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THE FIRST AMENDMENT RIGHTS OF HIGH SCHOOL NEWSPAPERS IN VIRGINIA

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THE FIRST AMENDMENT RIGHTS OF HIGH SCHOOL NEWSPAPERS IN VIRGINIA

by

David E. Hoffman

**A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education**

**Greensboro
1980**

Approved by

Dissertation Adviser

APPROVAL PAGE

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As the result of Tinker v. Des Moines (1969) students have become more aware of their constitutional rights. However, the First Amendment rights of student newspapers have been abridged even after the Tinker decision stated that students' rights did not end at the schoolhouse gate.

Even though the courts have recognized certain rights of both the student press and the professional press, areas of litigation during the past few years have involved obscenity, libel, and prior restraint. Of these three abridgments, the imposition of prior restraint by school administrators tends to be the greatest threat to a free student press.

This study was begun with the intention of defining student press rights by reviewing major court cases involving the professional press as well as the student press, studying the literature in the area of the student press, and sending a questionnaire to the high school newspaper advisers in Virginia.

This dissertation is pragmatic in that it provides a working instrument for identifying student press freedoms as determined by court rulings. Also included in the study are guidelines of press rights for student reporters, newspaper advisers, and school administrators. The study provides an

accurate picture of present-day student press rights in Virginia as seen by high school advisers.

The results of the survey indicate that student newspaper advisers in Virginia are involved in a majority of the final decisions regarding what goes into the high school newspapers. The advisers' major legal concern is with obscene rather than libelous materials. The survey also indicates that over 30% of the Virginia newspaper advisers have had no course in journalism and most of the advisers in Virginia are not certified in journalism.

The study of student court cases indicates that prior restraint of student publications is permissible although the courts have established more stringent guidelines for prior restraint than for post-publication sanctions. Prior restraint of material which the school administration considers obscene is difficult to justify in the courts since the term obscene has been difficult for the courts to define. The review of major obscenity cases shows this difficulty.

With the student newspaper proving to be such a prominent area of potential litigation, school administrators must realize the importance of appointing qualified advisers. Also, until more advisers become knowledgeable about the rights of the student press, the press will remain predominantly a voice of the administration or faculty adviser.

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Chapter 1

INTRODUCTION

In 1969 the United States Supreme Court handed down a decision which would give students in the nation's public schools more rights while in school. Tinker v. Des Moines created among students a new awareness that their constitutional rights were not shed "at the schoolhouse gate."[1] This decision laid the ground work for identifying the rights of student expression and provided the way for innumerable challenges by those who had been denied First Amendment rights.

Did this decision mean that student newspapers had the same First Amendment rights as those guaranteed to the professional press? Neither academicians nor courts have been able to answer this question adequately. Just as the courts have placed various limitations upon the First Amendment rights of the professional press, so also they have interpreted the degree of constitutional rights to be given student newspapers.

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[1]Tinker v. Des Moines Community School District, 393 U.S. 503 (1969).

Limitations placed on the professional press have greatly affected the student press since, historically, the professional press has had greater freedom than the student press. As this study shows, the courts have often interpreted the First Amendment to have limitations and moreover, many academicians have taught students the importance of American freedom as outlined by the Constitution of the United States, while denying them the same constitutional rights.

One factor likely to influence the degree of freedom provided the student press in the future is the number of decisions handed down recently by the courts regarding professional press rights. The professional press has lost several court cases in the last few years and hence, a number of rights which in the past had been considered protected by the First Amendment to the Constitution have now been denied by the courts.

In the past the professional press had been guaranteed rights against prior restraint and other forms of censorship. But recent court rulings have indicated that some of these guaranteed rights may be taken away. Although the courts have been limiting its First Amendment rights, the free press has survived in the United States during the past two hundred years.

Although the educational journals contain numerous articles on student press rights, there exists neither a study which compares the rights of the professional press with those of the student press nor one which provides guidelines for the student press to use in working compatibly with the school administration. The courts have limited both the professional and student presses, but often the school administration provides an additional, sometimes unconstitutional, limitation to the student press.

The overall purpose of this study is to provide student editors, advisers, and school administrators with information regarding legal rights of the student press so that all three entities can function in both a free and congenial manner.

STATEMENT OF THE PROBLEM

When constitutional rights are denied any American citizen, the courts are usually summoned to guarantee that these rights are provided with adequate regard to preserving the "general welfare" of those involved in the litigation. Even after Tinker v. Des Moines, the First Amendment rights of student newspaper editors have been denied by school administrators. The student press is under fire by some administrators who continue to censor the publications by any means possible including prior restraint, harassment of student staff members and faculty advisers, and withholding

funds from offending newspapers. As a result of such practices, the courts often become the sounding board for those involved. Subjects of litigation have included editorial material (e.g., sex surveys and anti-administration articles), photography, and advertising copy.

Sometimes, however, the material subjected to litigation is irresponsible student work that may fall into the strictly defined realm of libel. The courts and the American professional press tend to accept a social responsibility approach to journalism and agree that libelous material should be avoided in a responsible press. Administrators, advisers and student newspaper staff members need to be aware not only of the laws of libel and other press responsibilities but also of student rights as guaranteed by the First Amendment.

Thus, there is a need to educate the administrators and newspaper advisers about press rights and responsibilities. In return the advisers need to teach their staff members about press law and ethics. With such an awareness, administrators and the student press can work together.

Since a number of the student newspaper cases before the courts are the results of inadequate policy set down by the school board or inadequate direction by the newspaper adviser, there is a need to review the literature on the subject of press law and major legal cases relating to both

the professional and student presses in order to develop direction for school boards and faculty advisers. Through this study, strengths and weaknesses in school board policy will be identified and an instrument for legal guidelines will be developed.

QUESTIONS TO BE ANSWERED

The major purpose of this study is to develop practical guidelines for high school newspaper staff members and advisers, and school administrators to have available to avoid situations which may cause a breakdown in newspaper/administration cooperation. Below are listed some key questions which need to be answered through research.

1. Who makes the final decisions regarding the content of the student newspapers?

2. What types of materials are acceptable for high school newspapers?

3. Do high school newspapers have the same rights as those of professional newspapers?

4. Are high school newspaper advisers adequately trained to perform their various tasks in working with the student newspapers?

5. Do advisers provide their student staff members with guidelines on what is legally and ethically acceptable in the press?

6. Is there censorship of high school newspapers?

SCOPE OF THE STUDY

This is a historical study of the legal rights and responsibilities of the professional and student presses in the United States. The research indicates reasons for litigation involving the free press, the results of major court cases, the freedom of the press as perceived by student newspaper advisers, and the effects the major decisions will have on the public schools.

This study also contains a review of significant court cases involving the three major restraints placed upon the press: the laws of libel and obscenity, and prior review. Also included are major court cases involving the professional press from 1930 to 1979 and major court cases involving the student press from 1969 to 1977.

Although the court cases give a historical basis for this study, the reality of the modern student press as perceived by high school advisers is equally important. Therefore, the results of a survey sent to all Virginia high school advisers during the 1979-80 academic year are included.

METHODS, PROCEDURES, AND SOURCES OF INFORMATION

The study of a legal problem involves a complete examination of the various viewpoints as depicted by separate

courts, justices, and academicians. Hence, an analysis of the available references relating to the First Amendment rights of the press is included.

A search of Dissertation Abstracts was made to determine if such a study was needed. General articles related to this study were located with the aid of such indexes as Education Index, Index to Legal Periodicals and Resources in Education. Additional research summaries were found in various books on school law and in other books relating to mass media.

A search for court cases related to the topic was conducted with the aid of Corpus Juris Secundum, American Jurisprudence and the National Reporter System. The court cases were read and categorized according to libel cases, obscenity cases or prior restraint cases.

Various books and articles on research models were consulted in an effort to develop a valid questionnaire which was sent to every high school newspaper adviser in Virginia. The questionnaire was developed with the aid of faculty members at the University of North Carolina at Greensboro and faculty members at Averett College.

Additional supplementary material relating to student press law was acquired from the Student Press Law Center, The Newspaper Fund, Columbia Scholastic Press Association

and the National Scholastic Press Association. Material relating to professional press law was received from Sigma Delta Chi (The Society of Professional Journalists) and the American Newspaper Publishers Association Foundation. Invaluable and timely material was acquired from responses given by 172 Virginia high school newspapers advisers in response to the questionnaire.

DEFINITION OF TERMS

For this study, the following selected terms are defined below:

Expression. Black's Law Dictionary defines expression as making something known distinctly so nothing will be left to inference or implication.[2] With the 1969 Tinker decision, expression was defined as verbal or visual conveyance of knowledge. Tinker indicated that the First Amendment applies to all forms of expression including dress, speech and the press.[3]

Libel. Libel is the defamation of a person's character and must contain four elements: publication through print or broadcast, identification of an individual (directly or

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[2] Black's Law Dictionary 691 (4th ed. 1968).

[3] Tinker v. Des Moines, pp. 505, 506.

indirectly), injury to someone, and fault of the publisher.[4] Injury by libel may appear in two separate forms. In libel per quod a person is libeled through association; in libel per se, a person is libeled directly.[5]

Obscenity. The courts have been struggling to define obscenity for decades. The 1973 Miller v. California decision laid down a tripartite test in an attempt to recognize obscenity. The majority decision stated that contemporary community standards when applied to the whole work would be one test for obscenity. The second test is the application of state law and the third is the determination of whether the work has "serious literary, artistic, political or scientific value."[6] Once an item is declared obscene, the First Amendment rights are lost.

Prior restraint. Prior restraint is prior approval of printed or broadcast material before publication. Unless

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[4]Bruce W. Sanford, Synopsis of the Law of Libel and the Right of Privacy (New York: Newspaper Enterprise Association, 1977), pp. 8, 9.

[5]John R. Bittner, Mass Communication: An Introduction (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1980), p. 366.

[6]Miller v. California, 413 U.S. 15 (1973).

prior approval of a work is willingly granted to another individual, prior restraint is in violation of the First Amendment.[7]

Privilege. Privilege is the right to express something without the fear of being sued. Privilege is either absolute or qualified in nature. Legislators and judges have absolute privilege while carrying out official duties. The press has qualified privilege which permits it to print information with the possibility of losing the privilege if the information is inaccurate.[8]

SIGNIFICANCE OF THE STUDY

During the decade following Tinker, there have been many student press cases litigated involving students, advisers, principals, superintendents, and school board members. In fact, prior to Tinker very few cases involving the school press' First Amendment rights of expression were brought to court since the results almost always favored the school administration in its determination to control the student

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[7]Lillian Lodge Kopenhaver and J. William Click, Ethics and Responsibilities of Advising College Student Publications (Athens, Ohio: National Council of College Advisers, 1978), p. 7.

[8]Howard Angione, ed., The Associated Press Stylebook and Libel Manual (New York: Associated Press, 1977), pp. 251, 252.

press. Absolutely no cases involving school press rights were litigated prior to the late 1950's.[9]

However, within the past few years, the student press has won a major victory. In Gambino v. Fairfax County School Board,[10] an article entitled "Sexually Active Students Fail to Use Contraceptives" was permitted by the court to be printed in The Farm News, a high school newspaper. During that same year, however, in Trachtman v. Anker[11] the court ruled that a New York City high school newspaper would not be permitted to distribute a questionnaire on student sexual practices (see Appendix A). The student editor lost his case, not because of his First Amendment rights being denied, but because the court decided that the survey could cause possible psychological problems to the younger students.

With such ambiguous court decisions, some school administrators have taken a strong stand against the student newspaper and have suppressed the publication through censoring

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[9]Mike Wiener, "Right to Make Waves: Free Press in the High School," The Nation, January 28, 1978, p. 83.

[10]Gambino v. Fairfax County School Board, 429 F. Supp. 731 (E.D. Va., 1977).

[11]Trachtman v. Anker, 563 F. 2d 512 (2nd Cir., 1977).

the content, providing inadequately prepared advisers, or eliminating the newspaper altogether. Such tactics have often resulted in the birth of a venomous underground student press that is more difficult to control. As an additional adverse result of the suppression of the student press, the actions of the administrators are perceived by some students as being hypocritical in nature. While teaching students about their constitutional rights in the classrooms, the schools which suppress student newspapers are denying students the opportunity to experience one of their basic rights--freedom of expression.

The solution to this administrative problem is for school administrators and faculty advisers to become more aware of students' rights of expression under the First Amendment and as outlined in Tinker. In addition to this basic awareness, the schools need to establish guidelines for working with the student press.

Furthermore, it is the adviser's responsibility to teach student newspaper staff members their rights and responsibilities. Most proponents of the free press agree that with rights come responsibilities and it is imperative that student newspaper staff members become aware of these

responsibilities. As the University of Oregon journalism professor, Jack R. Hart said,

> If you hope to be successfully independent high school journalists, you will have to arm yourself with knowledge about the judicial interpretations of the First Amendment and then will have to wield that armament reasonably.[12]

With the First Amendment freedom of the student press comes the same limitations as those placed upon the professional press. Hence, the student journalists must become aware of the laws regarding libel and obscenity which have been the result of the greatest amount of litigation by the professional press. As the student press continues to acquire new rights, it will also acquire new responsibilities.

In addition to the limitations of libel and obscenity on the student press, the courts have recognized a third limitation placed upon the students' First Amendment rights. The student press can be censored when it "materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school. . . ."[13]

Thus, this study is significant in that it provides educational administrators, student newspaper advisers, and student newspaper staff members with guidelines for press

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[12] Student Press Law Center Report, Winter, 1977-78, p. 29.

[13] Burnside v. Byars, 363 F. 2d 744 (5th Cir., 1966).

rights and responsibilities as the result of a review of significant professional and student press cases. In addition to developing these guidelines based upon the literature, the study provides a significant amount of data from the questionnaire to determine the rights already provided to the student press. Although the questionnaire was sent only to advisers in Virginia, the geographic, economic and cultural diversity of the state provides an accurate picture of the student press nationally.

DESIGN OF THE STUDY

The remainder of the study is divided into four major parts. Chapter two is a review of relevant literature relating to First Amendment rights of the professional and student presses. Along with literature dealing with rights and responsibilities, this chapter deals with the historical concept of a free press as well as its relevance to the modern professional and student presses.

The third chapter includes a summary of major court cases involving the First Amendment rights of the professional and student presses, dealing specifically with those cases involving the limitations of libel, obscenity, and prior restraint.

Chapter four records and interprets the data compiled from the questionnaire sent to Virginia high school newspaper advisers. An overview of First Amendment rights of Virginia student newspapers is given as perceived by faculty advisers from 172 (75.8%) of the 227 Virginia high schools with student newspapers. A picture of the problems and strengths which exist in the contemporary student press is provided.

The final chapter of this study provides a review of the material discussed in chapters two, three, and four. The concluding chapter also presents an instrument for developing student press rights while maintaining press/administration congeniality.

Chapter 2

REVIEW OF THE LITERATURE

OVERVIEW

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[1]

There has never been a statement in the history of mankind to encompass so completely the basic human rights as does the First Amendment to the United States Constitution. On the other hand, there has probably been no statement that has been as widely interpreted and misunderstood as the First Amendment.

Although other nations have included the basic concept of freedom of the press in their constitutions, the idea has not worked as well anywhere as it has in the United States. For example, Article 125 of the Constitution of the USSR grants freedom of the press to its citizens.[2] However, history has shown that this freedom is granted in words only. In practice,

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[1]U. S. Constitution, Amend. I.

[2]Ben H. Bagdikian, "The Child in Jeopardy," Quill, September, 1976, p. 33.

many Russian citizens have found the same problem as the one experienced by the Nobel Prize-winning writer Alexandr I. Solzhenitsyn. In referring to his experiences as a writer in the Soviet Union, he indicates the suppression which he has encountered when he states,

> Underground is where you expect to find revolutionaries. But not writers. It is mortifying, of course, to have to go underground not for the revolution but merely for the sake of literature.[3]

The USSR is by no means the only country to suppress freedom of the press. History records that many nations have limited freedom of the press. England at one point during the civil war in the early 1640's placed restrictions upon the press. Such a move by the government resulted in one of the greatest documents ever written regarding press freedom, John Milton's Areopagitica. In this work, Milton stated that the free press is a human right that must be preserved. However, Britain's press regulations have not been limited to the seventeenth century. In 1911 the British Official Secrets Act was enacted. This act states that a reporter may be arrested if he publishes something which is not authorized by a higher authority. When something is labeled "secret," regardless of its relevance to the public,

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[3]Alexandr I. Solzhenitsyn, "The Writer Underground," New York Times Book Review, February 10, 1980, pp. 3, 28.

it cannot be printed. Clement Freud, a Liberal Member of Parliament, summarizes the act by saying, "Anything is secret that an official says is secret."[4]

Numerous types of press suppression have been recorded worldwide during the past few years. In 1972 a Chinese newsman was covering a general's speech which included a joke about Chairman Mao not being able to beat the Ping-Pong champs. The reporter jotted down the joke and left the notes at the newspaper office with plans to write the story the next day. When he returned to the office, he was met by his superior and questioned about the notes he had taken the night before. In reference to the general's joke, the reporter was asked, "How do you defend such counterrevolution?" The reporter was banished to a Mongolian commune for nearly five years.[5]

While banishment is a harsh punishment for a reporter's error in judgment, it is not uncommon in totalitarian countries. But censors are also found in countries which have historically been politically freer in nature. In South Africa a national censor was temporarily dismissed from his job when he explained and justified to the news media his role as censor. He said,

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[4]Alan A. Otten, "Some of the News in Great Britain Is a Big Secret," Wall Street Journal, December 28, 1979, p. 6.

