7-1-1973

"One Step Forward, Two Giant Steps Backward" -- The Court Looks at Student Rights

Jack E. London

The dissent in the supreme court decision was based on the principle that a wife, within the confines of the marital home, could not have a reasonable right to expect that such communication would be free from interception. This opinion also resorted to the argument that a wife's right to privacy is subordinate to the husband's right and duty to protect the marital home.[24]

The majority opinion in the supreme court decision reflects a reluctance to incorporate the *Appelbaum* exception[25] into the "Security of Communications" statute,[26] and simply provides a strict construction of the statute. It is likely that the impact of the case will be restricted to its facts. However, in light of the rationale of the court, the decision could very well set precedent for all noncriminal proceedings, in which intercepted communications obtained in violation of "Security of Communications" statute are sought to be introduced into evidence.

It is the writer's opinion that the court properly rejected the reasoning in *Appelbaum* and recognized a wife's right to privacy in her communications. It would have been an anachronism for the court to subordinate a wife's right to privacy at a time in our society when women are finally being recognized as the equals of men. The right to privacy is of such importance that it should not be diluted by antiquated and obsolete social norms. *Markham* is not to be interpreted to say that *all* illegally obtained evidence will be inadmissible in Florida, but the application to a civil matter of a statute obviously designed to affect criminal proceedings, in order to preserve an individual's right to privacy, is clearly an indication of the court's attitude toward the admissibility of evidence obtained in derogation of a person's right to privacy.

CARLOS E. CASUSO

"ONE STEP FORWARD, TWO GIANT STEPS BACKWARD" —THE COURT LOOKS AT STUDENT RIGHTS

Central Connecticut State College[1] allows only those student organizations officially recognized by the college to use campus facilities for meetings and other non-college sponsored activities. The petitioners, a group of students, sought to gain official recognition for an organization to be known as "A Local Chapter of Students for a Democratic Society."[2] Following the established procedures of the college,[3] the petitioners

24. Markham v. Markham, 272 So.2d 813, 814-15 (Fla. 1973).
25. 277 App. Div. 43, 44, 97 N.Y.S.2d 807, 809 (1950).
26. FLA. STAT. ch. 934 (1971).

1. A state supported university located at New Britain, Connecticut [hereinafter referred to as "the College"].
2. Hereinafter referred to as "S.D.S."
3. The university procedures briefly were as follows: An application was submitted to

applied for official recognition. When the president of the college denied them official recognition, the petitioners filed a suit in federal district court[4] for declaratory and injunctive relief.

Two issues were raised in the district court. First, petitioners questioned the right of the college, a state institution, to deny them recognized status, with its corresponding privileges and rights, when the college had accorded that status to other organizations which had complied with the prescribed procedures. Second, petitioners claimed a denial of procedural due process since there had been no hearing on their request for recognition.

The federal district court ordered the respondents to hold a hearing and clarify the reason for their decision. After that hearing, the college president again denied the petition for campus recognition. Upon rehearing, the federal district court agreed with his decision.[5] The Court of Appeals for the Second Circuit affirmed.[6] On certiorari, the United States Supreme Court *held*, reversed and remanded: Once application for recognition is filed in accordance with the college requirements, the burden is on the college administration to justify rejection. This burden is not met if rejection is based merely on an unproven relationship with a national organization, disagreement with the group's philosophy, or an unsupported fear of disruption. However, rejection may be valid if the college, among its requirements for recognition, has a rule that prospective groups affirm in advance their intentions to comply with reasonable campus regulations and the applicant group fails to so affirm. *Healy v. James*, 92 S. Ct. 2338 (1972).

Student organizations do not have an absolute right to be recognized by a college.[7] College administrators have wide discretion in formulating and implementing reasonable rules and regulations to maintain educational objectives and determine what actions are most compatible with those objectives.[8] Several courts have held, for example, that a college

---

the Dean of Students by the organization seeking recognition, then application went before the Students Affairs Committee, a student-faculty body, and finally with this Committee's recommendations to the President of the University for final decision. Healy v. James, 445 F.2d 1122, 1124 (2d Cir. 1971).

