THE APPLICATION OF THE TINKER DISRUPTION FACTOR TO THE DISTRIBUTION OF STUDENT LITERATURE IN PUBLIC SECONDARY SCHOOLS

Dissertation for the Degree of Ph. D.

MICHIGAN STATE UNIVERSITY

STANLEY I. SOFFIN

1975

This is to certify that the

thesis entitled

The Application of the Tinker Disruption Factor to the Distribution of Student Literature in Public Secondary Schools
presented by

Stanley I. Soffin

has been accepted towards fulfillment
of the requirements for

Ph.D. degree in English

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Date April 24, 1975

O-7639

ABSTRACT

THE APPLICATION OF THE TINKER DISRUPTION FACTOR TO THE DISTRIBUTION OF STUDENT LITERATURE IN PUBLIC SECONDARY SCHOOLS

By

Stanley I. Soffin

Since the mid-1960s, the public protest of societal ills in the United States has spilled over from college and university campuses to the high schools. Much of the secondary school protest was manifest in students' privately printed publications, which were called "the underground press." This study is an examination of forty-three legal decisions involving the distribution of this literature on or near school property. The cases were categorized under the following headings: prior review policies in public schools; the application of the Tinker disruption factor to the banning of student literature; additional restraints on student literature, such as bans on in-school sales or prohibitions against anonymity of authors; and administrative control over school-sanctioned publications, including decisions of cases filed by publications advisers. In addition, this study includes a detailed discussion of the landmark decision, Tinker v. Des Moines School Dist., 393 U.S. 503 (1969), in which the United States Supreme Court extended a student's right to freedom of expression inside the schoolhouse gates.

The student literature cases revealed that the federal courts do not hesitate to intervene when students challenge decisions of school officials concerning first amendment issues. The case law strongly supports the notion that once the federal courts do intervene, they will likely rule for the student plaintiffs. Throughout the case analysis, the position of the defendant school districts has been to argue that the student-challenged administrative decisions or regulations governing in-school distribution of literature were necessary to avoid material and substantial disruption of school decorum--a standard, if properly applied, sanctioned by the Tinker decision. The courts, however, have disagreed with the assessment of potential disruption in all but a few cases. Instead, federal judges have declared that school officials have relied on unconstitutional regulations that serve only to shackle student freedom of expression. The most odious of such rules is prior review. But of those courts that have ruled on the issue, only the Seventh Circuit Court of Appeals and one federal district court have flatly rejected any system of prior review operating on the content of student literature distributed on or near school property. The other courts involved in these decisions, including the Courts of Appeals for the First, Second, Fourth, and Fifth Circuits, have approved procedurally sound systems of prior review--but only to launder content that is neither obscene, libelous or that might lead a school official to predict reasonably that material and substantial disruption is imminent. The same courts have ruled that procedurally safe systems of prior review may not be used to stifle lawful content with which school officials disagree. Furthermore,

the courts have flatly rejected school officials' assessments of circumstances that led them to stop students from in-school circulation of literature. In these cases school administrators failed to substantiate in court that their apprehensive fears of disruption justified a curtailment of first amendment rights. The school authorities' fears of disturbance were associated with content falling into the following general categories: criticism of school officials, political opinion, sex information, and alleged obscenity. The examination of cases filed by school newspaper advisers follows this same pattern of complaint, except in two of the four cases in which decisions have been reached at this writing, the judges have upheld the dismissal of the teachers.

The author recommends that school officials replace any and all systems of prior review with precise and reasonable distribution-of-literature regulations that clearly inform students of the time, place, and manner in which distribution may take place. Furthermore, the author recommends that school officials hire qualified journalism instructors to teach publications classes and that officially approved scholastic publications operate under specific, written guidelines that serve, above all, to resolve conflicts over content.

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A DISSERTATION

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

Department of English

1975

ACKNOWLEDGMENTS

Many must share my sincere appreciation for their help and guidance in this dissertation:

Zolton A. Ferency, associate professor of Criminal Justice, for encouraging me to undertake this study and guiding its progress;

Madison Kuhn, professor of History, for his helpful comments and suggestions;

Margaret Soffin, my wife, for unselfishly bearing the invisible burdens that only a doctoral candidate's spouse can know;

Anne Elizabeth Soffin, my three-year-old daughter, for working so dilligently on her "dissertation" along side me;

Catherine Alice Soffin, my one-year-old daughter, for being such a good baby during such a stressful time;

Mr. and Mrs. Harold Soffin, my parents, and Mr. and Mrs. Leroy Fisher, my in-laws, for relieving the financial strains;

The many respondents to my letters seeking information and material;

Mrs. Sue Cooley, for her expert typing of the manuscript; and

Those students and journalism teachers who are the subjects of this dissertation--they and those above, and still others, have made this study possible.

DEDICATION

It is to the memory of Professor W. Cameron Meyers that I dedicate this dissertation. I am deeply saddened that he could not share its completion with me. To have lost Bud while this study was in progress was to have lost the soul of its existence. No other man is more responsible for shaping my adult life than this "gentle man and scholar," as a mutual friend once called him. I only hope I will be able to contribute half as much dignity to the teaching profession as did my colleague and friend, who was loved by so many yet so much alone. May he rest in peace.

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CHAPTER I

INTRODUCTION

ITEM: A principal in a Montgomery County (Md.) high school issued this memorandum to his faculty: "If you see any copies of the Washington Free Press [a local student underground newspaper] in possession of a student, confiscate it immediately. Any question from the student regarding this confiscation should be refferred [sic] to the administration. If you see a student selling or distributing this paper, refer them [sic] to an administrator and they will be suspended."[1]

ITEM: In a Houston, Texas, high school, a principal suspended two students for distributing an underground newspaper in a park across from the school before classes had begun. The school had no written rules governing student publications.[2]

ITEM: In Flint, Michigan, a high school newspaper adviser returned from a newspaper workshop at the University of Detroit to find his principal had put the Christmas issue of the student newspaper through a paper shredder. The principal had objected to an editorial on black power.[3]

ITEM: In Indianapolis, Indiana, four high school students brought suit against school officials for prohibiting the distribution off school grounds of their non-school-sponsored publication that included the phrases "fuck up," and "fuck off"; a story that assigned points for the "number of freak girls screwed"; and a cartoon depicting the school principal sitting on a toilet in which a student had placed a bomb that exploded. It appeared with this

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[1]Montgomery County Student Allinace, "Wanted: A Human Education: An Urgent Call for Reconciliation Between Rhetoric and Reality: A Study Report on the Montgomery County Public School System" (Bethesda, Md.: Montgomery County Student Allinace, 1969), p. 9.