[5]Robert Sam Anson, "Portraits of Four Chinese," Saturday Review, March 15, 1980, pp. 20-23.

> Every South African cannot go out and buy every new book and read it to decide if he will take it. Now we have a body that can do it for him. We study the book and tell him if he will like it or not. Afrikan writers are not being suppressed. Very few of them produce anything.[6]

The degree of press freedom throughout the world varies with governmental statutes which place limitations upon the press. Although there are certain basic restrictions, the press in the United States, for the most part, is free. Nonetheless, during the past few years, the press and the courts have been fighting a battle to define press rights as guaranteed by the First Amendment. Some judicial bodies propose that responsibility comes with the free press, while others suggest that "freedom of the press" means exactly what it says. Many courts have recently decided to legislate responsibility. However, journalists fear such an action and many concur with New York Times writer Tom Wicker who writes, "What is lost sight of is that if responsibility can be imposed, freedom can be lost."[7] Yet, the courts continue to make decisions which abridge the press' freedom.

Some journalists blame the recent wave of anti-press rulings coming down from the Supreme Court on Mr. Chief Justice

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[6]"Front Runners," Saturday Review, December, 1979, p. 6.

[7]Tom Wicker, On Press (New York: Berkley Press, 1979), p. 283.

Burger. In a little more than ten years since he was placed at the helm, the nation's highest court has decided on cases which have resulted in reporters having to reveal confidential sources in a court of law; journalists being required to define, in a court, the editorial process used in writing or editing a story; judges, plaintiffs or defendents having the right to close court rooms to the press; authorities of such institutions as prisons and mental hospitals having the right to close off facilities to journalists, and police have the right to search news rooms for evidence, although the press is not involved in a crime. Critics of Burger state that he has intentionally worked at abridging press rights for fear that "too much liberty can undermine social order."[8] Harvard law professor Alan Dershowitz says about Burger, "As a Supreme Court justice the man is simply not passionately committed to freedom and liberty. If he were one of the Founding Fathers, he would have voted against the Bill of Rights."[9]

The actions of the Supreme Court tend to suggest that the First Amendment is a touchy subject with the members. A

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[8]Tim O'Brien, "The Dubious Justice of Warren Burger," Saturday Review, December, 1979, p. 19.

[9]Ibid., p. 20.

writer for Columbia Journalism Review noted that

> since 1975, the Court has waited until the last day--or nearly--of the term to hand down its major First Amendment decision. . .the Justices simply want to drop their First Amendment bombshells and then quickly leave town for the summer to avoid the rage of the Washington press corps.[10]

Others writers lament that the make-up of the present court is just not conducive to a guarantee of press freedoms. One writer states,

> Indeed, had only Justices Hugo L. Black and William O. Douglas--both of them liberal stalwarts of the Courts previous decades--been together on the Court during the Burger years, the press would have won virtually every case it had lost before the High Court.[11]

However, of Black and Douglas, only Douglas read the First Amendment's application to freedom of the press to mean exactly what is said, that "Congress shall make no law. . . ." Douglas believed that the First Amendment was written to curb governmental interference with the press. Alden Whitman wrote in the New York Times obituary of Douglas that Douglas would be remembered as

> one of the stoutest advocates of unfettered publication, as he demonstrated in the Pentagon Papers. . . .The dominant purpose of the First Amendment was to protect the widespread practice of governmental suppression of embarrassing information. . . .Secrecy in government is

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[10]Bruce W. Sanford, "No Quarter From This Court," Columbia Journalism Review, September/October, 1979, p. 59.

[11]Sidney Zion, "High Court vs. the Press," New York Times Magazine, November 18, 1979, p. 145.

> fundamentally undemocratic, perpetuating bureaucratic errors. Open debate and discussion are vital to our national health.[12]

In court rulings discussed later in this paper, Douglas' strong support of the press is made evident.

Not all citizens find the First Amendment to be as "sacred" as do newsmen and libertarians such as the late Mr. Justice Douglas. For example, a Gallup Poll early in 1980 indicated that "three-quarters of all Americans had no idea what the First Amendment to the Constitution says--or means."[13] Politicians, even Presidents of the United States, have viewed the freedom of the press as an inconvenience. Gay Talese, in writing about the New York Times, noted that Franklin Roosevelt felt uncomfortable with the Press. Talese stated in The Kingdom and the Power that

> Roosevelt's resentment of The (New York) Times was based on nothing more complicated than the fact that he could not control it. Few Presidents actually believe in a free press. Truman did not, nor did Eisenhower nor Kennedy nor Johnson.[14]

Even though Talese stopped with President Johnson, perhaps the greatest dislike for the press by any President of the United

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[12]Alden Whitman, "Vigorous Defender of Rights," New York Times, January 20, 1980, p. 28.

[13]Don Hausdorff, "The Fist Amendment-Words and Meaning," New York Times, February 17, 1980, p. E19.

[14]Gay Talese, The Kingdom and the Power (Cleveland: New American Library, 1969), p. 43.

States was displayed by President Nixon. Ben H. Bagdikian notes that

> on February 28, 1973, Richard Nixon, then President, said to John Dean, then Nixon's faithful servant, speaking about their plans to bring the disobedient portion of the American press to heel, 'One hell of a lot of people don't give a damn about this issue of suppression of the press.'[15]

Although many of those in power do not respect the press, traditionally there have been only three ways that they can legally suppress the press. Those three ways have been through proving obscenity or libel, or attempting to acquire a restraining order to prevent the publication from being circulated. The courts have found it difficult to define "obscene," resulting in the application of the vague standards set down in 1973 by the Miller v. California decision. Libel does occur occasionally in publications, and courts have established strict guidelines to prevent damage to an individual's reputation. The attempt at prior restraint has proven to be almost an impossible task in recent years, although one of the most famous cases involving prior restraint took place during 1979 when a restraining order was placed against Progressive magazine which had acquired an article about the components of the hydrogen bomb. The remainder of this chapter will deal with the literature regarding obscenity, libel, and prior restraint.

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[15]Bagdikian, p. 35.

Obviously, restrictions placed upon the student press are narrower than those placed on the professional press, but the professional media court decisions provide some guidelines for the student press.

THE ISSUE OF OBSCENITY

Major court decisions (Roth v. United States, Miller v. California, etc.) have indicated that obscenity is not protected by the First Amendment. Such decisions are contrary to the views of such libertarian thinkers as the late Mr. Justice Douglas who argued that "the First Amendment says nothing about 'speech' or 'press' that is inoffensive. It allows all utterances, all publications to be made with impunity."[16] The courts have ruled otherwise, although they have historically found it difficult to define "obscenity." The definition changes with almost each new court decision as is evident in Jacobellis v. Ohio where the court limited obscenity to include only "hard-core pornography" as the result of Mr. Justice Stewart's vague definition of "hard-core pornography."[17]

The vagueness of the Supreme Court in defining "obscenity" is equalled in absurdity only by the manner in which the

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[16]William O. Douglas, "Introduction," Quill, September, 1976, p. 9.

[17]Jacobellis v. Ohio, 378 U.S. 184 (1964).

Helsinki (Finland) City Council dealt with this indefinable term. In 1978 a Helsinki committee was successful in persuading the city council to have Donald Duck comics removed from the Helsinki public libraries because of

> . . .Donald's fifty-year engagement to Daisy Duck, the questionable parentage of his three nephews Huey, Dewey, and Louie and the brief sailor suit that Donald wears--which leaves his feathery bottom exposed for all to see. . . .[18]

The U. S. Supreme Court has, however, been successful in determining that sex portrayed in works of art is not necessarily "obscene." The Court has also made the discovery that

> sex, a great and mysterious motivating force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern.[19]

In this early decision the Supreme Court recognized the weaknesses of human nature and the "mysterious" effect sex has on human beings.

The Supreme Court, in Miller v. California, set up the following guidelines for identifying "obscenity."

(1) The publication must be considered as a whole and must appeal to one's prurient interest (excite lustful thoughts).

(2) The publication must have no socially redeeming value.

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[18]"Is This Duck Obscene?" Student Press Law Center Report, Spring, 1978, p. 16.

[19]Roth v. United States, 354 U.S. 487 (1957).

(3) The publication must be considered according to local community standards.[20]

In his dissenting opinion to Miller v. California, Mr. Justice Douglas wrote, "The court has worked hard to define obscenity and concededly has failed."[21]

The rights of the high school student press have traditionally been somewhat less than those of the professional press. Although the 1973 Jacobs v. Board of Commissioners decision indicated that a few "earthy words" in a publication do not make the publication "obscene," the courts have ruled in other cases that students do have "limited" First Amendment rights (e.g., Shanley v. Northeast Independent School District and Trachtman v. Anker).

Often the stifled student press can result in an underground newspaper as "pure" as Awakening which the court decided could ". . .surface, flower-like, from its underground abode,"[22] or the "biting" type of publication as in Near v. Minnesota which the court said made "serious accusations."[23] In recent years the underground press has improved in content

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[20]Miller v. California, 413 U.S. 15 (1973).

[21]Ibid., p. 37.

[22]Shanley v. Northeast Independent School District, 462 F. 2d 964 (5th Cir., 1972).

[23]Near v. Minnesota, 283 U.S. 697 (1931).

and make-up and has become less subversive. In fact, Virginia high schools are presently nearly void of such publications as is noted in chapter four.

Perhaps the high school underground press has gone the way of one of the most famous underground newspapers, The Village Voice. In her book, The Voice, Ellen Frankfort writes that The Village Voice

> . . .is not quite what it set out to be when it began publication in 1955. Then it was poor, radical, idealistic and a haven for the idiosyncratic writer. In time it became rich, bourgeois, cynical and a destroyer of some very good writers.[24]

Perhaps the reasons for fewer underground newspapers are the facts that the established newspapers are becoming more investigative in their coverage and that student editors are becoming more cognizant of their constitutional rights. Also, like The Village Voice, the underground press has become "rich, bourgeois, cynical and a destroyer of good writers."[25]

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[24]Ellen Frankfort, The Voice (New York: William Morrow, 1976), inside jacket.

[25]Ibid.

THE ISSUE OF LIBEL

Libel is the major area of litigation in the professional press, yet it has not proven to be a major factor of litigation in the student press. Although the courts have ruled that the student press has the same rights as the professional press, the courts have also ruled that the student press has the same responsibilities which includes that of not printing defamatory material.

In the professional press the litigation involving libel has centered around the issue of whether a person is a public figure or a private individual. If the courts determine that a person is a public figure, the plaintiff must prove "malice."[26] A recent libel case indicates the protection afforded the press in this area. In 1974 the National Enquirer printed an article regarding a "boisterous argument" actress Carol Burnett allegedly had with former Secretary of State Henry Kissinger. Upon discovering that the information was false, the National Enquirer printed a retraction and apology. However, Burnett felt that she had been libeled and sued the paper for $5 million in damages. In court the lawyer for the National Enquirer argued that "malice" was not the intent since the publication had printed "many

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[26]New York Times v. Sullivan, 376 U.S. 254 (1964).

flattering stories of the star."[27] The attorney also indicated that the retraction and apology proved good intent. The Los Angeles Superior Court ruled that "malice" had not been proven by the plaintiff; therefore, as a public figure she had not been legally libeled.[28]

Advocates of a more responsible press argue that the reason the press is so susceptible to libel charges is because "we have become a nation of Peeping Toms."[29] The result is, of course, that the press, in its attempt to quickly fulfill the nation's appetite for information about individuals, sometimes is incorrect in its reportage. This inaccuracy of reporting invariably leads to litigation. Washington Post board chairman Katherine Graham notes that

> it is impossible to expect the paper to print only what it knows in advance that it can prove in court. If a paper wants to protect itself totally, it will really write much less.[30]

Her comment echoes what was said two hundred years earlier by one of the nation's first newspaper publishers. Benjamin Franklin said, "If all printers were determined not to print

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[27]"Carol Burnett Fails to Prove Malice," Editor and Publisher, February 16, 1980, p. 34.

[28]Ibid.

[29]Carll Tucker, "Public Figures, Private Lives," Saturday Review, February 16, 1980, p. 56.

[30]"Katherine Graham: Protecting the First Amendment is Everyone's Business," News/News, November, 1979, p. 7.

anything till they were sure it would offend nobody, there would be very little printed."[31]

Often the press, in libel cases, is the subject of "malice" itself. When a publication prints the facts that are in opposition to the views of a reader, the publication is sometimes taken to court to prove that the article is true. The result in some cases is that the plaintiff is required to pay costs. This happened in 1979 as the result of a libel case involving Barron's magazine. The suit against the magazine charged that Barron's had published false information regarding a corporation of which the plaintiff was a stockholder. The Federal District Court of southern New York ruled that

> the suit was filed either with the knowledge that counsel has no adequate factual basis to sustain the allegations or in reckless disregard of the fact that proof of the charge was not available. In either circumstance, plaintiff and his counsel knowingly proceeded with litigation that lacked foundation.[32]

The court required that the plaintiff and his attorney pay Barron's $50,000 in legal fees.[33]

Fortunately, the student press had not been involved in major litigation involving libel. Educators and administrators

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[31]Speaking of a Free Press (Washington, D.C.: ANPA Foundation, 1974), p. 10.

[32]"Court Makes Plaintiff Pay Costs of Libel Suit," Editor and Publisher, June 9, 1979, p. 32.

[33]Ibid.

have become aware of the potential of libel litigation which may come from such areas as gossip columns and April Fools' editions of student newspapers. Although the gossip column had been a part of the student newspaper for decades, this type of writing has been generally phased out of high school newspapers during the past decade; yet it still remains in some junior high newspapers. In addition to the potential of litigation which the gossip column may provoke, high school students seem to see such writing as irresponsible and immature. By the time the journalist gets to high school, he is wanting to write more than gossip. As a student wrote in Amityville (New York) Memorial High School's newspaper, Echo, "'Snoopy' and its kind belong right where they are--in the Junior Echo. We are not writing for junior high school students and we do not intend to begin now."[34]

Another area of potential litigation as the result of libel is the publication of April Fools' editions. Although the editors know that the information is an exaggeration and a joke, false material, regardless of the humor involved, is subject to litigation. A case in point in May, 1979, involved the editor of the student newspaper at the University of Louisville who published the traditional April Fools' edition. The court ruled that the newspaper included material that was

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[34]Bill Ward, Newspapering (Minneapolis: National Scholastic Press Association, 1971), p. 52.

both "obscene" and libelous. Included in the issue were stories with a great deal of profanity and charges of rape and sodomy allegedly committed by the entire football team. When the student editor was fired from his position, he sued the college. The court ruled in favor of the student, but since he had graduated from the university, the court ruled the case moot because he could not be reinstated as editor. The court also denied the editor back pay or attorney's fees.[35] Although the student's attorney claimed this to be a "hollow victory," such litigation shows that the court has no sense of humor regarding false information published in a newspaper. This case was argued on the basis of the denial of the student's First Amendment rights, but the publication of such material could have resulted in libel litigation.

Hence, the potential of libel is prevalent in two "traditional" areas of the student newspaper--the gossip column and the April Fools' issue. Including either of these in the student newspaper is irresponsible and those newspapers (whether professional or student) which publish such material must face the possibility of litigation.

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[35]"A Hollow Victory," Student Press Law Center Report, Fall, 1979, p. 32.

Professional reporters are aware of the fact that

> the 'gee-whiz slam-bang' stories usually aren't the ones that generate libel, but the innocent-appearing, potentially treacherous minor yarns from police courts and traffic cases, from routine meetings and from business reports (are the potential areas for libel).[36]

It is important that the student press, likewise, become aware of these potentially dangerous areas of litigation.

THE ISSUE OF PRIOR RESTRAINT

"Prior restraint on publication remains the single greatest threat to freedom of the press. Such restraints fall on speech with a brutality and finality all their own,"[37] said Alexander Bickell, a lawyer involved in the 1971 Pentagon Papers litigation. Although historically there have been few cases of actual prior restraint on professional publications in the United States, those that have occurred indicate the potential danger prior restraint can have on a free press.

A recent proposal before the Massachusetts State Legislature suggested that investigative reporters "register with the state as private detectives and. . .pay an annual license fee."[38]

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[36]Howard Angione, ed., The Associated Press Stylebook and Libel Manual (New York: Associated Press, 1977), p. 249.

[37]Floyd Abrams, "Progressive Education," Columbia Journalism Review, November/December, 1979, p. 28.

[38]"Licensing Reporters," Editor and Publisher, May 19, 1979, p. 8.