4. Healy v. James, 311 F. Supp. 1275 (D. Conn. 1970). The action was brought under 42 U.S.C. § 1983 (1970), alleging a denial of petitioners' associational rights guaranteed by the first and fourteenth amendments without due process because no hearing was held.

5. Healy v. James, 319 F. Supp. 113 (D. Conn. 1970). The district court had retained jurisdiction and after the hearing held that the students' procedural due process had been satisfied.

6. Healy v. James, 445 F.2d 1122 (2d Cir. 1971).

7. ACLU v. Radford College, 315 F. Supp. 893 (W.D. Va. 1970).

8. Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966). In Esteban v. Central Mo. State College, 290 F. Supp. 622 (W.D. Mo. 1968), the federal district court found that an educational institution can protect itself "against conduct that would damage or destroy it or its property in toto or in part." *Id.* at 629. The court upheld the suspension of students, who, in violation of a university rule participated in mass gatherings because the demonstrations might have been considered as "unruly or unlawful." Additionally, in Barker v. Hardway, 283 F. Supp. 228 (S.D.W. Va. 1968), *aff'd per curiam*, 399 F.2d 638 (4th Cir. 1968), *cert.*

has the right to enact a rule banning all social organizations.[9] However, in the last decade the courts have overwhelmingly held that constitutional guarantees are protected in our public educational facilities.[10] Indeed, in *Shelton v. Tucker* the Court observed that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[11] In *Tinker v. Des Moines Independent Community School District*, the United States Supreme Court held that although first amendment rights must be applied in light of the special circumstances found in the school environment, it is equally important that "[n]either students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[12]

Therefore, it is not surprising that in the last several years there have been a number of cases involving constitutional challenges to the actions of college administrators on first amendment grounds.[13] An argument common to these cases was well-illustrated by the court in *ACLU v. Radford College*.[14] The court noted:

> A perusal of these cases makes clear a recurring theme that once a public school makes an activity available to its students, faculty, or even the general public, it must operate the activity in accord with first amendment principles.[15]
>
> . . . .
>
> The contention that . . . [the college] . . . has not restricted the group's activities but has only given privileges to some other

---

denied, 394 U.S. 905 (1969), a case involving campus protest which turned into violent demonstrations, the court said:

> True it is that enrollment in school does not mean the student surrenders any of his constitutional rights. But by the same token, that fact does not give him the right to abuse and harass the administrators of the institutions or engage in conduct detrimental to its well-being or which may tend to deprive other students of the right to a peaceful atmosphere in which to pursue their ambition for an education.

Id. at 238.

9. Webb v. State Univ., 125 F. Supp. 910 (N.D.N.Y. 1954) (limited to organizations with national ties); *accord*, Waugh v. University of Miss., 237 U.S. 589 (1915) (state statute); Wilson v. Board of Educ., 233 Ill. 464, 84 N.E. 697 (1908). *But see* Healy v. James, 445 F.2d 1122 (2d Cir. 1971), where Judge Smith in his dissent pointed out:

> It is perhaps arguable that a college or university might deny the use of its facilities to any political organization, although the courts have in recent years greatly expanded the exercise of first amendment rights on other types of public or even privately owned premises.

Id. at 1134.

10. Tilton v. Richardson, 403 U.S. 672 (1971); Keyishian v. Board of Regents, 385 U.S. 589 (1967); Sweezy v. New Hampshire, 354 U.S. 234 (1957); *see also* Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027 (1969).

11. 364 U.S. 479, 487 (1960).

12. 393 U.S. 503, 506 (1969).

13. *See, e.g.*, Brooks v. Auburn Univ., 412 F.2d 1171 (5th Cir.), *aff'g* 296 F. Supp. 188 (M.D. Ala. 1969).