[2]Sullivan v. Houston Independent School Dist., 307 F. Supp. 1328 at 1331-1335 (S.D. Tex. 1969).

[3]Howard Bondy, interview, Flint, Michigan, September 17, 1974.

caption: "I may have gotten rid of the school, but I'm still eating the principal's shit."[4]

Each of these incidents includes a crucial issue involved in clearly defining the legal parameters within which scholastic journalists may exercise their constitutionally protected right to freedom of expression--specifically, the right to distribute literature on or adjacent to school property without prepublication censorship by school administrators. The assertion that first amendment guarantees apply to students in public schools received unequivocal support from the United States Supreme Court on February 24, 1969, when it declared, in Tinker v. Des Moines School Dist., that neither "students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[5] Tinker marked the first time the highest court in the land had agreed to hear a school discipline case in which the rights of high school students were juxtaposed to the

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[4]Brief for Appellant at 55, Jacobs v. Board of School Commissioners, 490 F. 2d 601 (7th Cir. 1973), 43 U.S.L.W. 4238 (U.S. Feb. 18, 1975).

[5]393 U.S. 503 at 505 (1969). The case will be discussed in detail in Chapter II. Tinker also has been cited in several suits upholding a teacher's right to distribute literature to each other in school. See Friedman v. Union Free School Dist. No. 1, 314 F. Supp. 223 (E.D.N.Y. 1970); Teachers Local 1021 v. Los Angeles City Board of Educ., 455 P2d 827 (1969). Cf. Pickering v. Board of Educ., 391 U.S. 563 (1968) (holding that a public school teacher could not be fired for criticizing a school tax proposal of the board of education in a letter to a local newspaper). See also James v. Board of Education of Central Dist. No. 1, 385 F. Supp. 211 (W.D.N.Y. 1974) (reversing school board's decision to dismiss a high school teacher who wore an armband to school as a passive protest of the Vietnam war). The scope of teachers' rights is not the focus of this study, except in cases where the teacher is the adviser to a scholastic publication.

interest of the state and its institutions.[6] The case concerned the suspensions of three high school students for wearing black armbands to school in a passive protest of the Vietnam war. The Supreme Court ruled that the armbands had not caused "material or substantial interference" with school decorum, and, as a form of pure speech, could not be suppressed by school authorities.[7]

On January 21, 1975, the United States Supreme Court affirmed its position that guarantees constitutional rights to students. In February and March of 1971 nine students in Columbus, Ohio, high schools were suspended for up to ten days during a racial demonstration in which the students demanded a black studies week in the city school system. In Goss v. Lopez the Court ruled that school officials may not suspend a student without first telling him why. The five-member majority concluded that once a state has guaranteed its residents free primary and secondary education, it cannot withdraw that right on grounds of misconduct without "fundamentally fair procedures to determine whether the misconduct has occurred."[8] As in Tinker,

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[6] In West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) the Court reversed an earlier decision by ruling a compulsory flag salute regulation violates a student's freedom of speech. But the case involved the limited interest of a religious sect as opposed to students in general, and, of course, also involved a state statute rather than a school regulation. Two other Supreme Court cases appear to suggest that the first amendment has been applied to schools for over fifty years. In Bartels v. Iowa, 262 U.S. 404 (1923) and Meyer v. Nebraska, 262 U.S. 390 (1923), the Court held unconstitutional a state's attempt to ban instruction in a foreign language. Neither of these cases, of course, dealt with the free speech issue presented in Tinker.

[7] Tinker v. Des Moines School Dist., 393 U.S. 503 at 509, 511.

[8] Goss v. Lopez, 43 U.S.L.W. 4181 at 4184 (U.S. Jan. 21, 1975).

the Court rejected in Goss the notion that a student cannot challenge a school administrator's assessment of a school-related incident.

Many school administrators, however, agree with Associate Justice Hugo Black, who argued that the Tinker decision ushered in "an entirely new era in which the power to control pupils by the elected 'officials of state supported public schools. . .' in the United States is in ultimate effect transferred to the Supreme Court."[9] Associate Justice Lewis C. Powell echoed Black's concern in his dissent in Goss by calling the Court's action an "unprecedented intrustion" into a routine disciplinary matter.[10]

Students in Court

A review of lower-court decisions before Tinker reveals the extent of the control local school officials wielded over their young subjects. And coupled with Tinker and its progeny, the legal cases reflect a fundamental change in the philosophy of public school discipline--from the Puritan system of strict discipline and respect for authority to the Madisonian system of inalienable rights, in which the civil rights of individuals are balanced against the interests of the state.[11]

The first significant case illustrating what one author calls "judicial diffidence towards local school matters" and reflecting

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[9] 393 U.S. 503 at 515 (Black, J., dissenting).

[10] Goss v. Lopez, 43 U.S.L.W. 4181 at 4187 (U.S. Jan. 21, 1975).

[11] Edward T. Ladd, "Regulating Student Behavior Without Ending Up in Court," Phi Delta Kappan 54 (January 1973): 305-306.

the "traditional American belief that education is a local concern which should be shaped and supervised by local officials,[12] arose in 1923 in Clay County, Arkansas. Pearl Pugsley, an eighteen-year-old high school girl, defied a school rule that prohibited "the wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics." Miss Pugsley, alas, appeared in school with talcum powder on her face and was promptly sent home. Although suggesting the school rule was inane, the Arkansas Supreme Court ruled for the school authorities:

> It will be remembered also that respect for constituted authority and obedience thereto is an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson.[13]

Unlike Tinker, the issue did not concern the relationship between the rule and the prevention of disruption or injury to others. The court simply decided that making and enforcing rules--it appears all rules--was within the discretion of the school officials. Significantly, the court did not decide on the wisdom of such rules. It was enough that a student had flouted a rule, had been disobedient, had undercut the cornerstone of education--the respect for authority.