Without registering with the state, a reporter would not be allowed to write. Fortunately for the free press, the proposal was defeated. However, licensing of reporters is common practice in other countries. For example, in Panama, of the 595 applications from reporters one year, only 298 were approved by the licensing committee.[39] Hence, the press may become a political arena in which the ideas of a publication determine whether or not it is permitted to continue.

Such a statute as proposed in Massachusetts would likely be declared unconstitutional since the courts in the past have been extremely cautious in placing prior restraints upon the press. However, in 1979 the Supreme Court was faced with a possibly critical decision. The case involving a restraint placed on Progressive magazine to prevent the magazine from publishing an article entitled "The H-Bomb Secret: How We We Got It, Why We're Telling It" was about to be heard by the Supreme Court when the information was published in a small Wisconsin newspaper. This was the first time that a Federal judge granted such an injunction for reasons of "national security," based upon the Atomic Energy Act of 1946 which indicated that information regarding the H-bomb was restricted.

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[39]Ibid.

The Atomic Energy Act contained two restrictions,

> one sets punishment for anyone in possession of 'Restricted Data' who 'communicates, transmits, or discloses the same to any individual or person'; the other authorizes the government to get an injunction when it thinks anybody has violated or is about to violate any part of the law.[40]

Such actions by the court caused a concern that this would be the beginning of governmental intervention in the areas of press freedoms. Executive editor of the New York Times, Abe Rosenthal, stated that although the New York Times would not print the H-bomb article, "it seems to me a very dangerous thing the government is doing. I'm not the editor of that magazine and I don't think the government should be."[41]

After the information regarding the H-bomb appeared in the Madison Press Connection, the issue of whether the press is free from prior restraint was not solved. Although the editors of Progressive magazine considered that they had won a victory for freedom of the press after the government dropped its restraints following the publication of the H-bomb material in the Madison newspaper, other writers were not so sure.

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[40] "Does the Progressive Have a Case?" Columbia Journalism Review, May/June, 1979, p. 26.

[41] "Physicist Says H-Bomb Story Contains Info in Public Domain," Editor and Publisher, March 24, 1979, p. 13.

As one wrote in the Wall Street Journal,

> Despite claims of victory for a free press by the magazine and its supporters, it seems sadly clear that the First Amendment came away with some dents. The government managed to stop publication of an article for six months, certainly one of the most successful exercises of prior restraint ever in this country. And the one court decision so far, by a federal judge, upheld the government's right to do that.[42]

Neither the Progressive nor the Madison Press Connection could enjoy the short victory. The Progressive faced a financially draining legal battle and was forced to solicit funds to continue publishing. In a February, 1980 letter sent to readers, the editors of the Progressive wrote,

> We face a deficit that mounts more perilously with every passing week.
>
> The reason, quite simply, is the lawsuit filed against us last year by the nuclear weapons authorities over secrecy in the United States hydrogen bomb program. We won the legal battle in that historic First Amendment case--but we are losing the financial war.[43]

The Madison Press Connection suspended publication in January, 1980 because of financial difficulties.[44]

Another test of judicial prior restraint on the basis of the Atomic Energy Act occurred in early 1980 when

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[42]John R. Emshwiller, "Progressive Case: Did the Press Win or Lose?" Wall Street Journal, September 28, 1979, p. 12.

[43]Letter mailed to readers, Progressive, February, 1980.

[44]"End of the Connection," Progressive, March, 1980, p. 12.

Metropolitan Edison, owners of Three-Mile Island nuclear energy plant, asked a judge to restrain an article regarding security inefficiencies at the Three-Mile Island plant. The request was the result of a Dauphin County, Pennsylvania, news reporter's story which described his work undercover for one month at the Three-Mile Island plant and his discovery that the security was lax. The judge refused to restrain the article which the reporter had written. In the ruling, Judge John C. Dowling wrote,

> Publication is many times inconvenient, disruptive, annoying and damaging, but the experience of our founding fathers, an experience which has been reinforced throughout history, has supported a view that the press has to be left free to publish the news whatever the source, without censorship, injunction or prior restraint.[45]

Sometimes the prior restraint is not the result of court orders. In a mayoral election of November, 1979, the restraint was attempted by supporters of a largely favored incumbent. The weekly newspaper, Somerville Journal, criticized the mayor's actions and in the issue before the election, the newspaper had openly endorsed the mayor's opposition in the election. In an effort to suppress the negative newspaper coverage supporters of the mayor purchased most of the 4,000 copies of the newspaper within four hours after the newspaper was distributed. The editors decided on a second run of the newspaper

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[45]John Consoli, "Judge Rejects Prior Restraint on Shopper," Editor and Publisher, February 9, 1980, p. 47.

since they felt that the material included in the issue was of vital importance to the citizens in making an informed decision. As the result of the action taken by the incumbent candidate's supporters, the mayor was not re-elected.[46]

One Virginia high school newspaper adviser, in response to a questionnaire regarding student press rights in Virginia, wrote that the only way to have a free press is to own one. This comment is echoed by many reporters who spend hours getting and writing a story and then have the story rejected by the editor or publisher. Hence, prior restraint can legally be applied by an editor or publisher. This has occurred numerous times in the past. One recent example of internal prior restraint occurred in November, 1979, when a reporter and editor of the Danville (Virginia) Register quit that publication after the "management and ownership decided not to print a story on the Clerk of Circuit Court Tommy Tucker."[47] The newspaper with the controversial article was to appear shortly before the election in which Tucker was a candidate. The article allegedly had material which was negative towards the Clerk of Court and had been compiled

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[46]"Mayor Attempts to Censor Weekly with a 'Buy-out,'" Editor and Publisher, December 22, 1979, p. 15.

[47]Richard Burnett, "Local Editor and Reporter Resign Posts at Daily," The Danville Virginian, November 7, 1979, p. 1.

after the reporter spent most of a week working on the story. The reporter said, "We feel that it was a very unethical decision. The most important thing to do was to get this information to the people so they could make an intelligent vote."[48] The editor, who also resigned, acknowledged the freedom of press ownership when he said,

> She (Register Publishing Co., owner) has a right to kill the story. It's her paper and she can run it the way she wants to. But we have the right to quit if we feel something is wrong.[49]

The importance of freedom of the press to the reporter and editor is obvious. Many journalists do not have the strength to put their jobs on the line for the First Amendment. A Municipal Court Judge and professor of communications at Bethany College (West Virginia) writes that

> the test of any journalist is willingness to go to prison and/or be fired in defending the cause of freedom, and those who lack this courage should forego communication careers.[50]

Fortunately, student editors do not have to put their jobs on the line when faced with prior restraint in any form. However, many student editors are faced with the administrators' decisions to implement prior restraint and the courts have outlined the legality of prior review as noted in chapter three.

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[48]Ibid. [49]Ibid.

[50]James W. Carty, Jr., "The Search for Justice," Editor and Publisher, February 9, 1980, p. 4.

Sometimes the results of prior restraint litigation adversely affect the student editor's reputation in the community as was the case in Gambino v. Fairfax County School Board.[51] In this case involving restraints placed upon an article concerning birth control, Gina Gambino, the editor of Hayfield High School's The Farm News, says, "A lot of parents are condemning us, saying that we're trying to get their kids to have sex. But we're just saying, 'Be smart about it.'"[52]

Occasionally, administrators incorporate prior review as a method of aborting the possibility of libelous material being printed. One incident that could have caused litigation or stronger action by the administration but instead caused a tighter screening of editorial material, involved an editorial in an Ohio high school newspaper. The editorial was not factual and verbally attacked a vice-principal. The adviser attributed the mistake to

> . . .a first-year staff inclined to immaturity. It (the editorial) had been written hastily, just before press time, to replace an editorial that for some reason could not be used, and had not been subjected to the usual scrutiny of the editorial board on any controversial matter.[53]

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[51]Gambino v. Fairfax County School Board, 429 F. Supp. 731 (E.D. Va., 1977).

[52]Christopher Joyce, "Sex and High School Papers," The National Observer, April 9, 1977, p. 18.

[53]Dolores P. Sullivan, "Do First Amendment Rights Extend to the Student Press?" The School Press Review, February, 1977, p. 4.

The haste of deadlines is not an excuse in litigation involving libel and the best defense is truth. Therefore, litigation was possible in this particular situation.

Although administrators and advisers may screen material and make students aware of possible libelous information, they may not prohibit students from publishing and distributing the material unless the school has an exact and narrow set of guidelines which prohibits the type of material which the students plan to distribute. The administrators must realize that something is not libelous until it is published.[54]

The editorial content of student newspapers is not the only part of the newspaper to cause controversy between the newspaper staff and the school administration. Advertisements have also caused problems. Those which tend to be excluded from student publications are political (e.g., Zucker v. Panitz), sex related (e.g., ads from abortion clinics) or ads relating to alternative lifestyles (e.g., homosexuality). In Zucker v. Panitz the court ruled that since the newspaper was a forum for ideas, the advertisement submitted by the "Ad Hoc Student Committee Against the War in Vietnam" could be printed.[55]

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[54]Angione, p. 251.

[55]Zucker v. Panitz, 299 F. Supp. 102 (S.D.N.Y., 1969).

In March, 1978, a controversy arose regarding the inclusion of abortion ads from a private clinic in high school newspapers in the Charlotte-Mecklenburg (North Carolina) school system. Some newspapers ran the ads while others did not. The superintendent stated that the editors and advisers should decide whether or not to run the ads.[56] A court case regarding prior restraint could have resulted had the superintendent decided to forbid the student newspapers from printing the ads.

The best way for student editors to preserve their rights regarding obscenity, libel, and prior restraint is to learn about them. It is the adviser's responsibility to inform his students about their First Amendment rights. By permitting the students to practice freedom of the press, the school administrators and newspaper advisers are helping to make the First Amendment stronger. For the sake of the First Amendment, advisers must heed this suggestion by John Dougherty of the Rochester (New York) Times Union. He says, "Continue to teach law as best you can. When it is good, this is one course your graduates remember fondly as useful."[57]

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[56]"4 Scholastic Editors Refuse Abortion Ads," Greensboro Record, March 13, 1978, p. 1.

[57]The Newsroom and the Classroom (Madison, Wisconsin: University of Wisconsin, 1976), p. 4.

CHAPTER 3

REVIEW OF COURT DECISIONS

INTRODUCTION

During the past decade professional newsmen have found that courts on all levels have abridged certain privileges which the newsmen had thought were protected by the First Amendment. Many members of the professional press are concerned that court judges are finding press rights easier to deny. Some share the concern of New York Times attorney Floyd Abrams who, while speaking at the 1978 William O. Douglas Inquiry into the State of Individual Freedoms, said,

> The difficulty is that many judges seem to view every exception to the First Amendment as an invitation to the next one; and every limitation on the First Amendment, as a signal that, in the language of a high CIA official, 'The First Amendment is after all, just an amendment.'[1]

Historically, the courts have stated that the only two abridgments of freedom of the press are obscenity and libel. Of these two abridgments, obscenity cannot be defined specifically and libel has changed its meaning over the years. Prior restraint has been a third potential limitation placed

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[1]I. William Hill, "Press Urged to Adopt New Stance on Press Freedom," Editor and Publisher, December 23, 1978, p. 26.

upon the press, but the courts (especially the Supreme Court) have declared prior restraint unconstitutional in a number of decisions.

Although the courts have declared that high school students may not necessarily have the same First Amendment rights as the rest of the citizenry and that there are times when prior restraint may be valid, rights of the student press have been identified more clearly since the Tinker v. Des Moines decision in 1969. Although the student press has also been fighting occasional prior restraint battles, its victories historically have been fewer than those of the professional press. In addition to cases of prior restraint, the courts have ruled in a number of cases involving underground newspapers, which are publications that are not school sponsored. In dealing with the underground press, the courts have often come back to the dilemma of attempting to define "obscene." Hence, the decisions made by the United States Supreme Court relating to obscenity have proven to be the substance of student newspaper cases involving obscenity.

ORGANIZATION OF CASES SELECTED FOR REVIEW

Professional press cases in this chapter have been selected for one or more of the following reasons:

(1) The case is considered to be a landmark case in the constitutional area of freedom of expression.

(2) The case is functional in helping to define obscenity, libel, or prior restraint.

(3) The case establishes professional guidelines for the student press.

The student press cases have been selected for one or more of the following reasons:

(1) The case is considered to be a landmark case in the constitutional area of student rights.

(2) The case is representative of the student First Amendment cases since Tinker, regarding prior restraint, obscenity, or both.

(3) The case is unique in its area of litigation (i.e., prior restraint or obscenity).

Since 1969 most works concerned with student rights begin with a discussion of Tinker. This study will be no exception since this landmark Supreme Court decision identifies basic student rights of expression. Hence, the first category deals solely with the findings in the following case:

(1) Tinker v. Des Moines Community School District (1969).

The second category includes Supreme Court landmark decisions in which the court has attempted to define "obscenity." The court's definition, taken from four major decisions, is as vague as many of the state statutes resulting in the initial litigation. The cases reviewed here are as follows:

(1) Roth v. United States (1957);

(2) Jacobellis v. Ohio (1964);

(3) Miller v. California (1973);

(4) Paris Adult Theatre I v. Slaton (1973).

The third category includes four Supreme Court decisions defining libel. The major cases selected for review in this category include:

(1) New York Times v. Sullivan (1964);

(2) Hutchinson v. Proxmire (1979);

(3) Wolston v. Reader's Digest (1979);

(4) Herbert v. Lando (1979).

The fourth category includes two professional press Supreme Court cases and seven student press lower level court cases regarding prior restraint. Included here for review are the following professional press cases:

(1) Near v. Minnesota (1931);

(2) New York Times Company v. United States (1971).

Also included here are the following student press cases:

(1) Zucker v. Panitz (1969);

(2) Antonelli v. Hammond (1970);

(3) Jacobs v. Board of School Commissioners (1971);

(4) Sullivan v. Houston Independent School District (1973);

(5) Baughman v. Freienmuth (1973);

(6) Gambino v. Fairfax County School Board (1977);

(7) Trachtman v. Anker (1977).

The court decisions made on the seven student press cases are in some way based upon Tinker and identify basic student rights and student press rights. These cases include a variety of issues which resulted in litigation. They also provide an excellent definition of prior restraint and give basic guidelines for administrative prior restraint actions.

The final category of cases reviewed in this chapter is composed of U.S. District Court and U.S. Circuit Court student press cases involving underground publications and obscenity. The four cases selected for review here include:

(1) Baker v. Downey City Board of Education (1969);

(2) Shanley v. Northeast Independent School District (1972);

(3) Fujishima v. Chicago Board of Education (1972);

(4) Leibner v. Sharbaugh (1977).

TINKER: THE LANDMARK DECISION ON STUDENTS' RIGHTS OF EXPRESSION

Tinker v. Des Moines Community School District 393 U.S. 503 (1969)

Overview

This case, along with the Supreme Court decisions on obscenity or prior restraint, has been a key case on which student rights cases since 1969 have been based. In addition to establishing and defining basic student rights, the decision rendered by the court in this case is invaluable to all areas of student expression. The student newspaper has been the greatest beneficiary of the student rights granted by this decision.

Facts

Several students, including Mary Beth Tinker, wore black armbands, as a sign of protest against the Vietnam War, to school after they had been warned by the principal of possible suspension if they continued to wear the armbands. The students were suspended and court action was taken on the grounds that the school board, in forbidding the students to wear the armbands, violated the students' First Amendment rights of expression.[2]

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[2]Tinker v. Des Moines, 393 U.S. 504, 505 (1969).

Decision

The U.S. District Court and the U.S. Circuit Court upheld the school board's decision of suspension. The Supreme Court reversed the decision since the defendants did not prove that the students' action of wearing armbands had, as stated in Burnside v. Byars, "materially and substantially interfere(d) with the requirements of appropriate discipline in the operation of the school."[3]

Discussion

Mr. Justice Fortas, in writing the majority opinion for the court, stated that "during testimony school officials disapproved of demonstrations, not on the fear of violence."[4] Hence, the fear of violence was not the issue and the court ruled that the action was a ". . .mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint."[5]

Since the court also ruled that the students' wearing of armbands was "akin to 'pure speech,'"[6] the case became a major First Amendment case of freedom of expression. This decision opened the way for student press court cases and

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[3]Burnside v. Byars, 363 F. 2d 744 (5th Cir., 1966).

[4]Tinker v. Des Moines, p. 509n.

[5]Ibid., p. 509. [6]Ibid., p. 506.

required administrators to become more cognizant of student rights. For the first time students, teachers, and school administrators realized that ". . .state operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students."[7]

OBSCENITY: THE SUPREME COURT'S ATTEMPT AT DEFINING THE WORD

Roth v. United States
354 U.S. 476 (1957)

Facts

A New York City man was found guilty, by the lower courts, of sending "obscene" materials through the mails. Such a practice of using the mails in this way was contrary to the federal obscenity statute (18 USC 1461).[8]

Decision

The Supreme Court upheld the lower courts' decision and provided vague guidelines for determining what is "obscene." Mr. Justice Brennan, in writing for the majority,

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[7]Ibid., p. 511.