14. 315 F. Supp. 893 (W.D. Va. 1970) [hereinafter referred to as *Radford*].

15. *Id.* at 896. Neither can a state university support a campus newspaper and try to arbitrarily restrict what it may publish. Antonelli v. Hammond, 308 F. Supp. 1329 (D. Mass. 1970).

> campus groups misses the point because restriction and privilege are different sides of the same coin. One group is restricted from doing what another is privileged to do.[16]

In *Healy*, the Court rejected the argument that nonrecognition of the student group would still allow students to meet and function off campus.

Aside from the obvious psychological boost which official recognition gives to a group, its true importance is in affording an organization the use of all forms of campus publicity, sponsorship of activities, and college facilities which are necessary for an organization to operate effectively.[17]

In a recent case[18] involving almost the same factual situation as *Healy*, the Court drew the following analogy concerning a university denying recognition to a student group:

> What is at issue here is whether the students affiliated with the Chapter will be permitted to use the buildings and grounds of the campus to conduct meetings and discussions. The restriction imposed by the University is analogous to one attempting to prevent a particular group or individual from speaking on school premises.[19]

In *Healy*, the Court recognized that a college has a legitimate interest in preventing disruption on campus; nevertheless, the denial of recognition of the group was a form of prior restraint, denying the petitioners' organization the range of associational activities previously discussed.[20] Therefore, "once petitioners had an application in conformity with the requirements, the burden was upon the college administration to justify its decision of rejection."[21] While safeguarding the interest of the state in preventing disruption on the campus may justify such action (restraint), a "heavy burden rests on the college to demonstrate the appropriateness of that action."[22]

The decision in *Healy* affirmed the prior reasoning in *Tinker v. Des Moines Independent Community School District*, which held that primary first amendment rights could only be forbidden by the school administrators upon a showing that engaging in the conduct "would *materially* and *substantially* interfere with the requirements of appropri-

---

16. ACLU v. Radford College, 315 F. Supp. 893, 898 (W.D. Va. 1970).

17. Healy v. James, 92 S. Ct. 2338, 2343 (1972).

18. University of S. Miss. Chapter of the Miss. Civil Liberties Union v. University of S. Miss., 452 F.2d 564 (5th Cir. 1971).

19. *Id.* at 566, 567. *See also* Brooks v. Auburn Univ., 296 F. Supp. 188 (M.D. Ala. 1969); Snyder v. Board of Trustees, 286 F. Supp. 927 (N.D. Ill. 1968); Dickson v. Sitterson, 280 F. Supp. 486 (M.D.N.C. 1968).

20. 92 S. Ct. at 2348.

21. *Id.* at 2347.

22. *Id.* at 2348.

ate discipline in the operation of the school. . . ."[23] In determining what conduct would be material and substantial the *Tinker* Court noted that any deviation from the majority view may inspire fear, however, neither an undifferentiated fear or apprehension of disturbance, nor an action based upon the desire of school officials to avoid the discomfort and unpleasantness that accompany an unpopular view are sufficient.[24]

Remanding *Healy*, the Court sought to provide guidance to lower courts and discussed the four possible justifications (all closely related) for nonrecognition proffered by the college president. Under other circumstances, these justifications may have been adequate grounds for the denial of recognition, but at least three of them, and possibly all four, are inadequate based on the facts of the case.

The first ground is the possible relationship, if any, between petitioners and the National S.D.S. organization. Courts grant college administrators wide discretion in governing their campuses.[25] They have upheld a college's right to ban all organizations with national ties,[26] but have stressed that once an activity is opened to some, it must be operated according to first amendment principles.[27] Additionally, the courts have consistently held that guilt by association alone is not enough. "The Government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims."[28] While the petitioners indicated they shared some of the beliefs of the national organization, they did assert, both orally and in writing, complete independence from the national organization.[29] Thus, affiliation would be an inadequate ground in this case upon which to base a denial of recognition.