This goal of education has been seen in several other pre-Tinker decisions. In Board of Education v. Purse, the Supreme Court of Georgia upheld the suspension of a child whose mother had criticized

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[12]Richard L. Berkman, "Students in Court: Free Speech and the Functions of Schooling in America," Harvard Educational Review 40 (November 1970): 568.

[13]Pugsley v. Sellmeyer, 250 S.W. 538 at 539 (1923).

the teacher in front of his class. The reasoning: to teach a lesson in respecting authority. "Public education which fails to instill in the youthful mind and heart obedience to authority, both private and public, would be more of a curse than a blessing,"[14] the court declared.

Preceding Tinker by sixty-one years, the Wisconsin Supreme Court in State ex rel. Dresser v. District Board allowed the suspension of two Wisconsin high school students who had submitted an upperclassman's poem satirizing school rules to a local weekly newspaper. The poem, the court said, ridiculed school discipline. By expelling the students, school officials demonstrated "an earnest desire to counsel, admonish, and discipline the pupils for their own good."[15]

Regulations prohibiting social fraternities in high schools also have received judicial support for keeping the melting pot of America boiling.[16] Similarly, to avoid disruption caused by "gross deviation from the norm,"[17] several grooming regulations banning long hair

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[14]Board of Education v. Purse, 28 S.E. 896 at 900 (1897).

[15]State ex rel. Dresser v. District Board, 116 N.W. 252 at 904 (1908). In a recent incident, a Racine, Wisconsin, high school principal, perhaps aware of the Dresser decision, confiscated his students' newspaper because it was "too pornographic." The editor of the Racine Journal-Times, perhaps also aware of the Dresser case, reprinted the controversial stories on rape, pregnancy, and contraceptives.

[16]See Burkitt v. School Dist. No. 1, 246 P.2d 566 (1952); Lee v. Hoffman, 166 N.W. 565 (1918); Robinson v. Sacramento City Unified School Dist., 245 Cal. App. 2d 378 (1966); Wilson v. Abeline Independent School Dist., 190 S.W. 2d 408 (1945). But see Wright v. Board of Education of St. Louis, 246 S.W. 43 (1922).

[17]Davis v. Firment, 296 F. Supp. 524 (E.D. La. 1967).

and facial hair on male heads have been upheld by state and federal courts. For example, in Michigan, the Attorney General has sanctioned local school board regulations on hair and dress standards.[18] Non-student longhairs also have fought hair regulations of the United States Marine Corps, police departments, fire departments, newspaper offices, and an Army base in Okinawa--where a rule embraced the male offsprings of military and Defense Department personnel.

The courts, incidentally, have not always shorn such policies from school conduct regulations. The following rule was recently upheld by a Federal District Court for the Northern District of Ohio:

> The boy's hair at the back and sides shall not be longer than one inch below the top of the collar measured at the midpoint of the back of the collar on a white short-sleeve Arrow Getaway dress shirt with the collar button buttoned.
>
> The boy's hair should not be more than two inches thick at its lowest point at the back or sides.
>
> Boys are not permitted to wear beards or moustaches. Sideburns should not be lower than the bottom of the ear. In the front the hair must be combed so that it is at least one inch above the eyebrows.[19]

The Student Protest Movement

The impetus that nourished the high-school student rights movement--and a concomitant denial of those rights by school officials[20]

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[18]Letter to Dr. John W. Porter, Superintendent of Public Instruction, from Frank J. Kelley, Attorney General, November 27, 1972. See also Harold Punke, Social Implications of Law Suits Over Student Hairstyles (Danville, Ill.: The Interstate Printer & Publisher, Inc., 1973).

[19]The Hillsdale Daily News, January 31, 1975, p. 5.

[20]A report by the New York Civil Liberties Union observed that in 115 selected cases of alleged student misconduct resulting in suspensions, the school board failed to comply with its own suspension regulations, thus denying students due process. In one instance, a

--has been frequently attributed to the civil rights movement of the early 1960s. College and university students, perhaps inspired by the youngest man ever to hold the office of President of the United States, joined the drive to bring equality for minority groups--and not incidentally to themselves. In 1964 Mario Savio led a protest that became known as the "Free Speech Movement." Thousands of students at the University of California at Berkeley rallied behind him. They contended the university could not dictate the constitutional rghts or restrict the political involvement of the student body. Meanwhile, Students for a Democratic Society marched for civil rights in the South. And as United States soldiers fell dead in the rice paddies of Southeast Asia, students at home took to the streets to protest their opposition to an undeclared war. Just as proms, cheerleaders, and booze parties had filtered down from colleges to high schools, so too did the outrage of college students.

According to Newsweek magazine, "6000 'incidents'--ranging from racial strife through political protests to arson attempts--" took place in schoolhouses from coast to coast in 1969 alone. A 1971 survey of 1,982 junior and senior high school principals revealed forms of protest had transpired in 67 percent of the country's urban and suburban schools and in 53 percent of the rural schools. School

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principal suspended a student for distributing literature, a right clearly established in writing in the NYCL's Student Rights Handbook. Another principal claimed the handbook incited students to exercise their rights. See Ira Glasser and Alan Levine, New York Civil Liberties Union Student Rights Project: Report on the First Two Years, 1970-1972 (Bethesda, Md.: ERIC Document Reproduction Service, ED 073 524, 1972), pp. 29-31.

regulations were the issues in one-third of these incidents; political or social events accounted for one-fourth; and curriculum, one-half.[21]

Louis Harris, a public opinion analyst, supported these findings. After interviewing 2,500 students, parents, teachers, and principals in 100 schools of varying sizes and geographical areas in 1969, Harris concluded:

> The key to what is going on among high school students today is that a majority clearly want to participate more in deciding their future. They are willing to be taught, but not to be told. They are willing to abide by rules, but they will not abide by rules which put them down. They are aware of the need for authority, but not impressed by it for its own sake.[22]

Tired of petty rules that stipulated no sideburns (in some cases unless one maintained at least a B average); no hemlines less than two inches above the knee; no shirt-tails hanging out; no hair over the eyes (girls included); no heel plates; no this and that, students simply became impatient. Some were only months or days from the military draft--or exile in Canada. Surely, the students argued, there must be a better way to teach them how to think. As if to thwart the discussion of these grievances, as well as stifle young minds, school administrators attempted to block communication channels in their schools by regulating the distribution of student literature--circulars, pamphlets, newspapers, and magazines--that criticized school rules and featured controversial political opinions, sometimes expressed in hostile, vulgar, or profane language. It was precisely

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[21]Dale Gaddy, Rights and Freedoms of Public School Students: Directions From the 1960s (Topeka, Kansas: National Organization on Legal Problems in Education, 1971), pp. 3-5.