[8]Roth v. United States, 354 U.S. 479 (1957).

sums up the court's test for obscenity. He writes that something is obscene if it is viewed by

> . . .the average person, applying contemporary community standards, (and) the dominant theme of the material taken as a whole appeals to (his) prurient interest (prurient interest is defined as 'material having a tendency to excite lustful thoughts').[9]

Discussion

The key to this decision, when determining whether a work is "obscene," is that the work must be taken as a whole. As the courts have decided in numerous student press cases, a single "earthy" word does not make a publication obscene.

Some judicial bodies believe that the test is too vague. Mr. Justice Douglas, in his dissenting opinion, writes,

> Any test that turns on what is offensive to the community's standards is too loose, too capricious, too destructive of freedom of expression to be squared with the First Amendment.[10]

Needless to say, the phrase "the average person" has also been a subject of dispute in determining the realm of obscenity.

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[9]Ibid., pp. 489, 487.

[10]Ibid., p. 512.

Nevertheless, this definition is still, with a few additions, the basis on which "obscenity" cases are decided.

Jacobellis v. Ohio
378 U.S. 184 (1964)

Facts

A Cleveland theatre owner showed a French motion picture, titled "The Lovers," which included a short, explicit love-making scene. Showing such a motion picture was against the Ohio obscenity statute and the owner was arrested.[11]

Decision

By applying the "obscenity test" from Roth v. United States, the Supreme Court reversed the lower courts' decision by declaring the movie not obscene.[12] The decision was based predominantly upon the court's consideration of the film as a whole.

In a concurring statement, Mr. Justice Stewart added that obscenity would now be limited to hard-core pornography. In groping for a definition of "hard-cord pornography," he wrote,

> I shall not today attempt further to define the kinds of material I understand to be embraced within that

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[11]Jacobellis v. Ohio, 378 U.S. 186, 187 (1964).

[12]Ibid., p. 196.

> shorthand description of (hard-core pornography); and perhaps, I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.[13]

Discussion

Jacobellis v. Ohio is one of the first Supreme Court cases to apply the definition of obscenity as established by Roth. The ruling, in limiting "obscenity" to hard-core pornography, attempted to clarify and limit that which is "obscene." However, Mr. Justice Stewart's definition of "hard-core pornography" left the final decision on "obscenity" to personal subjectivity.

In affiriming Roth, the court showed that the "obscenity test" is applicable. Such a realization by the courts in student press obscenity cases following Tinker has been an asset to the student press because attempts at prior restraint based upon obscenity charges are difficult to substantiate when a work is considered as a whole.

Miller v. California
413 U.S. 15 (1973)

Facts

This obscenity case is similar in nature to Roth in that Miller was also charged with violating an obscenity statute by mailing sexually oriented advertising matter.

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[13]Ibid., p. 197.

The constitutionality of the California obscenity statute was the issue in this case. The statute made the distribution of "obscene" material a misdemeanor.[14]

Decision

Mr. Chief Justice Burger, in writing the majority opinion, upheld the lower courts' decision by declaring the statute constitutional. He stated that the statute had applied the tripartite test of Memoirs v. Massachusetts, which is a revised Roth "obscenity test." The Memoirs tripartite test accepts the review of material as a whole, the appeal to prurient interest, and the community standards as indicated in Roth. However, the third part of the Memoirs test is to determine if "the material is utterly without redeeming social value." [15]

Discussion

Vagueness in defining obscenity in the Roth decision was a problem which the Supreme Court still had not solved in the 16 years between Roth and Miller. It was in this case that Mr. Justice Douglas, in his dissenting opinion,

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[14]Miller v. California, 413 U.S. 17 (1973).

[15]Memoirs v. Massachusetts, 383 U.S. 418 (1966).

suggested that since the Surpreme Court had failed to define "obscenity," and since "the obscenity cases usually generate tremendous emotional outburst, they have no business being in the courts." [16]

Paris Adult Theatre I v. Slaton
413 U.S. 49 (1973)

Facts

An Atlanta, Georgia "adult" theatre showed two motion pictures, "Magic Mirror" and "It All Comes Out in the End," which included various types of explicit human sexual behavior. Based upon the Georgia obscenity statute, the theatre owner was arrested and charged with possessing and exhibiting obscene material.[17]

Decision

The Supreme Court affirmed the Georgia Supreme Court's decision that the ". . .films are also hard-core pornography, and the showing of such films should have been enjoined since their exhibition is not protected by the First Amendment."[18] Mr. Chief Justice Burger, in writing the

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[16]Miller v. California, pp. 37, 41.

[17]Paris Adult Theatre I v. Slaton, 413 U.S. 51, 52 (1973).

[18]Ibid., p. 53.

majority opinion, stated that history shows that state "obscenity" statutes are constitutional since other vices of society are likewise controlled. He stated that illegal actions do not have to be described in the Constitution for the action to be illegal. In comparing the distribution of "obscene" material with the distribution of drugs, he wrote, "The fantasies of a drug addict are his own and beyond the reach of government, but government regulation of drug sales is not prohibited by the Constitution."[19]

Discussion

This opinion is important to the study of high school newspaper cases. Mr. Justice Brennan's dissenting opinion provided a basis for the adoption of accurate, working guidelines for dealing with a "controversial" issue. He suggested that the Supreme Court

> . . .draw a new line between protected and unprotected speech, permitting the States to suppress all material on the unprotected side of the line. In my view, clarity cannot be obtained pursuant to this approach except by drawing a line that resolves all doubt in favor of state power and against the guarantees of the First Amendment.[20]

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[19]Ibid., pp. 67, 68.

[20]Ibid., pp. 93, 94.

As many student press cases indicate, guidelines established by the school boards are equally as vague to principals as to students. Hence, by identifying protected and unprotected rights more clearly, the courts as well as school boards could certainly limit the amount of litigation.

Another interesting point made by Mr. Justice Brennan in his dissenting opinion regarded the Surpreme Court's historical approach to deciding what is obscene. He wrote,

> The problem is. . .that one cannot say with certainty that material is 'obscene' until at least five members of this Court, applying inevitably obscure standards, have pronounced it so.[21]

The definiton of obscene is still in question and with the exception of the "socially redeeming value" test brought out in Memoirs, Roth has been the key to determining what is obscene. Historically, student press cases resulting from "obscene" publications, have been dismissed as the result of the difficulty in determining what is obscene.

LIBEL: THE COURTS TRY TO DEFINE PUBLIC FIGURES AND PRIVATE INDIVIDUALS

New York Times v. Sullivan
376 U.S. 254 (1964)

Facts

Sullivan, a city commissioner in charge of the police department in Montgomery, Alabama, sued the New York Times

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[21]Ibid., pp. 92, 93.

for libel. The case involved the newspaper's publication of an advertisement indicating that Negroes were being mistreated in Montgomery and that the police department was part of the problem.[22]

Although the advertisement did not include Sullivan's name, he felt that he was clearly indentified as the subject of the attack. An Alabama statute protected public figures as well as private individuals against the publication of material which ". . .tend(s) to injure a person. . .in his reputation (or) bring(s) (him) into public contempt."[23]

Decision

The Supreme Court reversed the decision of the lower courts and made a distinction between a public and a private figure. In declaring Sullivan a public figure, the Supreme court ruled that public figures must prove "actual malice." That is, the public figure plaintiff must prove that the publication printed an article with "reckless disregard of its truth or falsity."[24]

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[22]New York Times v. Sullivan, 376 U.S. 257, 258 (1964).

[23]Ibid., p. 267.

[24]Ibid., p. 271.

Discussion

The Supreme Court, in deciding New York Times, upheld the right of the press to be critical of public figures as long as the criticism was not malicious. Mr. Justice Brennan, in writing the majority opinion, stated that the court has a

> . . .commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.[25]

Naturally "truth" is a factor in any libel case, but this decision provides an open forum for the press, whether professional or student. Therefore, decisions of school administrators to take action against students who are truthfully critical of school policy are unconstitutional.

Hutchinson v. Proxmire
443 U.S. --, 61 L. Ed 2d 411 (1979)[26]

Facts

This case involves United States Senator William Proxmire's monthly "Golden Fleece Award" which he "awards" to governmental agencies or individuals as an indication of

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[25]Ibid.

[26]The Lawyer's Edition of Supreme Court decisions was used in the study of this case and in the next two cases in this section since this was the only primary source available at the time of writing. Therfore, page numbers refer to citations in the Lawyer's Edition.

the wasteful government spending incurred by the agency or individual. The subjects of the "award" for April, 1975, were the governmental agencies which were financing a study of monkeys being conducted by Ronald Hutchinson, a research behaviorial scientist.

The record of the award was included in a letter sent to over 100,000 people in May 1975, it was referred to during a television interview with Proxmire, and the specifics of the award were referred to in The Congressional Record. In The Congressional Record, Proxmire wrote,

> Dr. Hutchinson's studies should make the taxpayers as well as his monkeys grind their teeth. In fact, the good doctor has made a fortune from his monkeys and in the process made a monkey out of the American taxpayers.[27]

Hutchinson sued Proxmire for libel and the courts had to decide if Hutchinson was a public figure who would have to prove "malice" in addition to injury.

Decision

Using Gertz v. Robert Welch, Inc., the Supreme Court decided Hutchinson was not a public figure. Gertz states that public figures are those

> . . .who attain this status (by assuming) roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. Most commonly, those classed as public figures have thrust themselves to the forefront of particular public

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[27]Hutchinson v. Proxmire, 443 U.S. --, 61 L. Ed 2d 419 (1979).

> controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.[28]

Since the Supreme Court decided that Hutchinson did not thrust himself into the forefront of a particular controversy, he was not a public figure. Hence, the Court ruled that Proxmire had indeed libeled Hutchinson.

Discussion

Mr. Justice Brennan, in a dissenting opinion, claimed that the majority decision was contrary to New York Times v. Sullivan in that the institution, rather than the individual, was being criticized. He indicated that this was a special case since as he wrote, "In my view, public criticism by legislators of unnecessary governmental expenditures, whatever its form, is a legislative act shielded by the Speech and Debate Clause."[29] The results of such a decision should make the press, in all forms, more aware of types of criticism acceptable by the courts.

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[28]Gertz v. Robert Welch, Inc., 418 U.S. 345 (1966).

[29]Hutchinson v. Proxmire, p. 426.

Wolston v. Reader's Digest
443 U.S. --, 61 L. Ed 2d 450 (1979)

Facts

In 1974 the Reader's Digest Association, Inc. published a book entitled KGB, The Secret Work of Soviet Agents. Among Soviet agents identified in the book was Ilya Wolston, who was the subject of a New York City investigation during 1957-58 but never appeared before the grand jury for a hearing. Although he was subpoenaed to appear, he failed to do so and was charged with contempt of court. After a probationary period as the result of the contempt of court conviction, Wolston returned to private life and claimed in the suit that the book brought him back into the public light.[30]

The attorneys for Reader's Digest argued that when Wolston failed to appear before the grand jury, he became a public figure. Therefore, they argued that he must prove malice, rather than just injury from the publication of the book.[31]

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[29]Hutchinson v. Proxmire, p. 426.

[30]Wolston v. Reader's Digest, 443 U.S. --, 61 L. Ed 2d 456 (1979).

[31]Ibid., p. 457.

Decision

The lower courts had concluded that Wolston was a public figure and that he had not proven malice. However, the Supreme Court reversed the decision.[32]

Discussion

This case indicates the further discrepancy between a public figure and a private individual. The majority opinion, written by Mr. Justice Rehnquist, stated that the book printed a falsity and, therefore, must take the responsibility. However, in a dissenting opinion written by Mr. Justice Brennan, he stated that Wolston qualified "as a public figure for the limited purpose of comment on his connection with, or involvement in, espionage in the 1940's and 1950's."[33]

As the result of such a discrepancy in decisions rendered by the Supreme Court on the subject of a "public figure," some judicial bodies believe that libel, in many cases, is as difficult to identify as is obscenity. Do the Supreme Court justices realize the same dilemma as Mr. Justice Stewart did in Jacobellis v. Ohio in trying to identify "hard-core pornography," in that they can't define libel, but know it when they see it?

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[32]Ibid., pp. 456, 459n.

[33]Ibid., p. 462.

Herbert v. Lando
441 U.S. 922, 60 L. Ed 2d 115 (1979)

Facts

Retired Army officer Anthony Herbert gained media attention during 1969-70 when he accused his superiors of covering up war crimes in Vietnam. In 1973 CBS broadcast a report on his accusations and the producer of the broadcast, Harry Lando, also published an article in Atlantic Monthly. Since Herbert had "thrust" himself into the forefront of this public controversy he had to prove "malice." During the court cases, Herbert had asked Lando to respond to questions regarding the editorial process used in selecting material for publication. Lando refused to answer.[34]

Decision

The District Court ruled that Lando must respond since his response was important to Herbert in order to prove malice. However, the Court of Appeals reversed the Circuit Court's decision. The Supreme Court reversed this decision because the "Court of Appeals misconstrued the First and Fourteenth Amendments."[35] Herbert had proven that some of the allegations of Lando were untrue and Mr. Justice White, in writing the opinion for the majority, stated that

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[34]Herbert v. Lando, 441 U.S. 922, 60 L. Ed 2d 122 (1979).

[35]Ibid., p. 123.

> . . .spreading false information in and of itself carries no First Amendment credentials. Those who publish defamatory falsehoods with the requisite culpability, however, are subject to liability, the aim being not only to compensate for injury but also to deter publication of unprotected material threatening to individual reputation.[36]

Hence, the Supreme Court views this decision as a way of providing the public figure with greater latitude in proving malice.

Discussion

Some people in the media agree with Robert U. Brown who, in response to the Herbert v. Lando decision, writes that the ". . .three most over-worked words of a reporter will be 'I don't remember.'"[37] The important fact of this case is that the courts are given permission to look into the writer's mind to determine thought processes used in composing the work. By identifying the editorial process, the plaintiffs in a libel case may more easily determine whether malice has taken place. Mr. Justice Stewart, in his dissenting opinion, indicated that considering the thought process was not a factor in determining libel. He wrote that he believes libel "concerns that which was in fact published. What was not published has nothing to do with the case."[38]

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[36]Ibid.

[37]Robert U. Brown, "Three Little Words," Editor and Publisher, April 28, 1979, p. 96.

[38]Herbert v. Lando, p. 149.

The question raised by this decision is, "Does the press have editorial privilege?" The journalist does not have to be concerned with the courts denying this privilege if he heeds the suggestion of Michigan State University professor of journalism, John Murray, who said, in response to the Herbert v. Lando decision, "If a journalist's story is accurate, a plaintiff is not going to win a libel suit."[39] Thus, Professor Murray reaffirms that the best defense against libel is "truth."

PRIOR RESTRAINT: THE COURTS FIND THIS LIMITATION CONFLICTS WITH FREEDOM OF THE PRESS

Near v. Minnesota
283 U.S. 697 (1931)

Facts

A Minnesota obscenity statute was the object of this landmark Supreme Court case. The statute stated that a person who distributes ". . .any publication that is obscene, lewd, and lascivious or a malicious, scandalous and defamatory publication. . .is guilty of a nuisance and may be enjoined."[40] The case involves a publisher of a magazine, called The Saturday Press, who made accusations against Minneapolis public officials including the chief of police and the mayor.

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[39]"Law Prof Sees Dangers in Court's Ruling," Editor and Publisher, April 28, 1978, p. 62.

[40]Near v. Minnesota, 283 U.S. 702 (1931).

Near, the publisher, was prohibited from publishing and distributing his magazine. The Minnesota obscenity statute was the law used to suppress the magazine and the courts were required to decide on the constitutionality of the statute.[41]

Decision

The lower courts upheld the statute, but the Supreme Court reversed the decision by noting that the statute was unconstitutional. Mr. Chief Justice Hughes, in writing for the majority, stated that the statute was an ". . .infringement of the liberty of the press guaranteed by the Fourteenth Amendment."[42]

The weaknesses of the statute were identified by the Supreme Court as follows:

(1) The statute permits the suppression of the publication regardless of whether the articles are true.

(2) The statute indicates suppression of the publication rather than the punishment of the publisher.

(3) The statute places the publisher under censorship.

(4) The statute is in conflict with freedom of the press as guaranteed by the First and Fourteenth Amendments.[43]

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[41]Ibid., p. 704.

[42]Ibid., p. 723.

[43]Ibid., pp. 709-713.

Discussion

This decision by the Supreme Court is of paramount importance to the free press and is the precedent on which all prior restraint cases are based. The Supreme Court realized that the magazine made "serious accusations against the public officers named and others in connection with the pervalence (sic) of crimes and the failure to expose and punish them."[44]

Although the decision indicates that other issues may be constitutionally valid, the issue of prior restraint is not valid. The decision by the Supreme Court in 1931 identified the breadth of First Amendment press rights and continues to provide the constitutional support for both the professional press and the student press.

New York Times Company v. United States
403 U.S. 714 (1971)

Facts

The New York Times had acquired a classified study entitled "History of U.S. Decision-Making Process on Viet Nam Policy." On June 23, 1971, both the Second Circuit Court and the Court of Appeals issued restraining orders at the request of Attorney General John Mitchell. The New York Times appealed to the Supreme Court.[45]

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[44]Ibid., p. 704.