Second, the college president relied on an abhorrence of the group's philosophy, which he characterized as consistent with that of the national organization, *i.e.*, violence and disruption. However, the Court held that mere disagreement with a group's philosophy, as repugnant as those views may be, affords no justification for the denial of first amendment rights. Therefore, it becomes immaterial whether the petitioners did in fact advocate a philosophy of "destruction."[30]

If the college president's reasoning had been based upon the organization's activities rather than philosophy, and these activities could be factually supported, then the Court's prior holdings involving permissible speech as opposed to impermissible conduct would give a basis of nonrecognition. The Court in discussing the third basis of the college presi-

23. 393 U.S. 503, 509 (1969) (emphasis added). *See also*, Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).
24. *Id.* at 508, 509.
25. *See* note 9 *supra.*
26. Webb v. State Univ., 125 F. Supp. 910 (N.D.N.Y. 1954).
27. *See* note 15 *supra.*
28. 92 S. Ct. at 2348 (1972).
29. *Id.* at 2349.
30. *Id.* at 2349.

dent's decision points out that "[t]he critical line, heretofore drawn for determining the permissibility of regulation, is the line between mere advocacy and advocacy 'directed to inciting or producing imminent lawless action . . . likely to incite or produce such action.' "[31] The Court held that if there was evidence to support the conclusion that petitioners posed a threat of material disruption or lawless action, then the president's decision should be affirmed. However, from the hearing officer's remarks and the record, there was no substantial evidence that these individuals acting together would constitute a disruptive force on campus.[32]

Finally, a college administration has the right to impose reasonable guidelines with respect to the time, place, and manner in which student groups may conduct their activities.[33] They also have the inherent power to promulgate rules and regulations requiring a group seeking official recognition to affirm in advance its willingness to adhere to reasonable campus rules.[34] Such a requirement, in the Court's opinion, would not impose an impermissible condition on the students' associational rights. Since this constitutes merely an agreement to conform with reasonable standards respecting conduct, the students' Constitutional freedoms of speech, assembly, and petition are not violated.[35]

The record before the Court was not conclusive as to whether proper guidelines existed at the time petitioners' application was initiated, and the Court accordingly remanded for a determination of this point.[36] The *Healy* Court did not specify how restrictive promulgated standards might be and yet still remain Constitutionally permissible. In addition, if such standards do exist, there is no indication as to what type of prior assurances would be required of the group. Would a mere statement purporting compliance be sufficient, or can the college within its discretion require affirmative acts as well from certain groups? The Court's decision tends to grant wide discretion to the college administrator and, thus, the possibility that various groups may still face substantial obstacles in gaining recognition may prove to be a reality.

JACK E. LONDON

31. *Id.* at 2350, *citing* Brandenburg v. Ohio, 395 U.S. 444, 447 (1960). *See also* Noto v. United States, 367 U.S. 290 (1961); Scales v. United States, 367 U.S. 203, 230-32 (1961).

32. *Id.* at 2350.

33. *Id.* at 2352. *See also* Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027 (1969).

34. 92 S. Ct. at 2352; *see, e.g.*, Adderley v. Florida, 385 U.S. 39, 47-48 (1966); Cox v. Louisiana, 379 U.S. 536, 558 (1965); University of S. Miss. Chapter of Miss. Civil Liberties Union v. University of S. Miss., 452 F.2d 564 (5th Cir. 1971); ACLU v. Radford College, 315 F. Supp. 893 (W.D. Va. 1970).

35. 92 S. Ct. at 2352.

36. *Id.* at 2352, 2353. *See also* Healy v. James, 445 F.2d 1122 (2d Cir. 1971), the appendix following the decision includes a copy of the Central Connecticut State College Statement on Rights, Freedoms and Responsibilities of Students, which outlines the policies concerning campus life, including formation of campus groups. Only a very broad interpretation of Article V(A) could possibly fulfill the requirement the Court alludes to. *Id.* at 1134-39.