

### ***Legal Pad Note 3***

#### Privacy of Student Records – What you should know Subpoenas – What to do if you get one

Student records are broadly defined by federal law as all information maintained by the College that identifies and pertains to enrolled students. The federal law regulating the privacy of student records is the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment after former U.S. Senator James Buckley of New York who introduced this law as an amendment to the Educational Amendments in 1974.

The Registrar's web site has a tutorial and discussion of FERPA as it relates to the College and maintenance of student records: <http://www.smith.edu/registrar/privacyfacandstaff.php>.

FERPA prohibits the disclosure of student records without the express permission of the student. It defines student records as "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." The U.S. Department of Education web site: <http://www.ed.gov/policy/gen/reg/ferpa/indextoc.html> contains the full text of FERPA's implementing regulations. If an institution discloses student records without permission and without invoking one of the exceptions to the rule prohibiting disclosure, the U.S. Department of Education may disqualify the institution from receiving federal funding, most notably federal financial aid dollars.

Among the exceptions allowing disclosure of student records is the issuance of a subpoena. A subpoena is an order from a court or other entity with statutory authority to issue subpoenas. The order will generally request the appearance of a person for the purpose of testifying or providing documents. The latter will generally be titled a Subpoena Duces Tecum.

The most common subpoena for the college to receive is one for records related to a student or a former student. Under FERPA, students and former students must be notified if a subpoena compels the disclosure of their educational records. Only the Registrar may respond to a subpoena for student educational records and any subpoena received by a person or office other than the Registrar's should send it immediately to the Registrar or the general counsel for response and evaluation.

The College sometimes receives subpoenas for employment records when a current or former employee is involved in personal litigation. More rarely an employee may receive a subpoena requiring testimony in a lawsuit involving the College.

Not all subpoenas compel a response in Massachusetts. There are limitations on the subpoena power of courts and agencies. To ensure that a subpoena you receive requires a response, please consult the general counsel's office. If the College is not legally compelled to respond to a subpoena, the general counsel will provide a response to it in lieu of compliance. If a subpoena requires a response, the general counsel will help you gather the documents that may be required and can manage the appropriate response for you.

Legal Pad Notes 4 will address "So you want to show a movie...what's legal and what's not."