[45]New York Times Company v. United States, 403 U.S. 716 (1971).

Decision

The majority opinion, written by Mr. Justice Black, reversed the lower courts' decision. In supporting the Supreme Court's decision, he wrote,

> Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraint.[46]

The Supreme Court rendered it final decions on June 30, only seven days after the initial restraining orders were imposed.

Discussion

This decision to permit the New York Times to print what was later called "The Pentagon Papers" is a key case in the courts' efforts to provide the same press freedoms as established under Near v. Minnesota. However, some of the justices criticized the expediency with which the Supreme Court rendered its decision. Mr. Chief Justice Burger and Mr. Justice Harlan were two who felt that the decisions were made in haste.[47]

There is irony in this criticism since the courts in student press cases have historically indicated the necessity of expediency in school administrators' rendering of decisions on material submitted to them for prior approval. Both Near v. Minnesota and New York Times Company v. United

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[46]Ibid., p. 717.

[47]Ibid., p. 753.

States have been key cases in establishing the limitations the courts have placed on prior restraint.

Zucker v. Panitz
299 F. Supp. 102 (1969)

Facts

Members of the "Ad Hoc Student Committee Against the War in Vietnam" at New Rochelle (N.Y.) High School wanted to purchase an ad in the student newspaper, The Huguenot Herald. The ad was to read as follows:

> The United States government is pursuing a policy in Vietnam which is both repugnant to moral and international law and dangerous to the future of humanity. We can stop it. We must stop it.[48]

The student editor Zucker approved of the ad; the school principal Panitz did not approve. Zucker argued that since the purpose of the newspaper was "to provide a forum for the dissemination of ideas and information by and to the students of New Rochelle High School," the ad should be permitted to be printed. Panitz argued that school policy "limits news items and editorials to matters pertaining to the high school and its activities" and doesn't permit ads of an editorial nature. He also stated that the purpose of the newspaper was that it serves as "a beneficial educational device and a part of the curriculum."[49]

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[48]Zucker v. Panitz, 299 F. Supp. 102 (S.D.N.Y., 1969).

[49]Ibid., p. 103.

Decision

The court decided, after examining the nature of the newspaper, that the way the student editor viewed the newspaper's purpose was more in line with its true purpose. Therefore, prohibiting the ad from being printed was a denial of students' First Amendment rights.[50]

Discussion

This case emphasized the importance of student editors' establishing a valid purpose for the school newspaper. Once the purpose is established, the students, faculty, school administrators, and even the courts can easily identify the reason for which that newspaper exists.

Zucker v. Panitz also established the fact that such material as that which was to be included in the ad had been placed and was available to students at other places throughout the school. For example, ". . .the principal had placed literature on the draft in the school library."[51] Hence, the court ruled that student newspapers cannot be restrained and may also print any materials which are similar to those found in other publications in the school. Such a decision could have also been reached in the 1979 Morland v. Sprecher case which involved the publication by Progressive magazine

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[50]Ibid., p. 105.

[51]Ibid., p. 104.

of an article on how the H-bomb works. Scientists agreed that the information contained in the Morland article was far from classified and most of the information was available in Encyclopedia Americana.[52]

Antonelli v. Hammond
308 F. Supp. 1329 (1970)

Facts

A college student editor Antonelli, who was elected to the position by his classmates, decided to change the name and editorial content of the Fitchburg State College (Massachusetts) student newspaper. After the student had been editor for a short period of time, the college president Hammond became displeased with the new paper format and especially with certain articles which Hammond considered "obscene."[53]

The president then established an advisory board through which all material was to be submitted. When Antonelli refused to submit material through the board, the president withheld money that earlier had been allocated to the student

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[52]"Editor Says Bomb Story Contains No Secrets," Editor and Publisher, March 17, 1979, p. 12.

[53]Antonelli v. Hammond, 308 F. Supp. 1331 (D. Mass., 1970).

newspaper. Antonelli resigned from the editor's position and sued the president on the grounds of being denied his First Amendment rights.[54]

Decision

The court ruled that submission of material to the advisory board was unconstitutional and that withholding student funds was likewise unconstitutional. In writing the court's decision, Mr. Judge Garrity stated, "The state is not necessarily the unrestrained master of what it creates and fosters."[55]

The court also indicated a concern that the advisory board had been established for the sole purpose of specifying what students could or could not print. Mr. Judge Garrity wrote,

> . . .the creation of the form (of expression) does not give birth also to the power to mold its substance. . . it may be lawful in the interest of providing students with the opportunity to develop their own writing and journalistic skills, to restrict publication in a campus newspaper to articles written by students. But to tell a student what thoughts he may communicate is another matter. Having fostered a campus newspaper, the state may not impose arbitrary restrictions on the matters to communicate.[56]

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[54]Ibid.

[55]Ibid., p. 1337.

[56]Ibid.

Discussion

The ruling in the 1969 Swartz v. Schuher case indicated that

> . . .the activities of high school students do not always fall within the same category as the conduct of college students, the former being in a much more adolescent and immature stage of life and less able to screen fact from propaganda.[57]

Although this was a college press case, the ruling had a great deal of value for application to the high school press. The unconstitutionality of an administrator's withholding funds from a student newspaper in order to supress the newspaper is an important factor in this case and applies to high school newspapers as well as college newspapers. As in Zucker v. Panitz, the court ruled that the purpose of the student press cannot ". . .be simply a vehicle for ideas the state or the college administration deems appropriate."[58]

This case also indicated that a student publications advisory board that is established solely to limit the dissemination of ideas cannot function. Some advisory boards can function effectively as long as they are not the arm of the school administration. Antonelli v. Hammond is indeed a major case for identifying what elements of prior restraint are constitutional.

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[57]Swartz v. Schuher, 298 F. Supp. 242 (E.D.N.Y., 1969).

[58]Antonelli v. Hammond, p. 1337.

Jacobs v. Board of School Commissioners
490 F. 2d 601 (1973)

Facts

Jeff Jacobs, a student in an Indianapolis high school, was accused by the school commissioners of distributing an underground newspaper, Corn Cob Curtain, to Indianapolis high schools. Five issues were published and Jacobs was suspended for violating the school board policy which prohibited the "sale or distribution of literature in public schools without express prior approval of the General Superintendent."[59] The board of commissioners also decided that Corn Cob Curtain was obscene by applying the Roth-Memoirs definition.[60]

Decision

The court ruled that the school board policy was vague since the rule failed to include five points which are required in establishing such a policy. These five points are as follows:

(1) The rule may not include specifics as to time and place where the materials may be distributed.

(2) The rule must be understandable to persons of the ages to which it applies.

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[59]Jacobs v. Board of School Commissioners, 490 F. 2d 604 (7th Cir., 1973).

[60]Ibid., p. 609.

(3) The rule must not prohibit or inhibit conduct which is orderly, peaceful, and reasonably quiet.

(4) The rule may prohibit distribution at times and in places where normal classroom activities are conducted.

(5) The rule must not subject any covered student to the threat of discipline because of reaction or response of any other person to the written material--except that which is libelous.[61]

The court also ruled that the material was not obscene in the legal sense. The decision was that

> . . .a few earthy words relating to bodily functions and sexual intercourse are used in the copies of the newspaper. This material amounts to a very small part of the newspaper (and it) doesn't appeal to prurient interests. The presence of earthy words cannot be found to be likely to cause substantial disruption.[62]

Discussion

Jacobs v. Board of Commissioners reaffirmed or established three major premises for student press rights. First, the decision echoed the Tinker v. Des Moines decision in that the Court agreed that the constitutional rights to distribute printed matter extended to the public schools.

The court also used the Roth obscenity test which required that the work had to be considered as a whole before it could be called obscene. After viewing Corn Cob Curtain this way, the court decided it was not obscene.

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[61]Ibid., p. 611.

[62]Ibid., p. 610.

The third and final premise which the court established in this case was that guidelines for creating policy must be carefully created. The five-point instrument identified in Jacobs v. Board of Commissioners recognized students' rights and provided acceptable procedures for maintaining these rights for students.

Sullivan v. Houston Independent School District 475 F. 2d 1071 (1973)

Facts

A student was selling a newspaper, Space City, near the entrance of a high school in Houston, Texas. The principal of the school bought a copy of the newspaper and noticed that the newspaper contained several instances of "course language."[63] The principal told the student to stop selling the newspaper because of a school board prior submission rule. The student continued to sell the newspaper and the principal began suspension procedures. However, since the student's father was unable to come to the school for a hearing for six days, the principal suspended the student until the father could come. Upon suspension, the student shouted some "coarse words" and slammed the door. During the suspension period, the student returned to campus, sold

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[63]Sullivan v. Houston Independent School District, 475 F. 2d 1074 (5th Cir., 1973).

his newspapers, and refused to leave the campus. Following a few more "coarse words" by the student towards the principal, the student was expelled. The student sued the school district for denying him due process rights as the result of the suspension and expulsion, and for denying him First Amendment rights under the prior submission rule.[64]

Decision

The court decided that the school administrator had acted within his rights in suspending and expelling the student and that the student's due process rights were not denied since the school had offered a hearing with the student's father, but the circumstances prohibited the hearing from taking place.

The court also ruled that the school board prior submission policy was an

> . . .extensive and good faith effort by the school district to formulate a valid code of conduct. This court has recognized that there is nothing per se unreasonable about requiring high school students to submit written material to school authorities prior to distribution.[65]

Discussion

The court's decision on Sullivan v. Houston Independent School District was less of a denial of the student's First

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[64]Ibid., pp. 1074, 1075. [65]Ibid., p. 1076.

Amendment rights than an adult reaction to childhood arrogance. The court wrote,

> Considering Paul's flagrant disregard of established school regulations, his open and repeated defiance of the principal's request, and his resort to profane epithet, we cannot agree that the school authorities were powerless to discipline Paul simply because his actions did not materially and substantially disrupt school activities.[66]

Perhaps this student learned a lesson which many professional press people are learning today. Washington Post board chairman Katherine Graham stated the problem of many professional media people and suggested a possible solution. She said that newspapers must recognize

> our occasional mistakes, the limits and difficulties of the principles we espouse, or the fact that we don't really have all the answers. A little humility on our part can help defuse controversies--and perhaps keep our critics off-stride.[67]

Sometimes student editors lack this same humility as well as the ability to see that some "press freedom" cases result in adverse effects. As in the case of Sullivan v. Houston Independent School District, the decision was seemingly against the student's press rights. However, such irresponsibility of one student cuts into the basic freedom

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[66]Ibid.

[67]M. L. Stein, "Graham: 'Don't Try to Win Every Press Freedom Case,'" Editor and Publisher, February 24, 1979, p. 12.

desired by a responsible individual. The court stated this dilemma when rendering its decision. It said,

> Today we merely recognize the right of school authorities to punish students for flagrant disregard of established school regulations; we ask only that the student seeking equitable relief from allegedly unconstitutional actions by school officials come into court with clean hands.[68]

Baughman v. Freienmuth
478 F. 2d 1345 (1973)

Facts

A Montgomery County, Maryland school board regulation of prior review on the distribution of non-school sponsored material was questioned by parents. The regulation stated,

> A copy must be given to the principal for his review (up to three days prior to distribution). The principal may wish to establish a publications review board composed of staff, students and parents to advise him in such matters.[69]

A second policy was also questioned. This policy gave the principal the right to restrict the distribution of material which contained "libelous or obscene language, advocated illegal actions, or was grossly insulting to any group or individual."[70]

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[68]Ibid., p. 1077.

[69]Baughman v. Freienmuth, 478 F. 2d 1347 (4th Cir., 1973).

[70]Ibid., p. 1345.

Decision

The court ruled that the prior review regulation was unconstitutional in several ways. First, the court stated, the regulation is vague. The court stated that policy of contemplated prior review requires more precise wording than does policy suggesting post-publication sanctions. The decision noted the following guidelines for prior restraint:

> . . .a regulation requiring prior submission of material for approval before distribution must contain narrow, objective and reasonable standards by which the material may be judged. . . .(and the wording should be as such). . . that those charged with enforcing the regulation are not given impermissible power to judge the material on an ad hoc and subjective basis and that forbidden activity be clearly delineated so as not to inhibit basic First Amendment freedoms.[71]

The prior review policy was also unclear about the amount of time allowed for the principal to make a final decision regarding the material submitted to him. The court indicated a concern that failure to state a specified time may result in "chok(ing) off spontaneous expression in reaction to events of great public importance and impact."[72]

The obscenity regulation was ruled constitutional by the court. The court recognizes that "in the secondary school setting First Amendment rights are not coexistent with those of adults."[73]

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[71]Ibid., p. 1350.

[72]Ibid., pp. 1348, 1349.

[73]Ibid., p. 1347.

Discussion

This court decision, like the others since 1969, recognizes the rights of students as identified in Tinker. This case is especially important since it identifies two specific requirements to be met in any prior submission policy.

First of all, by recognizing that prior restraint policies must be made more specific than post-publication policy, the court has eliminated the opportunity for the school administrator to establish a vague prior submission policy to cover everything which he personally finds distasteful. This possible danger is mentioned in the Baughman v. Freienmuth decision. The court suggested that

> . . .there is an intolerable danger. . .that under the guise of such vague labels they (school administrators) may choke off criticism, either of themselves, or of school policies, which they find disrespectful, tasteless, or offensive. That they may not do.[74]

Baughman v. Freienmuth also established the importance of the quick decisiveness of the school administrator in determining if material may be distributed. If the school administrator does not quickly decide on certain material, the impact of the material may be greatly softened.

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[74]Ibid., pp. 1350, 1351.

Gambino v. Fairfax County School Board
429 F. Supp. 731 (1977)

Facts

The student editors of The Farm News at Hayfield High School in Fairfax County, Virginia were planning to publish an article entitled, "Sexually Active Students Fail to Use Contraceptives." The principal and school board refused to permit the students to publish the story since the newspaper was considered a "house organ" and therefore part of the curriculum. The school board felt that the students at school were a "captive audience" and the county school policy did not permit sex education in the schools.[75]

Decision

The court ruled that not permitting the students to publish the article was a denial of the students' First Amendment rights. In fact, the court "viewed the case as turning upon one issue--whether The Farm News is a publication protected by the First Amendment."[76] Because it took this viewpoint, all other issues were of little importance.

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[75]Gambino v. Fairfax County School Board, 429 F. Supp. 734, 735 (E.D. Va., 1977).

[76]Ibid., p. 736.

Discussion

The decision reached in this case was based upon a number of court cases already discussed in this chapter. The court decided, as in Zucker v. Panitz that the newspaper was not a part of the curriculum, but that it was more "akin to the school library where more explicit information on birth control philosophy and methodology is available."[77] As in Antonelli v. Hammond, the court ruled that the school administration has no legal right to withhold funds if the publication doesn't print what the administration wants. An in Tinker v. Des Moines, the court ruled that the students retained their First Amendment rights while at school.[78] Hence, Gambino v. Fairfax County School Board is a culmination of the student press cases up to the late 1970's; with this case, the rights of the student press are definitely identified.

Trachtman v. Anker
563 F. 2d 512 (1977)

Facts

The student editors of Voice, a newspaper at Stuyvesant (New York City) High School, had prepared a questionnaire regarding students' sexual habits (see Appendix A) to distribute to students at the high school (9-12). The principal

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[77]Ibid., p. 735.

[78]Ibid.

refused to permit the students to distribute the questionnaire since he felt the ninth and tenth graders were too young to be asked these questions. A student editor Trachtman sued the principal for infringing upon the student's First Amendment rights.[79]

Decision

Unlike Gambino v. Fairfax County Schools, the court in Trachtman v. Anker did not consider the key issue to be based upon whether or not the students were protected by the First Amendment, but whether or not the questionnaire would cause psychological harm to the younger students.

Following the testimonies of several psychologists and other primary witnesses, the court ruled that possible psychological harm could result from the distribution of the questionnaire. Mr. Justice Lumbard, in writing the majority opinion, states that the decision is

> . . .principally a measure to protect the students, committed to our care, who are compelled by law to attend school, from peer contacts and pressure which may result in emotional disturbances to some of those students whose responses are sought. The First Amendment rights to express one's views does (sic) not include the right to importune others to respond to questions when there is reason to believe that such importuning may result in harmful consequences.[80]

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[79]Trachtman v. Anker, 563 F. 2d 514, 515 (2nd Cir., 1977).

[80]Ibid., pp. 519, 520.

Therefore, the justice found it to be the court's responsibility to protect the students from other students.

Discussion

Mr. Justice Mansfield, in a dissenting opinion, wrote, "The right of a newspaper to conduct a survey on a controversial topic and to publish the result represents the very quintessence of activity protected by the First Amendment."[81] He also stated a concern with the type of ruling handed down by his colleagues. He stated, "The possibilities for harmful censorship under the 'guise' of 'protecting' the rights of students against emotional strain are sufficiently numerous to be frightening."[82]

The future of Voice after this decision seemed bleak; yet, according to Jeff Trachtman, the paper was successful as an underground newspaper after the litigation, "selling 1200 copies outside the school--more than any other Stuyvesant publication."[83]

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[81]Ibid., p. 522.

[82]Ibid., p. 521.

