Horowitz was characterized as academic or disciplinary, as Rehnquist had written. By customary measures of academic progress, no deficiency was apparent at the time authorities decided Ms. Horowitz could not graduate. Marshall declared that prior to this time she had received "credit" and "satisfactory grades" in all courses including clinical ones. He went on to say that it may be true that the school decided that Ms. Horowitz's inadequacies would impair her ability to be a "good medical doctor," but whether these inadequacies can be termed "purely academic reasons" is ultimately an irrelevant question; one that places undue emphasis on words rather than functional considerations. Marshall contended that Ms. Horowitz was dismissed largely because of her conduct, just as the students in Goss were suspended for their conduct. Only one of the reasons voiced by the school for deciding not to graduate Ms. Horowitz had any arguable nonconduct aspects and that reason, "clinical competency," was plainly related to perceived deficiencies in her personal hygiene and relationships with colleagues and patients. Even though he disagreed with the Supreme Court's rationale, Justice Marshall agreed that Ms. Horowitz had received procedural due process and sided with the Supreme Court's ruling.

Implications for Dental Education

Administrators in health professions schools must become aware of the current legal developments in academic affairs and develop a relationship with the institution's legal counsel for legal advice on academic evaluation, standing, and dismissal. Administrators will no doubt be influenced by the Supreme Court's employment of the doctrine of nonintervention in academic affairs, and minimal due process requirements. This may contribute to an attitude on the part of some administrators that leads them to act with impunity when dealing with students in academic affairs. Should this occur it would be most unfortunate.

The concept of due process originates from the idea of fairness in the application of laws and regulations to the individual. Administrators should be concerned that all students are treated fairly. Affording both substantive (fair) and procedural due process will unquestionably help to convey to students an understanding that they have been dealt with appropriately and reasonably.

The clinical nature of dental education makes it incumbent upon dental educators and administrators to state policies and procedures carefully and specifically. There is an element of judgment associated with clinical education that is not characteristic of the traditional cognitive disciplines. The statement of institutional practices will help avoid the arbitrary or capricious treatment of students, and denial of the extent of procedural due process to which they are entitled as citizens. Several suggestions can be made for formulating policy.

1. Evaluation of clinical performance should be separate and distinct from didactic performance and reported to the student as such. The Supreme Court recognized there were behavioral dimensions to being or becoming a good physician (or dentist). These may be construed as academic but are necessarily different from the cognitive skills typically associated with academic performance. In order that both student and faculty understand explicitly which aspects of the performance are being evaluated, educators should avoid integrating classroom and clinical assessments. This practice will also prevent performance in one domain from distorting the final evaluation and giving an erroneous representation of the student's effort.

2. Standards of clinical performance, which include technical, behavioral, attitudinal, and professional dimensions, should be developed, published and reviewed with the students. It should be stated explicitly that failure to achieve and adhere to such standards, as evaluated over a period of time by the faculty, will provide a basis for academic dismissal. Methods for assessing a student's attainment of the standards should be developed that are as objective as possible. The standards may or may not be assessed by the assigning of traditional grades.

3. Data that reflect inadequacies should be cumulative and represent the assessment of several faculty.

4. Once it has been determined by the school's committee on academic performance that a particular student is failing to attain the standards of clinical performance, that student should be counseled verbally as to the deficiency and those behaviors required to resolve the inadequacy. The student must also be informed that dismissal will be a consequence of failure to resolve the problems by a specified date. This information need not be provided in writing, although such a practice can help ensure adequate communication and understanding. However, a record of the meeting and the specific statements made to the student should be recorded and maintained by the administrator.

5. The student should be given a reasonable period of time to resolve the clinical deficiency. If, in view of the faculty evaluation committee, the deficiency has not been rectified by the previously stated time the student may be given a notice of termination from the program.

6. Although not required, it is beneficial to provide a mechanism for an appeal within the university to an administrative superior of the dean.

7. Administrators must be careful to avoid the derogatory labeling of the dismissed students in any way. Dismissal should be on the grounds of "unacceptable
academic performance” or “unsatisfactory clinical performance.” Written or published statements such as “the student is unfit intellectually or emotionally to be a dentist” may reasonably deprive the student of a “liberty” right; the student may claim that the opportunity for reaplication or subsequent employment was lost. Such a claim would require that the student had been given full procedural due process including a hearing by an unbiased tribunal.

8. Any decision to dismiss a student should be careful and deliberate rather than capricious or arbitrary. Due process will vary from one situation to another and the concept must be viewed as one that permits flexibility.

The Private Institution

The Horowitz case and the conclusions from it relate specifically to public institutions. Private universities may draw inferences from it for their own circumstances. It is possible that several private schools of dentistry have received, or are receiving, sufficient public monies to be considered to be under “state action.” Therefore, for legal purposes, the institution may be considered an instrumentality of the state and, as such, bound to provide for all the constitutional rights of the student.

Litigation against private universities will most likely be brought on breach of contract grounds. One such case was recently filed. A former dental student, dismissed from Emory University for academic reasons, brought suit against the university for breach of contract. Although he had a poor academic record during his first three years the student was promoted to his last year on probation, and was informed that he would be evaluated at the end of each academic quarter and dismissed if he failed to make acceptable progress. At a subsequent quarterly meeting, following a discussion of the student’s progress, the faculty voted that he be dismissed. The student claimed that his contract, the terms of which were expressed in the university catalog, had been breached. The U.S. district court stated:

The clause of this contract which was allegedly breached is contained in the Bulletin of Emory University: “Attendance at Emory is a privilege not a right; however, no student will be dismissed without due process.” Over these bare bones the plaintiff attempts to drape the entire panoply of due process rights developed by the Supreme Court in Board of Regents v. Roth and Goss v. Lopez. Based on the assumption that the Emory contract meant to define due process in such a manner, the plaintiff argues that the process he received was deficient and constituted a breach. The underlying assumption is extravagant. It entirely disregards the fact that cases such as Roth and Lopez involve the actions of tax supported institutions and thus implicate fundamental consideration of the relationship between citizen and state which are quite distinct from that shared by student and private institutions.

The court further observed that there was no basis for suggesting either that Emory University was subject to the same constraints imposed on public institutions or that it intended to so bind itself by contract. The court went on to say that in any event it did not need to decide the case on the basis of contract law. Since school officials require considerable discretion and latitude in their administrative actions, the court reasoned that the student’s claim of a binding, absolute contract seemed anomalous in the context of education in a health care profession. In Mahavongsanan v. Hall, the court had held similarly that implicit in the student’s contract with the university upon matriculation is the student’s agreement to comply with the university’s rules and regulations, which the university clearly is entitled to modify so as to properly exercise its educational responsibility.

Private institutions must carefully review the contractual agreements they have made on the basis of their catalog(s) and develop procedures that provide the student those rights and privileges so obligated. However, it would appear to be within the prerogative of the university to modify the catalog stipulations if educationally justified, and so inform the students of the changes.

Summary and Conclusions

Student dismissals from dental schools are inevitable. It is imperative that faculty be free to exercise their collective academic and clinical judgement relative to the potential of specified students to be qualified practitioners of dentistry. At the same time, it is important that students be treated fairly and granted all procedures necessary to ensure that a decision as important as dismissal is arrived at deliberately and carefully. The Supreme Court’s recent decision in the case of Charlotte Horowitz has provided helpful information relative to the Supreme Court’s attitude regarding fairness in clinical academic matters.

REFERENCES
5. Horowitz v. Board of Curators of the University of Missouri, 538 F. 2d 1317 (8th Circuit 1976).