[22]Life, May 19, 1969, p. 24.

here that socially conscious students challenged their superiors' written or unwritten policies. To what degree, they asked, can the sovereign power of the state regulate their freedom of expression in public schools? The question, some local school administrators answered, was absurd. Schools, they responded, may make any reasonable rule necessary to carry out the primary purpose of schools.[23] The extent that reasonable rules and regulations may abridge freedom of expression of students attending public schools, however, had never been clearly defined by state or federal courts. But Tinker was to provide the impetus for a considerable body of case law concerning the first amendment right of students to exercise their opinion in public schools.

The Scope and Methodology

In Tinker the Supreme Court emphasized that the compelling need of a state to educate its citizens must be balanced by the obligation of the state to protect, preserve, and teach first amendment rights.[24] Nowhere in the schools does this balance come more into

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[23]For example, the State of Michigan General School Law (1966), No. 340, Section 614 reads: "Every Board shall have the authority to make reasonable rules and regulations relative to anything whatever necessary for the proper establishment, maintenance, management and carrying on of the public schools of such district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or enroute to and from school."

[24]The first amendment to the United States Constitution reads: "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 of the right of the people peaceably to assemble and to petition the Government for a redress of grievances." It is made applicable to the states by the fourteenth amendment. Gitlow v. United States, 268 U.S. 652 (1925).

play than in the student distribution of literature near or inside the schoolhouse gate. Students are taught that a free and responsible press is the foundation of constitutional government, and that without reliable reporting of the affairs of both the governed and the governing, freedom would be at the mercy of rulers. They have seen this lesson sedulously inculcated by the recent press exposé of the insufferable misuse of governmental power known as Watergate.

When the high Court asserted in Tinker in February, 1969, that school officials, as agents of government, cannot deny students the first amendment guarantee of free speech, its intentions were not to limit that right to classroom discussion only.[25] The Court reasoned that an important part of the educational process is to teach students how to communicate, and that all communication channels--be they armbands or newspapers--must remain free from interference if the lesson is to be meaningful. Students must not only examine the principles of a free press in a democratic society, they must also practice those principles in school--"the marketplace of ideas."[26] To do otherwise would make a mockery of the lesson. Yet, my examination of court action since Tinker clearly indicates that school administrators have subjected student press rights to critical controls that serve only to chill those rights. Once more, the federal courts have been unable to agree on the constitutionality of these restraints on the student press.

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[25] Tinker v. Des Moines School Dist., 393 U.S. 503 at 512.

[26] Keyishian v. Board of Regents, 385 U.S. 589 at 603 (1967).

The major thrust of this study, then, is an examination and analysis of the body of law affecting the distribution of student literature[27] on or near public school property. The discussion begins with a detailed recounting of the events leading up to the landmark decision in Tinker, followed by an analysis of the decision. The case law resulting from subsequent student litigation and involving the confrontation between student journalists and school administrators follows the Tinker discussion. To supplement this case analysis, I have collected, where applicable, the revised distribution-of-literature regulations of school districts whose original rules were declared defective by the courts. The revised policies help to demonstrate the effect the court cases had on the students of schools involved in litigation. In some instances, the revised policies totally ignore the courts' decisions.

In addition, this study examines the developing case law involving faculty advisers of official school publications. The crucial issue here, as frequently with independent student journalists in public schools, is whether or not a school administrator can require journalism teachers or newspaper advisers to submit students' copy to school officials for approval prior to publication. The issue also concerns the adviser's responsibility, as viewed by school

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[27]Throughout this study, student literature refers to written material such as newspapers, periodicals, leaflets, and petitions. Underground newspaper refers to literature produced independently of the school by students or non-students. School-sponsored publications refer to student literature produced in the classroom or as an organized after-school activity with the assistance of a faculty adviser.

administrators, to counsel students against publishing articles that might be offensive, however defined. This body of case law is also unresolved; two of five cases, in fact, are in progress at this writing.

The conflict between student press and school administrators has arisen over three intertwining issues: (1) the propensity of school officials to review the content of student literature before it is distributed; (2) conflicting interpretations of "substantial disruption of or material interference with school activities";[28] and (3) content of the publications that school officials find objectionable. These issues are inseparable in the school setting. A school administrator, for example, will require review of a student publication before in-school circulation to determine if the content might cause material or substantial disruption. Students have challenged the constitutionality of such a regulation and others--both successfully and unsuccessfully-in federal district courts, courts of appeals, and the United States Supreme Court.

The discussion of the resulting forty-three decisions involving the student press produces a labyrinth of names, courts, issues, and decisions. Each case, considered separately, allows for understanding if not for disagreement. But when put into focus with forty-two other related cases, confusion often results. This discussion--a search for meaning and understanding of the body of scholastic press law--will concentrate on the leading cases and their progeny. The

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[27] Tinker v. Des Moines School Dist., 393 U.S. 503 at 514.

analysis of the case law develops the three related issues enumerated above: prior restraint, the Tinker disruption factor, and objection to specific content. Litigation involving prior restraint, the legal term for censorship, centers around written school regulations that authorize a school principal or his designee to approve the circulation of literature before its distribution. The Tinker disruption factor refers to a school administrator denying a student permission to circulate his literature on or near school property because he fears the literature will cause disruption either by the actual distribution or by the contents of the publication. Objectionable content in the case law refers to allegedly obscene or vulgar material, allegedly libelous statements, political opinion, critical comments of school personnel or school regulations, and sex education information--all of which cannot be separated from prior review and the Tinker disruption factor. Other issues, such as the constitutionality of rules prohibiting sale of student literature in school or of rules requiring the identity of all authors of student literature distributed in school, will follow.