[83]"Voice Speaks Out," Student Press Law Center Report, Fall, 1978, p. 5.

THE UNDERGROUND PRESS: STUDENTS FACE THE PRESSURE OF A SUPPRESSED PRESS

Baker v. Downey City Board of Education
307 F. Supp. 517 (1969)

Facts

Oink, an underground newspaper, was published by two high school seniors. The newspaper was distributed before school at locations both inside and outside the schoolhouse gate. The principal felt that distribution of the newspaper would result in less control and discipline since the students at the school would be reading Oink during classes. The two students, who each held elected student offices, were dismissed from those offices and suspended from school. They claimed that they were not given due process and, thus, sued the school board.[84]

Decision

The court stated that high school students have the right to criticize, ". . .but they may be more strictly curtailed in the mode of their expression and in other manners of conduct than college students or adults."[85] On the basis of such a justification, the court decided that the school administrators acted correctly in consideration of the circumstances.[86]

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[84]Baker V. Downey City Board of Education, 307 F. Supp. 519, 522 (C.D. Calif., 1969).

[85]Ibid., p. 527. [86]Ibid., pp. 527, 528.

Discussion

Although the case was decided during the same year as Tinker v. Des Moines, this decision rendered here was antithetical to the Tinker decision. Such brevity in the court's discussions regarding students' rights issues was common prior to the 1969 Tinker decision.

Several issues in this case met with a different decision a few years later. First, the student editors of Oink, claimed that the publication was issued to create

> . . .a platform for uninhibited criticism of the administration and for a forum available to students to present their ideas which, (they) knew, would not be allowed to appear in the school newspaper, 'Justice.'[87]

Hence, the purpose of the newspaper was identified as a forum for ideas. This point of determining the purpose was a major factor brought out by Zucker v. Panitz in 1969. There was also the key issue of whether or not the students were protected by the First Amendment. As determined by both Tinker and Gambino v. Fairfax County Board of Education, students are protected by the First Amendment.

Another issue involved here was the question of whether the publication Oink should be justifiably suppressed because of obscenity. The court noted that the students ". . .urged

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[87]Ibid., p. 526.

that the words used in some articles were not profane or vulgar unless considered out of context."[88] In using any of the obscenity tests outlined earlier in this chapter (Roth, Miller, etc.), such an argument for "obscenity" is void since each test requires that the work be viewed as a whole.

As noted earlier, this case is an excellent example of court rulings on students' rights prior to Tinker. The issue in this case involved not prior restraint, but blatant suppression.

Shanley v. Northeast Independent School District 462 F. 2d 960 (1972)

Facts

Five students were suspended for distributing a newspaper called Awakening. School board policy prohibited students from distributing printed matter, although the newspaper was circulated off campus before and after shcool. The policy also stated that the principal of the school must approve of material(s) being distributed and approval was not secured prior to distributing Awakening. The students sued the school board for denying them First Amendment rights, stating that the prior approval was unconstitutional.[89]

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[88]Ibid., p. 527.

[89]Shanley v. Northeast Independent School District, 462 F. 2d 961 (5th Cir., 1972).

Decision

The court ruled that the school board policy of prohibiting students from distributing printed matter and the policy requiring prior approval were unconstitutional. The court further ruled that the newspaper, Awakening, contained no material ". . .that could be considered libelous, obscene, or inflamatory." Mr. Justice Goldberg further stated that

> in fact, the content of this so-called 'underground paper' is such that it could surface, flower-like, from its 'underground' abode. As so-called 'underground' newspapers go, this is probably one of the most vanilla-flavored ever to reach a federal court.[90]

Although the court acknowledged the constitutionality of school administrators requiring prior submission of materials before distribution, the court emphasized the importance of specific guidelines so that a prior review policy ". . . does not operate to stifle the content of any student publication in an unconstitutional manner and is not unreasonably complex or onerous. . . ."[91] Such a ruling was affirmed in Baughman v. Freienmuth in 1973. The court also stated that the suspensions of the students were invalid since the only reason they were suspended was because they had allegedly violated "policy."[92] Since the policy was ruled unconstitutional in that it was not specific and the students had

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[90]Ibid., p. 964.

[91]Ibid., p. 969.

[92]Ibid., p. 975.

published something that was not likely to materially or substantially disrupt the school, the court ruled that the students' rights had been unjustly violated.

Discussion

The decision in Shanley v. Northeast Independent School District is important for several reasons. Among the important students' rights issues brought out in Shanley are that students do have the right to distribute printed materials in the schools; the school board maintains the burden of proof when a regulation is questioned, and prior submission policies may be placed upon material to be distributed at a particular school.

Although the students do have a right to distribute material, the court recognizes that the material is ". . . subject to reasonable constraints which are more restrictive than those constraints that can normally limit First Amendment freedoms."[93]

The constitutionality of the school board policy was the point of question in this case and the school board was not successful in proving that the policy was, in fact, constitutional. As stated in the case, the policy was too vague and overbroad and needed to include due process.[94]

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[93]Ibid., p. 969.

[94]Ibid., p. 975.

In writing the decision for the court, Mr. Justice Goldberg reprimanded the school policy makers. He wrote,

> Perhaps it would be well if those entrusted to administer the teaching of American history and government to our students began their efforts by practicing the document on which that history and government is based.[95]

Fujishima v. Chicago Board of Education
460 F. 2d 1355 (1972)

Facts

A school policy of the Chicago Board of Education was questioned in this case. The particular policy in question is as follows:

> No person shall be permitted. . .to distribute on the school premises any books, tracts, or other publications, . . .unless the same shall have been approved by the General Superintendent of Schools.[96]

Two students were suspended from school for distributing 350 copies of The Cosmic Frog which they published. The newspapers were distributed free during lunch and between classes. Upon suspension, the students sued the school board on the premise that the school policy was unconstitutional.[97]

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[95] Ibid., p. 978.

[96] Fujishima v. Chicago Board of Education, 460 F. 2d 1356 (7th Cir., 1972).

[97] Ibid.

Decision

The court agreed with the students. The basis for the decision was the fact that "because sections 6-19 (stated earlier) required prior approval of publications, it is unconstitutional as prior restraint in violation of the First Amendment."[98]

The court also echoed Shanley and other cases discussed in this chapter by indicating the vagueness of the policy. On the issue of obscenity, the court ruled that the newspaper was not obscene in the legal sense.

Discussion

The decision rendered in Fujishima v. Chicago Board of Education continued to build upon the need to construct a specific prior review policy. The court ruled that "the board has the burden of telling students when, how and where they may distribute material. The board may punish students who violate these regulations."[99] This ruling seems somewhat inconsistent with Jacobs v. Board of School Commissioners in that the court ruled in Jacobs that the school may not specify the time and place of distribution. However, the court also said in Jacobs that distribution at times and in places where normal classroom activities are conducted may be prohibited.[100]

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[98]Ibid., p. 1357.

[99]Ibid., p. 1358.

[100]Jacobs v. Board of School Commissioners, p. 611.

In reading the decision of Fujishima, the specifics as brought out in Jacobs are not included. However, if Fujishima is based upon Tinker in application, then the only limitation to the distribution of the material would be if it materially and substantially interfered with the school process.

Another student press issue brought out in Fujishima is that administrators label material obscene as the result of a personal rather than a legal judgment. The court stated that such administrators ". . .are incorrect, because those words (as in The Cosmic Frog) are not used to appeal to prurient sexual interests."[101]

Leibner v. Sharbaugh
429 F. Supp. 744 (1977)

Facts

A student in an Arlington, Virginia high school published and sold an underground newspaper. The student submitted the newspaper, The Green Orange, to the principal as prescribed by school policy and the principal orally forbade the student to circulate the newspaper. After the student sold a copy of the newspaper at a school football game, the principal suspended him.[102]

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[101]Fujishima v. Chicago Board of Education, p. 1359n.

[102]Leibner v. Sharbaugh, 429 F. Supp. 747 (E.D. Va., 1977).

The decision by the principal to forbid the distribution of the newspaper was based upon the school board policy regarding publications. The policy stated that "student publications must conform to the journalistic standards of accuracy, taste and decency maintained by the newspaper in general circulation in Arlington."[103] Upon suspension, the student sued the pricipal.

Decision

The court ruled that the policies are unconstitutional because they are too broad and vague. The court concluded that ". . .the chilling effect of the regulations in issue constitute(s) immediate and irreparable harm."[104]

Discussions

The policy regarding the standards of a student publication was obviously too broad and too vague. Hence, not only did the student suffer from having his constitutional rights revoked by an unconstitutional policy but also the principal suffered from being charged with the duty of enforcing this vague policy. Therefore, school board policy regarding prior submission or obscenity must be narrow enough for the students to understand and for the principals to be able to enforce.

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[103]Ibid., p. 748.

[104]Ibid., p. 749.

Chapter 4

FIRST AMENDMENT RIGHTS OF HIGH SCHOOL NEWSPAPERS IN VIRGINIA

INTRODUCTION

Virginia legislators have been proponents of human rights, especially freedom of expression, since even before the United States was born. In 1765 the Virginia House of Burgesses adopted the Declaration of Rights and Grievances which became the pattern for the Bill of Rights.[1] The guarantee of press freedom is included in the 1776 Virginia Declaration of Rights, often considered the first true bill of rights.[2]

Does this right of press freedom as outlined by Virginians in various Virginia statutes and by the Bill of Rights of the United States Constitution exist in Virginia's public schools? This question was examined by identifying the First Amendment rights as they related to the high school newspapers in Virginia. As the result of information obtained from 172 (75.8%) of the 227 high school newspaper

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[1]J. Edward Gerald, "Born of Struggle," Quill, September, 1976, p. 12.

[2]Ibid.

advisers in Virginia (see Table 1), a comprehensive picture was drawn regarding the press freedom given to high school newspapers in Virginia.

TABLE 1

ADVISER RESPONSES FROM SPECIFIC GEOGRAPHICAL AREAS IN VIRGINIA

Mountain (MT):	53
Piedmont (PD):	23
Tidewater (TD):	60
Northern (NO):	36
	172

NOTE: For a discussion of the four geographical areas of Virginia and a map indicating the geographical boundaries, see Appendix B.

In an effort to provide an understanding of the rights of the Virginia student press, it was important to understand the backgrounds of the faculty advisers. Each adviser obviously had a different concept of what the student press should be. An adviser in a small Piedmont area school viewed student newspapers as ". . .essentially house organs and public relations media (where students') rights are limited, and should be, because of the community they serve." This was one purpose of the student press which many advisers and administrators preferred since such a newspaper provides only a positive viewpoint of the school. The adviser of a large Tidewater area school newspaper has solved the problem of student newspaper advisers facing criticism from students, administrators, and the community. This adviser states,

"Nothing negative is allowed." Such solutions are easy, but if a school administration allows students their constitutional, First Amendment rights, then other alternatives need to be found. Some Virginia high school newspaper advisers have found possible alternatives.

THE ADVISER

The plight of the modern high school newspaper and the position of the newspaper adviser are indicated accurately in this comment by an adviser in a large Tidewater area school.

> Four years ago we lost our journalism teacher and were not able to replace him. Two English teachers of seniors and one English teacher of advanced juniors agreed to be responsible for one issue each year. This is done in addition to our regular curriculum and is a real hardship. However, better this than no paper.

Such comments by newspaper advisers are common as the result of school administrators focusing less attention on the worth of a student newspaper. Perhaps such lack of emphasis being placed upon school newspapers is the reason that nearly 60 schools in Virginia do not have student newspapers.

Table 2 shows that presently the average Virginia newspaper adviser has worked with the student paper only 3.9 years. A new adviser in a Piedmont area school exemplifies

the uncomfortable feeling of being a new adviser when he says,

> This is my first year advising and there's more I don't know than I do know. I'm pretty much feeling my way along this year, learning as I go.

TABLE 2

NEWSPAPER ADVISING EXPERIENCE

	Average Years Advising	Those with Less than 1 Year	Those with at Least 10 Years
Mountain (MT)	3.9%	23.4%	12.8%
Piedmont (PD)	4.0%	10.7%	3.6%
Tidewater (TD)	3.6%	26.3%	8.8%
Northern (NO)	4.5%	20.6%	8.8%

Often the newspaper adviser is given the position even though he is neither academically qualified nor professionally experienced. Table 3 shows that the average newspaper adviser in Virginia has completed 2.8 journalism courses, 30.4% have had no college journalism courses and only 24.4% have had a course in press law. One adviser in a small Mountain area school says,

> I have been adviser to a school paper for only half a year. I have had no journalism courses or experience. I am an English major but not an English teacher.

TABLE 3

ACADEMIC AND PROFESSIONAL EXPERIENCE OF HIGH SCHOOL NEWSPAPER ADVISERS

	MT	PD	TD	NO	AVG
Avg. No. College Journalism Courses	2.3	2.4	2.8	3.7	2.8
Percentage with no College Journalism Courses	34.7%	30.4%	26.7%	30.6%	30.4%
Percentage with a Course in Press Law	21.6%	13.0%	21.1%	39.0%	24.4%
Percentage with Professional Media Experience	33.3%	43.5%	45.8%	47.2%	42.0%
Percentage involved in Internship Program	15.7%	13.0%	15.3%	19.4%	16.0%

Although the academic background may not be present, a number of the Virginia advisers have had professional experience in some aspect of professional media (newspapers, broadcasting, magazines, etc.) or have completed a student internship program while in college. In Virginia 42% of the advisers have had some professional experience while only 16% have served in an internship program (see Table 3).

The quality of the student newspaper is often determined by the administrative support it is given. A Tidewater area adviser says,

> My journalism experience is quite limited and I don't really plan to continue in the field. Our school paper is poor and will remain so until a qualified sponsor is hired.

The newspaper adviser's experience affects how he sees the rights of the student press, how much control is given to the students, what material is acceptable, and what the legal ramifications might be.

STUDENT PRESS FREEDOMS

A small majority of Virginia newspaper advisers believe that the same rights afforded the professional press should not be given to the student newspaper. While 52.1% believe the student press should not have the same rights, 47.9% believe the student press should be constitutionally equal to the professional press. Table 4 indicates that Northern Virginia advisers tend to be more liberal in their viewpoint with 68.6% believing in equal press rights for all publications while the Mountain area of Virginia seems more conservative with 38.5% believing that student newspapers should realize the same rights as those of the professional press.

TABLE 4

THE DEGREE OF FREEDOM OF THE STUDENT PRESS AS PERCEIVED BY NEWSPAPER ADVISERS IN VIRGINIA

	MT	PD	TD	NO	AVG
Believe that same freedoms afforded professional press should be given student press	38.5%	54.5%	41.4%	68.6%	47.9%
Believe the rights of student press are					
too much	2.0%	9.5%	3.3%	5.6%	4.2%
adequate	80.0%	81.0%	86.7%	86.1%	83.8%
not enough	18.0%	9.5%	10.0%	8.3%	12.0%

Advisers give various reasons for deciding whether the student and professional presses should have equal rights. The students' lack of maturity and knowledge as well as some students' irresponsibility are some reasons why advisers believe in the separate rights of the professional press. One adviser in a small Mountain area school says,

> Rights of the press in the professional field are reserved for mature adults. The supervision which high school students need calls for some Christian guidance and restrictions which do not, by the same token, mean less freedom.

A Tidewater area adviser agrees about student maturity and says,

> Students do not always have the maturity to say something with good taste or restraints. The professional press covers controversial topics usually in a non-scandalous manner.

However, the difference in maturity between the student reporter and the professional reporter is questioned by a Northern Virginia adviser who says, "Quite often my high school journalists show more tact, good judgment and sensitivity than some professional local journalists."

One adviser, recognizing the First Amendment rights granted by Tinker, says that the student press rights exist, "But in a stricter framework because of the problems that arise from irresponsible papers." Such irresponsibility is avoided, according to a Tidewater adviser, if "students have been acquainted with their legal limitations and responsibilities and exercise good taste and judgment." Another adviser warns that "any prohibited areas should be clearly defined before the decision to publish is made." As has been proven in a number of court cases, it is important that guidelines specifically define what is or is not acceptable.

Although a majority believe that the student press should not have the same rights as those of the professional press, Table 4 shows that 83.8% of the Virginia high school newspaper advisers believe that student newspapers have

adequate freedom while 4.2% believe the student press has too much freedom and 12% believe it doesn't have enough. One adviser in Piedmont Virginia believes that the conservatism in his particular geographical area results in less freedom. He says, "I think many school papers have less freedom in 'Bible belt' areas or small southern regions."

Another adviser believes student newspapers do not have enough freedom. Less restriction, he says, would remedy the problem that "high school journalism teachers are always in the hot seat with administrators." A Northern Virginia adviser believes that school newspapers have adequate freedom "under the law, but not enough freedom since they are run by advisers and administrators." Although student newspapers should have professional press rights, a clear majority seem to be satisfied with the amount of freedom presently possessed by the student press.

