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A Legal Analysis of the Chancellor's Proposed Drug Policy Changes

The Chancellor, in his eagerness to limit the proliferation of drug activity on the campus of the University of Massachusetts, Amherst, has proposed a plan to install secret, sensitive listening devices outside the doors and walls of dormitory rooms. He hopes that this will stop drug activity on campus, and therefore prevent the activity from leading to other crimes. While well intentioned, the legality of the plan is dubious (as is its morality). The plan, in effect, would disregard the Fourth Amendment rights of thousands of undergraduate students for a number of reasons. Cases from both the Supreme Court and the Circuit Court of Appeals contend that Fourth Amendment protections apply where there is a reasonable expectation of privacy, that such expectations exist in college dorm rooms, and that, most importantly, the use of sense-enhancing devices to gather information from the interior of a home constitutes a Fourth Amendment search. Due the unlikelihood of acquiring a search warrant for most UMass students, enacting the Chancellor's plan without these warrants would be illegal and unconstitutional in regard to the Fourth Amendment.

In understanding the legality of these measures, it is important to first understand the rights of citizens that would potentially be violated, namely the Fourth Amendment. This amendment protects individuals and their property from "searches and seizures" by state officials, at least without warrants obtained with probable cause of a crime ("The Constitution of

the United States," Amendment 4). At its heart, the importance of the amendment is that it provides constitutional protection to citizens against arbitrary searches by the state. Should searches and seizures occur, they shall be made with the proper legal permission in the form of a warrant, where there is presumably good reason for the citizen's privacy to be violated. Thus, in proposing to essentially spy on students at the University of Massachusetts, Amherst, a crucial aspect will be doing so without the action constituting a search by 4th Amendment standards. Ascertaining a warrant to search every student at the school will not only be impossible because of the high standard of the probable cause requirement, but also because such an attempt would certainly attract attention and ruin the clandestine facet of the operation.

In regard to searches that involve eavesdropping and surveillance more so than physical searches, the Supreme Court case *Katz v. U.S.* (1967) offers much clarification on the extent and reach of the Fourth Amendment. Firstly, the case opinion argues that the Fourth Amendment "protects people—and not simply 'areas'—against unreasonable searches and seizures," suggesting that focus should be placed not on whether a particular area is "constitutionally protected," but on whether the person at hand is in a scenario or context where Fourth Amendment protections apply (*Katz v. U.S.*). It mentions the notion of having a "reasonable expectation of privacy," meaning that Constitutional protections apply in instances where a citizen should reasonably expect to have privacy and not be overheard by federal agents (*Katz v. U.S.*). Whereas before, one's home might be considered a constitutionally protected area, this case clarifies that instead one should consider whether the specific scenario merits constitutional protection. For instance, a citizen should not have a reasonable expectation of privacy if he or she has the windows open while screaming incriminating information at the top of his or her

lungs. A person could hypothetically still be in a place once considered protected by the fourth Amendment and be in a situation where no expectation of privacy can bestow such protections.

Katz v. U.S. creates a dim outlook for the legality of this plan of student espionage. This is especially true when considering the case *Piazzola v. Watkins* (1971). The case involves searching a college dormitory without a warrant and whether doing so violates the 4th Amendment. Though it is only a case from the 5th Circuit of the U.S. Court of Appeals, it provides supplementary clarification relevant to the context of the Chancellor's proposal. Circuit Judge Rives states that a student in a college dormitory can enjoy Fourth Amendment protection, which in the context of *Katz v. U.S.* would mean that, under most circumstances, the student has a reasonable expectation of privacy (*Piazzola v. Watkins*). While students at schools often waive protections from unwarranted searches for purposes of regulation and administration, the regulation cannot include searching for incriminating evidence in hopes of criminal prosecution; if the Chancellor tried to construe the notion of regulation to include searching for criminal evidence, it would be 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" (*Piazzola v. Watkins*).

Cases that involve surveillance devices to obtain information from the interior of a room also diminish the potential legality of the Chancellor's proposal. Consider *Goldman v. U.S.* (1942). In the case, a listening device is used outside of a room to hear conversations within it. The Court decided that the "use of the detectaphone by Government agents was not a violation of the Fourth Amendment," meaning that the placement of the device was not considered a trespass of the room itself (*Goldman v. U.S.*). This case would essentially permit the use of listening

devices in the fashion proposed in the Chancellor's plan. However, the case received very negative treatment by *Katz v. U.S.*, which asserted that the trespass doctrine of *Goldman* should "no longer be regarded as controlling," effectively discrediting any aspects of the case relevant and beneficial to the proposal at hand.

All previous cases considered, *Kyllo v. U.S.* (2001) should be the last nail in the coffin for the Chancellor's proposed plan. The case involved a federal agent using a heat-sensing device to determine that, in the garage of Danny Kyllo's home, a significant amount of heat was being produced, suggesting that halide lamps were being used (*Kyllo v. U.S.*). This information was used with other evidence to grant a warrant for searching the home for marijuana. The Court determined that the use of sense-enhancing devices on a home's interior to gather information otherwise unobtainable without physical intrusion "constitutes a search—at least where (as here) the technology in question is not in general public use" (*Kyllo v. U.S.*). Thus, the main component of the Chancellor's plan is essentially illegal, considering the infinitesimal chance that a warrant would be granted to search the entirety of UMass' dorms on the mere hunch that drug activity is occurring. The listening devices, because of this case, cannot be used due to the fact that they obtain information that otherwise couldn't be obtained without a physical intrusion into the dorms. One could argue that the devices wouldn't have to be as sensitive, and would only listen to speech that could be heard to the naked ear of an eavesdropper in the hallway. However, trying to prove which pieces of audio fall into that category would be difficult, and courts would likely be very reluctant in humouring such attempts.

Unfortunately, there are myriad cases that assert the illegality of the Chancellor's proposal. It is likely that the Chancellor has already considered the morality of the plan as well,

but it is worth considering once more. If the devices were to be installed, it might not be long before the secrecy of the espionage is ruined. After all, if the audio was ever used as evidence in court for a warrant, how would the method of acquiring the audio be kept secret from the public? If students were to find out, their perspective on college life would be profoundly changed. It would almost feel like the *1984* version of college, the devices analogous to telescreens that listen to everything you say. The Chancellor might as well put up posters around campus with his face on it, captioned "THE CHANCELLOR IS WATCHING YOU." On a serious note, there is a great chance that, upon discovery, a majority of students would be strongly opposed to the rather unethical measure.

Considering all the mentioned cases, it is likely that, if the Chancellor went through with his plan, any audio recorded by the devices would not be admitted in court, whether for criminal prosecution or for warrant requests. In his sympathy for the governmental crackdown on drugs, he has neglected legal considerations for the privacy of his students, and has made a gross dismissal of ethical concerns the very second that he authorized this plan for legal scrutiny by his advisors. In the name of a safer yet more liberal UMass, the Chancellor will hopefully learn his lesson from the error of this plan and draft a new one which will *legally* provide a better environment for his students.

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