In analyzing the case law, the major factor of disruption becomes the central force. As the discussion of the Tinker case will show, a school administrator can limit a student's right to freedom of expression in school when confronted with disruptive activities or the reasonable likelihood of disruption (predictive disruption). Many decisions in these cases therefore concern the courts' opinion of the judgment of school administrators in predicting disruption and thereby restricting the distribution of student literature in school. Other

decisions concern only the constitutionality of school rules that seek to regulate that distribution. Hence, the study is both an examination of school administrators' judgment in suppressing student literature as well as the courts' assessment of specifically written school rules. The common bond between these two areas is the obligation of school officials to protect students from disruptive conduct associated with the distribution of student literature. The case law will show that the courts have overwhelmingly rejected school officials' attempts--by written rules or by declaration--to deny literature distribution rights to student journalists. In case after case, the courts have found the school officials unable to justify their fears of disruption caused by the distribution of literature in school.

Most of the student literature involved in this litigation was published without official school approval. While these so-called underground newspapers comprise the bulk of the case law, it is important to note that judges generally do not distinguish between first amendment rights of independent student editors and school-sanctioned editors. In some cases, the underground editor seeks to gain equal distribution rights with his school competition. And in a few examples, those editors are in fact the same person. This amusing situation arises when school administrators or school newspaper advisers allegedly seek to control the content of official school newspapers, which may be a part of the school curriculum or an approved after-school activity. A significant outcome of the underground editor in court has been the freeing of some school-sponsored publications from administrative controls. Yet, in other instances, the legal battle has only served

to legitimize school domination of the dissemination of student opinion.

The differences are found in the various judicial interpretations of press rights of students since Tinker. This has arisen because, as of this writing, the United States Supreme Court has not ruled on the specific first amendment issues arising from litigation of high-school student publications, thus making its determination of the several issues, particularly prior review, the law of the land. The Court turned aside an opportunity to set such a precedent on February 18, 1975, when it vacated the lower court decisions in Board of School Commissioners v. Jacobs on a non-first amendment issue. The case involved the denial of distribution rights to a student underground newspaper in Indianapolis, Indiana.[29] Five of the eleven United States Courts of Appeals, in fact, have issued conflicting decisions on prior review policies. For example, the Seventh Circuit Court of Appeals, serving Wisconsin, Illinois, and Indiana, has ruled that prior review of student literature is impermissible. In doing so, the seventh circuit scorned a ruling by the Court of Appeals for the Second Circuit (New York, Connecticut, and Vermont) that favored a carefully delineated prior review procedure of student-distributed literature. Hence, the free-press rights of high school students are not equal in these six states.

The structure of the courts makes this possible. Each federal circuit court must follow the precedent set down by the United

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[29] Board of School Commissioners v. Jacobs, 43 U.S.L.W. 4238 (U.S. Feb. 18, 1975) (vacated per curium).

States Supreme Court. In the absence of a Supreme Court ruling on a particular issue, each circuit court of appeals interprets the law as it sees fit. The resulting decision is binding only on the federal district courts within the circuit (at least one), and not on other federal appeals courts and the district courts under their jurisdiction. In the absence of a federal appeals court ruling on a specific issue, the federal district courts, or trial courts, may rule independently of each other. Therefore, just as the Second and Seventh Circuit Courts of Appeals may differ on essentially the same issue, agreement among federal district courts also may vary if their common circuit court has not set a precedent on a particular issue. Also, a federal district judge or a panel of appellate court judges (minimum of three) may decide that the issue before the bench is sufficiently different from a likely precedent to enable them to rule independently.

Whatever their decisions, the major source of federal court opinions is the series of law books called the National Reporter System, a private company. Three parts of this series are essential to this study: the Supreme Court Reporter, the Federal Reporter, and the Federal Supplement Reporter. The Supreme Court Reporter reports decisions of the United States Supreme Court and is designated U.S. is footnote citations. The Federal Reporter, Second Series, includes the decisions of the eleven United States Courts of Appeals and is designated F. 2d. The Federal Supplement Reporter includes decisions of the United States District Courts and is designated F. Supp. in citations. Rather than footnote each of the several references to each case, I shall cite in the text only the first name

of the case and the page number; e.g., [Tinker at 509]. A complete citation to each case will precede the use of abridged citations. If the disscussion of a case refers to decisions by both the federal district court and the appellate court, I shall add F. Supp. to the former decision; F. 2d to the latter; e.g., [Tinker, F. Supp. at 971]. In the complete citation to a court decision, the number before the designated federal reporter refers to the volume; hence, Tinker v. Des Moines School Dist., 393 U.S. 503 means that the Tinker decision is found in volume 393 of the United States Reporter on page 503.[30]

Also it should be noted that student press law--with two exceptions--has been written by federal courts rather than state courts because it involves civil liberties. Such cases are guaranteed a federal forum by provisions of the Civil Rights Act of 1871.[31] (Students who violate criminal statutes, however, are exempt from invoking this Act.) While the right to a federal forum exists to provide uniform protection of federal rights, student press law, as

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[30]Because the decision in Board of School Commissioners v. Jacobs has not yet been published in the Supreme Court Reporter, the citation 43 U.S.L.W. 4238 refers to the United States Law Week.

[31]The Act reads: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress" (42 U.S.C. Section 1983). For a discussion of the enactment of section 1983 by public school students, see William Robert Smith, "Civil Rights Act of 1871 and Student Rights," in Frontiers of School Law (Topeka, Kansas: National Organization of Legal Problems in Education, 1973), pp. 173-181. For argument against a federal forum, see Egner V. Texas City Independent School Dist., 338 F. Supp. 931 (S.D. Tex. 1972).

I have indicated, is not exactly uniform among, as well as in, the eleven circuit courts of appeals.

Finally, in collecting the material for this study, I have written more than 150 letters requesting unreported case decisions, background material, unpublished articles, school publication rules, and statements from attorneys involved in student press litigation. Amazingly, I have received replies to almost every letter. Without this cooperation, this study would have been impossible. In addition, I have interviewed the attorneys representing the students in Board of School Commissioners v. Jacobs, the only high school press case to reach the Supreme Court. I also attended oral arguments for this case at the United States Supreme Court. Because the Court dismissed the case as moot on a non-first amendment technicality, the several issues this study seeks to present still await consideration by the highest court in the land.