CONTROL OF THE STUDENT PRESS

Table 5 indicates that advisers alone make the final decisions about what goes into 36.7% of Virginia's high school newspapers. The editor and adviser together make the final decisions of the content in 27.8% of the newspapers and editors alone make the final decisions in only 20.7% of

the student newspapers. In 3% of the schools, the principal makes the final decision and in 4.7% of the schools, the principal and adviser make the final decisions. A publications board decides what goes into the newspaper in 4.3% of the Virginia public schools. The publications board is composed of the student editor, faculty adviser, interested students, interested faculty, and a school administrator, although the composite may vary somewhat. As indicated in Table 5, the remainder of the schools use various methods in reaching a final decision on what goes into the student newspaper.

TABLE 5

CONTROL OF THE FINAL CONTENT OF HIGH SCHOOL NEWSPAPERS IN VIRGINIA

	MT	PD	TD	NO	AVG
Editor	17.3%	13.0%	13.8%	41.7%	20.7%
Adviser	42.3%	43.5%	41.4%	16.7%	36.7%
Editor/ Adviser	23.1%	21.7%	31.0%	33.3%	27.8%
Adviser/ Principal	3.9%	8.7%	6.9%	0.0%	4.7%
Adviser/ Editor/ Pub. Bd.	7.7%	0.0%	1.7%	5.5%	4.1%
Principal	3.9%	4.3%	3.5%	0.0%	3.0%
Editor/ Principal	1.9%	4.3%	3.5%	0.0%	1.2%
Publications Board	0.0%	4.3%	1.7%	2.8%	4.3%

Most schools who permit trained editors to decide what goes into the school newspaper have found the procedure to be beneficial for both adviser and editor. One adviser of a large Mountain area school newspaper says,

> Students, given the responsibility and an awareness of their liability and accountability, seem to take a stronger conservative approach than adults when acting as an editorial board. Our students formulate their own editorial policy and adhere to it to the letter.

Such an arrangement takes the burden of possible censorship off the adviser's shoulders and allows the students to practice their constitutional rights while exercising the responsibility given them.

Sometimes, however, the adviser doesn't have a choice of offering the rights to the student editors since the adviser is answerable to the principal and school board. In one large Piedmont high school, such a problem does not exist. The newspaper adviser there says,

> The principal of my school has never asked to read stories before they are printed. He insists that stories be truthful and accurate and that both sides of controversial issues be printed. He has given me no other guidelines. Everything else is left to me and my staff.

In one Tidewater high school the adviser is facing a situation which may lead to a student newspaper/principal conflict. The adviser says, "Our principal has threatened to censor us in the upcoming issues if we do not print what he

thinks is appropriate." Another adviser makes the final decisions about what goes into the newspaper because "our administrator (specifically the principal) forbids anything 'controversial' from appearing in the paper." In one case the adviser stood up for his rights when threatened by a principal because the adviser

> . . .refused to remove an article from the paper. It questioned inadequate transportation of students who had only five classes and wanted to leave on an early bus. The article stood and I kept my job, fortunately.

In some areas the student newspaper is controlled by an outside factor. A Mountain area newspaper adviser says, "This newspaper is published in a very backward area. The parents in many instances regulate the material used." In a Tidewater school, which the adviser describes as "rural and conservative," the student press is limited to what topics it can handle since, according to the adviser, "there would be such an uproar from the community and school board that it would be self-defeating to print certain materials."

In Virginia the faculty adviser is involved in 77.6% of the final decisions while editors are involved in only 58.1%. As the result, a number of Virginia faculty advisers have refused to permit material to be published in the school newspaper. Table 6 shows that 62% of the advisers have refused to permit some material (copy, photographs, or

advertisements) to go into the newspaper. Northern Virginia, with 48.6% of the advisers refusing to print some material, seems to give students a freer hand in what goes into the newspaper, while 72.7% of the Piedmont Virginia high school advisers have refused to permit students to print some material. However, Northern Virginia advisers are more likely to refuse advertisements or photographs than any other area since 38.9% of the advisers have refused to print an ad or photograph. Only 13.8% of the Tidewater area advisers have refused an ad or photograph.

TABLE 6

MATERIAL REFUSED BY FACULTY ADVISERS

	MT	PD	TD	NO	AVG
Refused to let a student print something	65.3%	72.7%	65.3%	48.6%	62.0%
Refused to let a student print advertisement or photograph	22.9%	30.4%	13.8%	38.9%	24.2%

Some of the advisers indicate that only profanity and libel have been censored, but one adviser says that his "principal has ordered ads and controversial stories killed." Often a discussion on good taste and responsibility results

in the student making a decision on a potentially libelous story. An adviser in a Northern Virginia school says, "I have suggested that some things are unnewsworthy (sic) but have taught them (the students) that I have no legal censorship power." Another Northern Virginia adviser says he has not refused to let a student print something, "but I have put a lot of pressure on editors to think very carefully about (the) value of material they have considered printing."

Advertisements seem to be a problem in some Virginia areas. Several Northern Virginia area advisers have refused ads from gay bookstores and one adviser refused an "ad which wanted gays to meet at a certain bookstore." Such ads are not solicited by the student newspaper but are often brought in by outsiders who view the high school student body as a potential marketplace for their product or service. One adviser says that the newspaper "ad crews do not go to paraphernalia shops, etc. We don't seek them if they deal with illegals (sic), etc." Some high school editors and advisers alter the ad with the advertiser's permission. One adviser in Tidewater Virginia, after contacting the store owner, deleted "Largest Selection of Smoking Paraphernalia" before placing the ad in the school newspaper. A school newspaper in the Mountain area refuses as a matter of editorial policy "advertisements supporting any item prohibited in the school."

To avoid possible misunderstanding, the newspaper staff should state specifically through adopted policy why an advertisement can be rejected, even though the courts (e.g., Bigelow v. Virginia)[3] guarantee the press' right to refuse any material it wishes not to print, including advertisements.

ACCEPTABLE MATERIALS

Litigation involving high school student newspapers has centered around several selected issues. Among the materials which have been litigated are articles which are sex-related (e.g., birth control and students' sex habits), editorials regarding school administrative policy, and photographs which include semi-nude men or women. Of the issues mentioned, Virginia high school newspaper advisers tend to find sex-related materials to be most objectionable for student newspapers. As is noted in Table 7, 84.1% of the advisers believe that photographs of semi-nude men and women do not belong in the student newspaper although only 74.1% would not permit such material in their school newspapers. In fact, the advisers indicate that they are likely to permit material to go into the newspaper they advise even though they do not agree that some of the material belongs there.

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[3]Bigelow v. Virgina, 421 U.S. 809 (1975).

TABLE 7

UNSUITABLE MATERIAL FOR STUDENT NEWSPAPERS IN VIRGINIA

	MT	PD	TD	NO	AVG
Article on birth control	40.4% (38.5%)	34.8% (30.4%)	41.4% (41.4%)	19.4% (11.1%)	35.1% (32.4%)
Ads from abortion clinics	65.4% (61.5%)	78.3% (60.9%)	74.1% (69.0%)	44.4% (30.6%)	65.3% (57.1%)
Survey article on students' sex habits	63.5% (57.7%)	65.2% (52.2%)	63.8% (44.8%)	25.0% (22.2%)	55.3% (44.7%)
Editorial supporting national political candidate	13.5% (7.7%)	26.1% (26.1%)	13.8% (5.2%)	11.1% (2.8%)	14.7% (8.2%)
Editorial against school administrative policies	15.4% (13.5%)	17.4% (17.4%)	3.5% (0.0%)	2.8% (2.8%)	8.8% (7.1%)
Photograph of semi-nude male or female	84.6% (71.2%)	91.3% (87.0%)	82.8% (79.3%)	83.3% (63.9%)	84.1% (74.1%)
Gossip column	57.7% (48.1%)	82.6% (65.2%)	67.2% (41.4%)	63.9% (47.2%)	65.3% (47.6%)

NOTE: The first numbers in each area represent the percentage of advisers considering the material unsuitable for student newspapers. The numbers in parentheses indicate those advisers who would not permit the material in their student newspapers.

Many of the advisers who would not permit certain material to appear in the newspapers they advise indicate that they fear reaction from the principal, superintendent, school board, or community. One adviser in a Piedmont area high school says he is "not personally against any of the material listed, but the school board and parents would be." Another adviser from a small Mountain area school says,

> I personally would not object to an article on birth control, ads from abortion clinics or an article on students' sex habits but our community is so conservative and it would cause such an uproar that it simply wouldn't be practical.

One adviser would not permit certain items to go into the newspaper simply "for reasons of job security." An adviser in a small Piedmont area school says that he

> . . .anticipates the censorship which the school superintendent would expect for fear of losing my job. In fact, the superintendent became quite upset when we published the results of a survey about students' attitudes toward our new school building.

Even high school newspaper advisers, like the United States Supreme Court justices, have difficulty defining obscenity. One adviser cannot necessarily define obscenity but knows it when he sees it. In dealing with the publication of semi-nude photos, he says, "Botticelli's 'Venus,' yes; Farah Fawcett, no." Another advises asks,

> What is semi-nude? We had a picture of two girls and a boy in bathing suits at the senior picnic on the front page last year. I don't consider that semi-nude.

A number of the advisers who would oppose the support or endorsement of a national political candidate believe that objectivity should be carried over to the editorial page. Although the courts have ruled that the Fairness Doctrine applies solely to broadcasting (e.g., Red Lion Broadcasting Co. v. Federal Communications Commission),[4] many advisers feel that each candidate should get equal space in the same issue of the student newspaper. Rather than taking a position in support of one candidate a Mountain area adviser says, "I would see value in analyzing platforms of all candidates for the same office."

The traditional gossip column has become less popular in recent years among students and advisers. Table 7 indicates that 65.3% of Virginia high school newspaper advisers believe that the gossip column has no place in the student newspaper. Many advisers and student editors have become aware of their responsibilities and liabilities in working with the student newspaper. Since gossip columns have in the past been filled with "hearsay evidence," advisers and editors realize that such columns are potentially libelous. Hence, some advisers will not advise newspapers with a gossip column. A Northern Virginia adviser says, "Though I have no legal right to yank it out, I would stop advising a

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[4]Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367 (1969).

crew whose preference was to print gossip, if I couldn't change their minds." Other Virginia advisers condone the gossip column but include it only as a photocopy insert.

The subject matter is as diverse for some student newspapers as it is limited for others. A Mountain area adviser says,

> My policy is that anything written in good taste can be published with the exception of the taboos of sex, politics and religion. Even these, if treated carefully, are worth printing (i.e., a survey on dating, an opinion poll on Carter's policy on Iran, an editorial comparing the involvement of Iranian students to the apathy of too many high school students). All of these will appear in our next issue, plus a letter criticizing the smoking policy at the school.

Many newspaper advisers find that most subjects can be handled by the student press as long as they are handled responsibly. A Northern Virginia advisers says, "A discussion on libel and liability has always been sufficient in determining what should or should not be printed." As with most problems involving the student press, communication seems to be the key to a free and responsible student-run press. Without this communication the ugly alternatives are litigation or the emergence of an underground press.

ALTERNATIVES TO A STUDENT CONTROLLED PRESS

A suppressed student newspaper may act on one of three results. Students or advisers may take the attitude that it

is easier to do what is asked and expected than to fight a sometimes costly fight for press freedoms. As one Virginia adviser says,

> The very idea of censorship grates my soul. Unfortunately, I need my job to pay bills, buy food, etc. After a few run-ins with the bosses I reconciled myself to submission. It's just not worth the fight.

A second result of suppressing a student newspaper may be a costly court case. This is a step taken by only a few Virginia newspaper advisers. As is shown in Table 8, only 1.8% of the Virginia student newspaper advisers have been involved in court cases concerning First Amendment student press rights. A few advisers indicate that they have come close to litigation but have solved their problems out of court. One adviser says he was not involved in a court case but his "principal was for trying to block an underground newspaper. The principal lost."

The third result of suppressing a student newspaper is an underground press. Fortunately, as Table 8 indicates, according to the advisers only 16.4% of the Virginia high schools have had underground newspapers. This low percentage may be due to the short number of years the average Virginia adviser has worked with the school newspaper. As one adviser in a large Northern Virginia high school asked, "In the 60s, who didn't have an underground paper?" Another adviser indicated that his students "wouldn't know what an

underground paper was." The underground newspaper seems to have lost its impact on high school campuses in recent years, although an adviser in a large Tidewater area school says that his school was threatened with an underground newspaper recently and he adds, "There were posters announcing one but it has never come out."

TABLE 8

LITIGATION, UNDERGROUND NEWSPAPERS, AND INSTRUCTION IN PRESS LAW AT VIRGINIA HIGH SCHOOLS

	MT	PD	TD	NO	AVG
Percentage of advisers who have been involved in cases concerning First Amendment student press rights	2.0%	0.0%	0.0%	5.6%	1.8%
Percentage of schools which have had underground newspapers	3.9%	13.6%	22.0%	27.8%	16.4%
Percentage of advisers who teach press law and ethics to students	52.9%	72.7%	59.6%	75.0%	66.7%

As an alternative to suppressing the student newspaper, many Virginia advisers have discovered that by teaching their student journalists press law and ethics, the student newspaper will be more responsible and, as a result, less susceptible to censorship. Table 8 indicates that 66.8% of the Virginia student newspaper advisers teach press law and ethics at some time. Although only 24.4% of the advisers have had a course in press law, many introductory college journalism courses include press law basics and other advisers have discovered the fundamental press laws through personal research or professional media experience. Some advisers would like to teach press law to their students but often encounter obstacles. For example, one Tidewater area adviser said he cannot teach press law and ethics because

> . . .the newspaper staff is not allowed any in-school time. Thus, I have difficulty attracting a staff and having time to teach them anything regarding high school journalism.

Hence, the students of this public high school were being denied the opportunity to learn the correct method of journalistic reportage as well as missing an excellent opportunity to apply their constitutional rights through free expression.

As the data compiled in the various tables in this chapter indicated, the diversity of Virginia's geographical areas makes a difference in student press freedoms. The Northern and Piedmont areas tended to grant more freedom than did the Tidewater and Mountain areas. Overall the

Northern area advisers had more experience in advising, more course work in journalism and more professional experience. Also, they believed that student newspapers should have the same rights as the professional press, and accordingly, are less likely to refuse publication of certain material. The data indicated that the degree of student press freedom was found in the Northern, Piedmont, Tidewater, and Mountain areas, in descending order. Although the student advisers in Virginia are basically aware of student press rights, the high school newspaper in Virginia is still not totally free.

Chapter 5

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

OVERVIEW

This study was designed to identify student press rights and specifically student press rights in Virginia. Its purpose was to provide legal guidelines for student newspaper staff members, newspaper advisers, and school administrators. The review of the literature indicated that such guidelines were necessary, and the results of the survey sent to the Virginia high school newspaper advisers continued to affirm this fact.

The review of the literature regarding the professional press further indicated that professional journalists were as unaware of their First Amendment rights as the student journalists were. Litigation continued to surface in the areas of obscenity, libel, and prior restraint. With each case the rights of the press were redefined. In the area of obscenity the courts have not been able to define the term, but they have ruled on cases which make obscenity illegal. Regarding libel, the courts seem to make their own rules as they go. From the viewpoint of the journalist, prior restraint is an ever-present threat to the rights of the American press.

The laws of the professional press continue to have a primary bearing upon the rights of the student press. As has been noted in the review of court cases, the decisions on obscenity, libel, and prior restraint as applied to the professional press have defined the courts' boundaries in student press cases. Although the court cases reviewed here tended to present a student press with broad freedoms, the intention of this paper, as well as the intention of the courts since Tinker v. Des Moines, was not to take away the right of the administrator and adviser to control and discipline but to provide a framework through which this control and discipline do not infringe upon First Amendment rights. As Mr. Justice Goldberg wrote so metaphorically in his opinion regarding Shanley v. Northeast Independent School District,

> Tinker's dam to school board absolutism does not leave dry the field of school discipline. . . .Tinker simply irrigates, rather than floods, the field of school discipline. It sets canals and channels through which school discipline must flow with the least possible damage to the nation's priceless topsoil of the First Amendment.[1]

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[1]Shanley v. Northeast Independent School District, 462 F. 2d 978 (5th Cir., 1972).

SUMMARY

In chapter one, six key research questions were identified as points to investigate. The paper was designed so that these questions could be answered through the review of literature, examination of major court cases, and the identification of rights as they existed in one geographical area, Virginia. Because of such a composite study, these six questions can now be answered.

Question one concerns the decision-making process as it presently exists in regard to student newspapers. Court decisions have indicated that decisions concerning student newspaper content should be made by the students. The court, however, indicated that administrators have the right of prior review, providing the policy is narrow enough to work and simple enough to be understood. Nonetheless, Virginia high school newspaper advisers indicated that they were involved in 77.6% of the final decisions regarding content in the student newspaper, and they decided solely what went into 36.7% of them. Student editors made the final decision on newspaper content at only 20.7% of the Virginia high schools. As noted in Appendix B, Virginia is a political microcosm of the nation with diverse sectional ideas. Although political conservatism is brought out in the responses of the high school advisers to the questionnaire

on student press rights, the 1977 Virginia gubernatorial nominee, Henry Howell may have accurately described the state politically when he said, "A liberal in Virginia is anyone who believes in life after birth."[2] This degree of conservatism was not evident in the Virginia advisers' responses, but much of what is indicated in the responses shows that Tinker has not made much of an impact upon student newspaper rights in Virginia.