CHAPTER II

TINKER v. DES MOINES SCHOOL BOARD

In March 1965 the United States had about 27,000 men in Vietnam, a country most high school students probably never had heard of a few years before. The Americans in Vietnam were acting as advisers and assistants in a war between North and South Vietnam. But by the end of 1965, the situation had dramatically changed. The United States had augmented its expeditionary force to include 184,314 men engaged in open warfare against North Vietnamese regular army units and Viet Cong guerrillas.[1] The draft of young men, many straight from their high school graduation parties, had increased from 8,000 to 40,000 a month.[2] In the South China Sea off the Coast of Vietnam, three United States aircraft carriers served as home bases to American bombers that relentlessly attacked strategic military targets in North Vietnam under the code name "Operation Rolling Thunder."

"Dateline South Vietnam" became as familiar to the consumers of news as "Dateline Washington." To many it was only a matter of time before the collapse of North Vietnam's will to fight. Indeed, engaging in a war ostensibly to save South Vietnam from communists'

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[1]Gerlad Gold, Allan Siegal, and Samual Abt, eds., The Pentagon Papers (New York: Bantam Books, Inc., 1971), pp. 343, 382-85.

[2]Facts on File, November 11, 1965, p. 415.

triumph had a familiar ring to it. Only twenty-four years earlier, the United States had entered the greatest war in the history of man to prevent totalitarian nationalism from conquering Western Europe. It succeeded in that goal. But Vietnam was not England or France. The domino theory of falling free nations failed to rally the spirit of the American public. The existence of soldiers of the United States fighting an undeclared war halfway around the world was the subject of intense public debate and controversy. On November 27, 1965, an estimated 15,000 to 25,000 persons ranging from pacifists to the far left marched around the White House to protest United States involvement in Vietnam and to urge negotiations. The March for Peace in Vietnam, as it was called, was initiated by the National Committee for Sane Nuclear Policy.[3] All around the country draft-eligible men--many college students--burned their registration certificates or notices of classification issued by the Selective Service System. The debate was eventually to divide the country and force a once popular President, Lyndon B. Johnson, who had promised a "Great Society" and a "War on Poverty," to shun a bid for reelection. Ironically, President Johnson, a Democrat, had run as a "peace candidate" in the 1964 presidential campaign, collecting 61 percent of the votes cast--the greatest percentage any president had ever received.[4] His Republican opponent was Senator Barry M. Goldwater of Arizona.

School children, of course, were not immune to the emotional and frustrating dialogue on what was called "the war in Vietnam," "the

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[3]New York Times, November 20, 1965, p. 1.

[4]Facts on File, December 10, 1964, p. 435.

war in Southeast Asia," and "the war in Indochina." Des Moines, Iowa, was no exception. In December 1965 a group of adults met at a local church to plan a peaceful demonstration in opposition to the war in Vietnam. Each decided to wear a black armband during the holiday season and to fast on December 16 and New Year's Eve. The armband was to mourn those who had died or were injured in the hostilities in Vietnam and to support Senator Robert F. Kennedy's proposal to extend indefinitely a proposed Christmas Day 1965 truce on the battlefields.

The children of the members of the group also decided to support the demonstration by wearing black armbands to their schools. The school administrators first learned of the student protest when a student journalist, Bryon Peterson, a senior at Roosevelt High School, called the director of secondary education to ask what he planned to do about students who wore armbands to school. Peterson was also seeking permission to write a story about the armband protest. Dr. E. Raymond Peterson (no relation to Bryon Peterson), director of secondary education for the Des Moines Independent School District, called an emergency session of the five high school principals and junior high school principals at Roosevelt High School for 7:30 a.m. on December 14, 1965. They denied the student journalist permission to run his story in the Roosevelt [High School] Roundup.[5] Bryon Peterson's

[5]Donald Haley, journalism teacher at Roosevelt High School, Des Moines, Iowa, interview, October 18, 1974, Chicago, Illinois. After meeting with Bryon Peterson, the student journalist, to inform him of their decision, the school principals, through the director of secondary education, Dr. E. Raymond Peterson reported: "We felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one." Tinker v. Des Moines School Dist., 393 U.S. 503 at 509.

answer to his question on school policy regarding the wearing of armbands to school came two days later, on December 16, 1965, in the following "special bulletin":

> NOTICE TO TEACHERS
> This is the procedure to follow in dealing with a student who chooses to wear any arm band to school. First, call the student aside and ask him to remove it and give it to you. Tell him it will be returned at the end of the day. Do not force him nor take it from him. If the student refuses to remove the arm band notify the office and send the student to the adviser at once.[6]

Once in the adviser's office, the student who refused to comply with the regulation banning the wearing of an armband would be suspended until he agreed to return to school without the armband.

On December 16, 1965--the same day of the release of the special bulletin--Mary Beth Tinker, a thirteen-year-old eighth grader at Harding Junior High School, and Christopher J. Eckhardt, a fifteen-year-old sophomore at Roosevelt High School, were suspended for wearing armbands. John Tinker, a brother of Mary Beth and a fifteen-year-old sophomore at North High School, was suspended for wearing and refusing to remove his armband on December 17, 1965. The Tinker youths' brother and sister, Paul and Hope, age eight and eleven, respectively, also wore armbands to their elementary school, but they remained in school. The suspended students were out of school until the holiday recess on December 20. They returned to their classes on Janaury 4, 1966, after the planned protest was scheduled to end. But on

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[6]The special bulletin was included in a letter from Mr. Haley to author on November 14, 1974.

January 3, the Des Moines School Board, at a crowded and emotional meeting, voted five to two to maintain the armband regulation.

Throughout the pre-court stage of the case--and until the final decision--the youths had the support of their parents. The father of the Tinker children, Leonard Tinker, was a Methodist minister without a church. He served as a regional peace secretary for the American Friends Service Committee (Quaker), a nonprofit corporation, founded in 1917, that seeks to reduce the causes and effects of violence and to foster a deeper community spirit among people throughout the world. Mrs. Elizabeth Tinker, a teacher, was later to earn a doctoral degree in education. Christopher Eckhardt's mother, Mrs. William Eckhardt, was president of the Des Moines chapter of the Women's International League for Peace and Freedom. The parents stressed that their children decided on their own to wear armbands as a matter of individual conscience.[7]

Following the unsuccessful negotiations between the Des Moines School Board and The Iowa Civil Liberties Union, representing the Eckhardts and Tinkers, to rescind the armband prohibition, the legal fight began, destined to reach the United States Supreme Court. On September 9, 1966, the United States District Court for the Southern District of Iowa refused to permanently enjoin Des Moines school authorities from enforcing their armband regulation. In Tinker v. Des Moines School Dist., 258 F. Supp. 971 (1966) the court ruled

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[7] Des Moines Tribune, undated clippling; St. Louis Post-Dispatch, February 25, 1969, p. 3-A; Tinker v. Des Moines School Dist., 393 U.S. 503 at 516 (1969).

the restriction was "reasonable" to prevent disruption in the Des Moines schools.[8]

> While the armbands themselves may not be disruptive, the reactions and comments from other students as a result of the armbands would be likely to disturb the disciplined atmosphere required for any classroom. . . . [It] is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear armbands on school premises, which is entitled to the protection of the law. [Tinker, F. Supp. at 973.]

Although the district court recognized that the wearing of armbands on school grounds for the purpose of expressing an opinion on the Vietnam war was a symbolic act of speech, requiring protection by the first amendment, it hastily explained that the speech section of the first amendment is not absolute.

> The abridgement of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgement of speech that actually occurs. "In each case [courts] must ask whether the gravity of the 'evil' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger" [footnote omitted]. [Tinker, F. Supp. at 972.]

In this instance, the district court considered the danger of possible disruption caused by exposing 18,000 students in the Des Moines schools to a two-inch band of black cloth worn on the sleeves of three

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[8]Named as defendants in the case were the seven members of the Des Moines Board of Education, Ora Niffenegger (board president), Mrs. Rolland Grefe, John Heyden, Merle Schlampp, Dr. George Caudill--all of whom voted to ban the armbands--Arthur Davis, and the Rev. L. Robert Keck--both of whom voted to lift the restriction. Also named were Dwight Davis, superintendent of schools; E. Raymond Peterson, director of secondary education; high school principals Charles Rowley of Roosevelt High School, Donald Wetter of North High School, Melvin Bowen of Lincoln High School, Gareld Jackson of East High School, Elmer Betz of Technical High School, and Chester Pratt of Harding Junior High School; Donald Blackman, vice-principal at Roosevelt High School; Velma Cross, girls' adviser at Roosevelt High School; Richard Moberly, mathematics teacher at Harding Junior High School; Vera Jarman, girls' adviser at Harding Junior High School; Leo Willadsen, vice-principal at Harding High School; and Ellsworth E. Lory, English teacher at North High School.

students as justification for abridging the symbolic speech. The court ruled that the responsibility of the school district to maintain a scholarly, disciplined atmosphere empowered the school officials to curtail the free speech activities of the Tinker and Eckhardt youths [Tinker, F. Supp. at 972].

The case was heard twice on appeal to the United States Court of Appeals for the Eighth Circuit. But in Tinker v. Des Moines School Dist. 383 F. 2d 988 (1967) the eight appeals court judges sitting en banc were equally divided, thus upholding the lower court decision. The United States Supreme Court agreed to review the case. On February 25, 1969, the Court reversed the lower court decision and held, by a vote of seven to two, for the students.[9]

In ruling that the Des Moines school authorities had violated the suspended students' first amendment rights, the Supreme Court in Tinker v. Des Moines School Dist., 393 U.S. 503 (1969) characterized the armbands as "pure speech" and "a silent, passive expression of opinion" [Tinker at 505].[10] The justices recognized the physical act

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[9]Chief Justice Earl Warren and Associate Justices William O. Douglas, William J. Brennan, Jr., Potter Stewart, Byron R. White, Abe Fortas, and Thurgood Marshall ruled for the students; Justices Hugo L. Black and John M. Harlan dissented.

[10]When the Supreme Court reported its decision in 1969, the Tinkers had moved to the St. Louis area. John Tinker was a student at the University of Iowa at Iowa City; Mary Beth attended a high school at University City, Missouri; Mrs. Tinker was pursuing a doctoral degree at the University of Missouri, St. Louis; and the Rev. Leonard Tinker was on his way to Paris to study the peace negotiations that were in 1973 to end the involvement of the United States in the war in Vietnam. Christopher Edkhardt was attending Mankato (Minnesota) State College; his parents had moved to a suburb of Toronto, Canada. Des Moines Tribune, February 24, 1969, p. 3.

of wearing an armband as speech as opposed to conduct usually within a school administrator's power to regulate, such as fighting. As speech, wearing of armbands was entitled to "comprehensive protection under the First Amendment. . . . It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" [Tinker at 506].[11] This was a significant admission, for the Court had earlier refused to classify another method of non-verbal protest (the burning of a draft card) as speech, preferring to regulate the "nonspeech" element of conduct.[12] In this case, the Supreme Court ruled that burning a draft card to protest the Vietnam war was conduct in violation of the Universal Military Training and Selective Service Act of 1948. The Act, as amended in 1965, provides that anyone who "knowingly destroys" or "knowingly mutilates" a registration certificate or notice of classification (both commonly called "draft cards") would be fined a maximum of $10,000, or imprisoned for a maximum of five years, or both. The Court declared that the 1965 amendment did not violate the first amendment because of the overriding interest of national security, as protected by the effective functioning of the Selective Service System.[13]

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[11] While Tinker determined that a child does not shed his constitutional protection in school, In re Gault, 397 U.S. 1 (1967), a juvenile court case, concluded: ". . . Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." One year later, the Supreme Court qualified this statement in Ginsberg v. New York, 390 U.S. 629 (1968), when it ruled that the State of New York could protect minors from obscene literature.

[12] United States v. O'Brien, 393 U.S. 367 (1968).

[13] Ibid., 376-377.

But as one authority on the first amendment explains, the Supreme Court has not clearly defined which conduct is acceptable as expression, having made only case-by-case decisions.[14]

In Tinker, the Court determined that wearing a black armband to exhibit disapproval of the Vietnam war was an exercise of freedom of expression and set about to rule on the resulting conflict: "Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities" [Tinker at 507]. That is, when can school administrators supersede a student's right to freedom of expression in an effort to control conduct?