The type of material considered suitable for high school newspapers was the second issue investigated in the previous chapters. The courts have indicated that any material that can be defined as obscene or libelous does not carry First Amendment rights. Such cases as Jacobs v. Board of School Commissioners and Gambino v. Fairfax County School Board showed that the school administration could not censor the student prublication if the publication contained only a few coarse words or even material dealing with a subject that the administrators considered to be in poor taste. The literature regarding the student press indicated that gossip columns and "joke" issues were possible areas of libel for student newspapers. The Virginia high school advisers seemed to be less concerned with potentially libelous material than they were with sex-related subjects. Only

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[2]Larry Sabato, Virginia Votes: 1975-1978 (Charlottesville: University of Virginia Printing Office, 1979), p. 1.

65.3% found the gossip column unsuitable for a student newspaper, but 84.1% disapproved of pictures of semi-nude men or women appearing in the student newspaper.

In answer to question three concerning the equality of student press rights with professional press rights, the courts have indicated that high school students do not have the same degree of First Amendment rights as college students or adults (e.g., Shanley v. Northeast Independent School District). The courts have also shown that students have more rights than are often recognized by the school administration (e.g., Tinker v. Des Moines). A few more Virginia advisers agreed with the courts concerning the degree of student press rights as compared with professional press rights. Of the 172 advisers responding to the questionnaire, 47.9% believed that the student press should have the same rights as the professional press has.

Question four concerned the amount of journalistic training needed by high school newspaper advisers, if a responsible student press is going to emerge. In Virginia the State Department of Education requires twelve semester hours of journalism for certification.[3] However, journalism certification was obviously not required for one to qualify

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[3]Certification Regulations for Teachers and Qualifications for Administrative, Supervisory and Related Instructional Positions (Richmond: Department of Education, 1978), p. 15.

as a newspaper adviser. Of the newspaper advisers in Virginia, 30.4% have had no journalism course and the average adviser has had fewer than three courses.

Regarding question five, a majority (66.7%) of the high school newspaper advisers teach press law and ethics. However, only 24.4% have had a course in press law.

The answer to the final question concerning censorship in high school newspapers is simply "yes," there is censorship. The review of literature, the court cases, and the questionnaire indicated varying degrees of censorship. Even eleven years after Tinker, school administrators have not come to realize that students' rights do not stop at the schoolhouse gate.

CONCLUSIONS

Based upon the review of the literature, the review of the court cases, and a study of the results of the questionnaire, the following conclusions can be made regarding the state of the student press. Each conclusion is the result of the one which precedes it. The five basic conclusions drawn from this study are as follows:

(1) Because administrators may not be fully aware of the responsibilities that encompass advising the student

newspaper, advisers are sometimes arbitrarily selected, and often are not qualified for the position, nor trained.

(2) Because some newspaper advisers are unqualified or untrained for the position, the student newspaper staff members are not being adequately prepared to handle the rights which have been granted them.

(3) Because student newspaper staff members are often inadequately prepared, the student press does not receive the financial and legal support it deserves from school administrators.

(4) Because of this lack of support given to the student press by school administrators, the newspapers are still being censored by advisers and administrators.

(5) Because of years of blatant censorship, school administrators are often skeptical of a free student press.

RECOMMENDATIONS

Even though the direction of constitutional rights of student newspapers has been channeled by the courts, the courts alone cannot provide a free student press. With freedom comes responsibility and the key to a responsible student newspaper is a well-trained adviser. Some recommendations for making this a reality are as follows:

(1) States should require that all student newspaper advisers be certified in journalism. The states may recognize

professional experience as a substitute for course work in some special instances.

(2) States should require at least a two semester hour course in press law for journalism certification.

(3) Workshops in press law should be required periodically of all advisers who should be given credit towards certificate renewal for attending the workshop.

With better trained advisers, student newspaper staff members should be able to create a stronger student press. However, the student newspaper staff must be willing also to accept the responsibilities that go along with press rights. They must be informed of the laws of obscenity and libel as outlined in the various court cases described in chapter three.

Additionally, students should learn the components of good journalism to be accurate, to be objective, and to get both sides of a story. Furthermore, students should be willing to accept the fact that some doors will not always be open to them and that they may have to take "no" for an answer occasionally. This is part of being a journalist.

As the student press becomes more responsible, administrative support should become more common and administrators will accept more responsibility for seeing that the student press retains its freedom. They must be willing to recognize

that the student reporter can be trained not to write slanted or libelous material, and they should make themselves available to students and be willing to answer questions honestly.

With such guidelines and the knowledge of press rights, students can develop a free and responsible student press. An adviser at a small Mountain area high school in Virginia summed this up:

> If teachers would only instill a sense of responsibility and good taste in their students they wouldn't have problems. Our paper has published articles on planned parenthood, alcohol surveys, personal interviews, etc. in good taste. I think school newspaper staffs should be instructed carefully with regard to their responsibilities--the same responsibilities shared, but not always acknowledged or accepted, by the professional press.

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APPENDIX A

STUYVESANT (NEW YORK CITY) HIGH SCHOOL SEX SURVEY

Is the atmosphere different (in respect to sexuality) at Stuyvesant as opposed to your old school?
Greatly_____ Somewhat____ Not at all_____

Did you have trouble adjusting? A lot_____
A little_____ Not at all_____

Does sexual profanity offend you? All the time_____
Sometimes_____ Never_____

What are your attitudes towards the traditional dating situation (i.e., Only boy can ask girl out? Boy pays for date?) Approve_____ Disapprove_____

Should men and women have equal rights? Totally_____
In most cases_____ Never_____

What sexual stereotypes do you feel most strongly about?

To what degree should unisexuality be carried? (It has been haircuts and clothing up to now, it could one day be bathrooms. How do you feel?)

Do you feel the institution of marriage is outdated?
Greatly_____ Somewhat_____ Not at all_____

Do you think living together is an acceptable alternative solution? Yes_____ No_____

What are your feelings on pre-marital sexual relations?
Greatly disapprove_____ Some reservations_____
Approve_____ Comments?

What types of contraception are you aware of?

What types would you use?

How would you feel if homosexuality occurred among your peers? Extremely uncomfortable_____
Uncomfortable_____ Slightly uncomfortable_____
Wouldn't make a difference_____

Do you consider yourself a Heterosexual_____ Homosexual_____
Bisexual_____

What are your feelings about a law prohibiting discrimination against homosexuals? I would favor such a law_____ I would not favor such a law_____

How would you feel about having a homosexual or bisexual in a position of authority? Object greatly_____
Object somewhat_____ No objection_____

What are your feelings on the topic of masturbation?

What are your feelings on abortion? It should be permitted_____ It should be permitted if necessary to save the mother's life_____ It should be outlawed totally_____

If you are female, would you conceivably have one yourself?
Yes_____ No_____ Unsure_____
Do you feel an emotional relationship must co-exist with a sexual one? Yes_____ No_____ Comments?
What is the extent of your sexual experience? Was this experience (whatever it may have been) what you expected?
Do your views on sexuality coincide with those of your parents? Always_____ Usually_____ Sometimes_____ Never_____
In what ways do your parents' opinions differ from yours?
Do you feel that your sexual education (emotional and factual) is complete? Yes_____ No_____
Where did most of your sexual education take place?
At home_____ At school_____

SOURCE: Drucker, Linda. "High School Sex! A Topic to Discuss," Sider Press, Oceanside High School, November 4, 1977, p. 9.

APPENDIX B

VIRGINIA'S PHYSIOGRAPHICAL STRUCTURE

According to the 1978 edition of Virginia Facts and Figures, Virginia is divided into five geographical areas. These areas include the Coastal Plain, Piedmont Plateau, Blue Ridge, Valley and Ridge Province, and the Appalachian Plateau.[1]

For the purpose of this study, the division of Virginia into five geographical areas is inappropriate because of the imbalance in population. Therefore, for a more accurate representation, the state is divided into four geographical areas. In an effort to divide the population concentration as it exists in the Coastal Plain, including the metropolitan Washington, D.C. area with more than one million people and the Norfolk--Virginia Beach--Newport News metropolitan area with a 1,179,000 population,[2] this study will divide the Coastal Plain into the Tidewater and Northern areas. The area east and inclusive of Interstate 95 and the area south and inclusive of U.S. 301 is called Tidewater. All of the area north of U.S. 301 is called the Northern area. The

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[1] Virginia Facts and Figures (Richmond: Commonwealth of Virginia, 1978), p. 1.

[2] Ibid., pp. 2,3.

Northern area also contains that land north and inclusive of Interstate 64, east of the Skyline Drive and north of U.S. 33. The Piedmont Plateau is the area west of Interstate 95, south of Interstate 64, and east and inclusive of U.S. 220. The Blue Ridge, Valley and Ridge, and the Appalachian Plateau have been grouped, predominantly, into the Mountain area. This area is located west of U.S. 220, north and inclusive of the Blue Ridge Parkway and Skyline Drive, and south and inclusive of U.S. 33.

The four divisions as outlined have demographic distinctions which are based upon each area's various influences. The Northern area is influenced by the Washington, D.C. and surrounding areas which tend to be liberal in their thinking. Tidewater Virginia is a transient area, made up of a large number of military personnel. The result of this type of population is a seemingly "middle of the road" thinking--neither liberal nor conservative. The Piedmont and Mountain areas are less transient in nature, often agrarian and most likely conservative.

The specific thinking patterns of the goegraphic areas are further supported by looking at the voting records of the individual areas. In Larry Sabato's Virginia Votes: 1975-1978, the support of various political candidates and the voting on various referendums indicate the conservatism

of the Piedmont and Mountain regions, the liberal-conservatism of the Tidewater area and the liberalism of the Northern area. For example, in 1978 a referendum for Pari-Mutuel Betting was brought before the people of Virginia. All of the major cities in the Northern area voted for this referendum. All of the major cities in the Mountain and Piedmont areas voted against the referendum, and in the Tidewater area, 5 of the 11 major cities voted for the referendum.[3]

The demographics tend to place the four areas used for this study into a distinct political framework. The map of Virginia on the following page shows the geographic boundaries used for this study.

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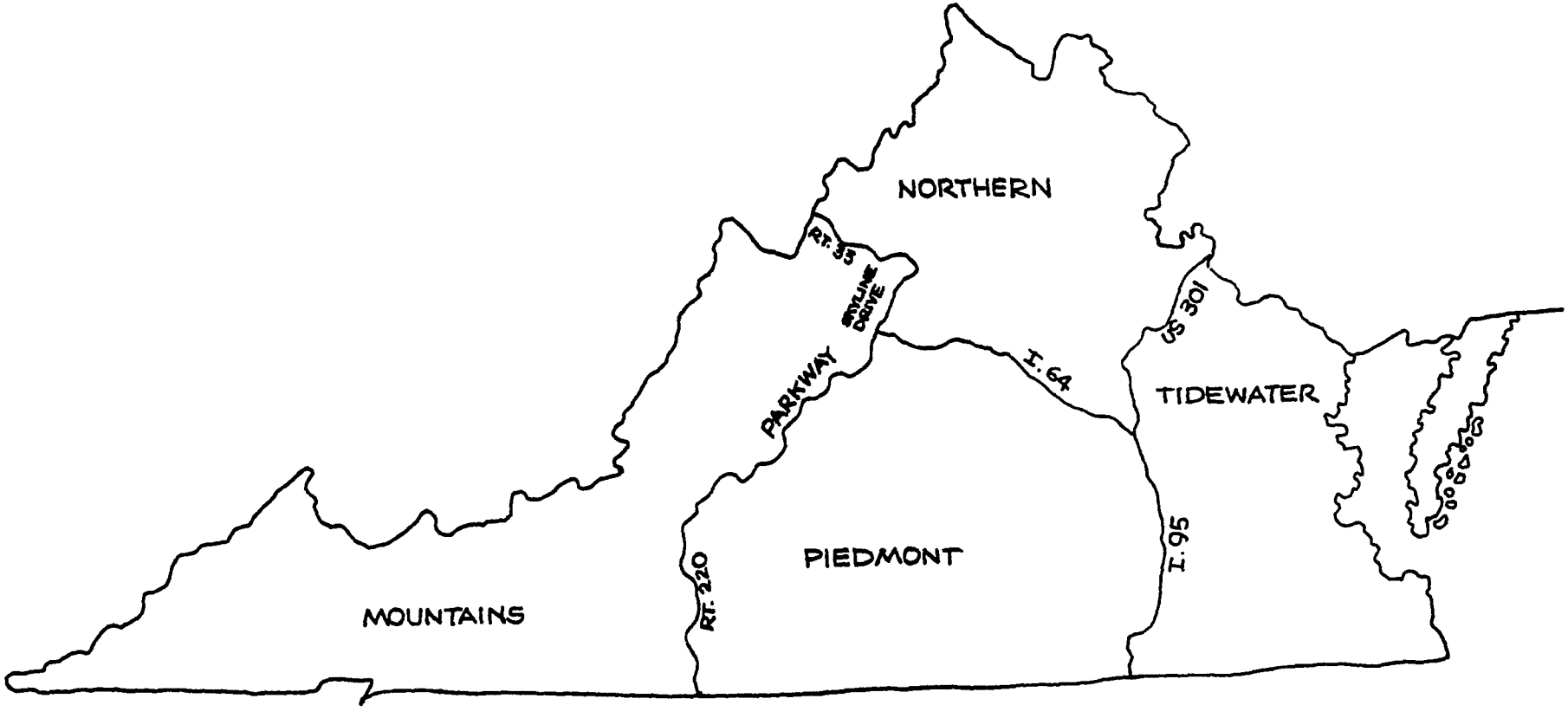
[3]Larry Sabato, Virginia Votes: 1975-1978 (Charlottesville: University of Virginia, 1978), p. 109.


NORTHERN
Rt. 33
SKYLINE DRIVE
PARKWAY
I. 64
US 301
TIDEWATER
PIEDMONT
I. 95
Rt. 220
MOUNTAINS

APPENDIX C

SURVEY SENT TO HIGH SCHOOL NEWSPAPER ADVISERS IN VIRGINIA

INSTRUCTIONS: Please answer each question as indicated.

1. Who makes the final decision on most of the stories that go into the student newspaper at your school? (check one or more)

   editor(s)_____ adviser_____
   principal_____ publications board_____
   other (please explain)_____

2. Have you ever refused to let a student print anything in the student newspaper? (circle one)

   Yes No

3. Place an "x" beside material(s) which you believe to be unsuitable for high school newspapers.
   A. _____ article on birth control methods
   B. _____ ads from abortion clinics
   C. _____ survey article on students' sex habits
   D. _____ editorial against school administration policies
   E. _____ editorial supporting a national political candidate
   F. _____ photograph of semi-nude male or female
   G. _____ gossip column

4. Please circle the letter(s) of any of the above (see question 3) which you would NOT PERMIT to go into the newspaper which you advise.

   A B C D E F G

5. Do you believe that the same freedoms of the press afforded the professional press should be given to high school newspapers? (circle one)

   Yes No

6. Have you or any other school personnel ever refused to allow an advertisement or photo to be printed in the school newspaper? (circle one)

   Yes No

7. To your knowledge, has your high school ever had an underground newspaper emerge? (circle one)

Yes No

8. Have you ever been involved in a legal case regarding First Amendment rights of the student newspaper? (circle one)

Yes No

9. How would you describe the rights of student newspapers (as you perceive them)? (check one)

_____ too much freedom
_____ adequate freedom
_____ not enough freedom

10. How many years have you been a newspaper adviser? (circle one)

1 2 3 4 5 6 7 8 9 10 or more

11. How many college courses in journalism have you had?
_____ (please indicate number of courses)

12. Have you ever had any experience in the professional media (newspapers, magazines, broadcasting, etc.)? (circle one)

Yes No

13. Were you involved in a journalism internship program while in college? (circle one)

Yes No

14. Have you ever had a college course in press law and/or ethics? (circle one)

Yes No

15. Do you teach press law and ethics to your journalism students and/or newspaper staff? (circle one)

Yes No

Comments:

SURVEY PROCEDURE USED

A listing of Virginia high schools was compiled from the Virginia High School League Directory (1979-80) which included 284 high schools in Virginia and the names of 205 newspaper advisers. Questionnaires were sent to all 284 schools.

Within a two week period, 118 responses were received from advisers and 18 from principals stating that their schools had no newspaper. This indicated that potentially 266 high schools in Virginia had student newspapers, resulting in a 44.4% return from advisers.

A follow-up letter was sent to advisers and principals of the schools which had not responded. A request was made that the principals respond by indicating if the school had no newspaper or if the school has a newspaper, to give the questionnaire to the adviser. Thirty-nine of the principals indicated that the school had no newspaper. Hence, the potential number of student newspapers in Virginia is 227. The follow-up letter and questionnaire resulted in 54 responses from advisers with a total return of 172 or 75.8%.

Of those responding initially, the advisers had an average of 3.9 years experience. Of those responding after the follow-up letter, the advisers averaged 3.8 years experience. Hence, there was no significant difference between advisers responding at different times.