In deciding the answer, the Supreme Court borrowed heavily from another student rights case involving the first amendment, Burnside v. Byars, 363 F. 2d 744 (1966). The Court of Appeals for the Fifth Circuit had ruled that school officials at Booker T. Washington High School in Philadelphia, Mississippi, could not prohibit students from wearing "freedom buttons" inscribed with "One Man One Vote" around the perimeter with "SNCC" in the center [Burnside at 746-747]. SNCC, the Students Non-Violent Coordinating Committee, was a civil rights organization that sought to register black voters in the South. The principal had instituted the ban in September 1964, after a few students wore the buttons to school. He justified the rule as a disciplinary rule promulgated because the buttons had no "educational value," would "cause commotion," and would disturb the

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[14]Thomas I. Emerson, The System of Freedom of Expression (New York: Random House, 1969), pp. 79-81, 292-298.

school program. About forty students defied the rule. They appeared in school the day after the principal had announced the rule, sporting the one-and-one-half-inch button on their shirt collars. The principal gave each student a choice of removing the button or being sent home. Most students elected to go home, and they were suspended from school for one week. Three students appealed to the court for judicial relief.

The appeals court, in ruling the regulation had violated the students' first amendment rights to communicate an idea silently, warned school administrators that they cannot ban expressions with which they do not wish to contend. And then the fifth circuit panel set down a standard that was to become the foundation of the Tinker decision three years later. The appellate court ruled that school officials must not interfere with a student's right to freedom of expression where the exercise of such expression in school does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" [Burnside at 749]. Unable to document commotion or disruption in the school caused by the freedom buttons, the Washington High School administrators could not ban the buttons or suspend the students for wearing them. They could do so, the court said, only if school "decorum had been so disturbed by the presence of the 'freedom button'" [Burnside at 748].

But in a companion case decided on the same day, the same three-judge panel of the fifth circuit upheld school authorities at Henry Weathers High School in Rolling Fork, Mississippi. As in

Burnside, the school administrators had banned SNCC buttons in school following a disturbance concerning the buttons by students who were supposed to be in class. During ensuing days in February 1965, several hundred students assembled in school wearing the buttons. They caused commotion when forcing others to wear the buttons. School officials informed the students not to return to school wearing the buttons or face suspension. Ignoring the orders, the students wore the buttons in school the next day and were suspended. In gathering their books to return home, the suspended students generally interfered with school activities. Some urged other students to leave school with them. This time the fifth circuit ruled that the "lack of order, discipline and decorum" accompanying the wearing of the freedom buttons justified the regulation [Blackwell v. Issaquenna County Board of Education, 363 F. 2d at 749-754 (1966)].

In Tinker, the Supreme Court could find no disruption associated with the presence of armbands in school to warrant the students' suspension. Borrowing from the language in Burnside, the Court ruled:

> Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements for appropriate discipline in the operation of the school," the prohibition cannot be sustained. [Tinker at 509.]

The justices also concluded that the school administrators sought only to prohibit a particular opinion--opposition to the Vietnam war--by instituting their armband regulation. The Court heard evidence that showed the Des Moines school officials had tolerated other symbols of political or controversial expression, such as political campaign buttons and the Iron Cross associated with Nazism, and

observed that the prohibition of expression of one particular opinion without evidence that it is necessary to avoid "material and substantial interference with schoolwork or discipline is not constitutionally permissible" [Tinker at 511].

The Court added, however, that school authorities may prohibit symbolic expression if they predict, or forecast, disruption even though no disruption in fact occurs. They will not be required to wait for de facto interference with school operations--a step beyond Burnside v. Byars, where the Court of Appeals for the Fifth Circuit required a showing of disruption before permitting infringement of speech.[15] But to justify the curtailment of student speech school administrators must be prepared to produce evidence in court that such action is based on "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view" [Tinker at 509]. The Court elaborated: ". . . In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. . . . But our Constitution says we must take this risk" [Tinker at 508].

This was another significant departure from the lower court ruling, which had held that the Des Moines school officials had "reasonably" anticipated disruption [Tinker, F. Supp at 973]. By shrouding both predictive and de facto disruption and interference in

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[15]The fifth circuit later dropped its requirement of de facto disruption before a school administrator could curtail a constitutionally protected right. See Ferrell v. Dallas Independent School Dist., 393 F. 2d 697 (1968).

first amendment robes, the Supreme Court was encouraging judicial review of school authorities' assessment of the facts leading to their decisions and regulations concerning free speech. Rather than rely on a school's fact-finding procedures in first amendment issues, the Supreme Court had allowed a new review of the facts for its determination. Because a school's assessment of disruption might involve an impartial tribunal, relying on the educational philosophy of the particular administrators, such a decision might be highly discretionary and therefore would require an independent analysis by the court.[16] In Tinker, the Court's review of the facts of the case differed sharply from the determination by the Des Moines school administrators. The Court overrode the opinion of the school authorities (as well as the district court) on the degree of disruption threatened by Mary Beth and John Tinker and Christopher Eckhardt.

Despite the Supreme Court's decision in 1969, the new director of secondary education for the Des Moines school district was not convinced. He argued that school authorities actually had feared disruption as a result of the presence of the armbands, because of the prevailing "social and economic upheaval."[17] Trial court testimony had revealed that the armbands did provoke some students to poke fun at the plaintiffs and that Mary Beth Tinker had disrupted her

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[16]Sheldon Nahmod, "First Amendment Protection for Learning and Teaching: The Scope of Judicial Review," Wayne Law Review 18 (September 1972): 1486-1487.

[17]Richard P. Klann, "The Tinker Case: A Principal's Views Two Years Later," National Association of Secondary School Principals Bulletin 55 (February 1971): 71.

mathematics class, according to the teacher. The journalism teacher at Roosevelt High School also said in an interview that a few students had threatened "to get those white softies" if they wore armbands to school.[18] Even the attorney for the students later admitted that a few disruptive incidents had occurred in the schools that were related to the armbands.[19]

The Supreme Court, however, ruled that the Des Moines school officials did not adequately meet the burden of proving the likelihood of substantial disruption as a result of the armbands. It was a significant point for the plaintiffs. Their attorney later recalled that his strategy before the Supreme Court was to shift the burden of showing why the students should not have worn the armbands from the students to the school district. He wanted to prove that the students had been suspended from school for expressing a political point of view. Once this was established, he believed the Supreme Court would require the school district to show some purpose for its action that overrode the students' right of free speech.[20] His strategy worked. And as one commentator on students' rights has written, this shift of burden from student to administrator represents a major development in school law. He explained that the shift does not mean that school officials cannot act to prevent disruption;

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[18]Donald Haley, interview, October 18, 1974, Chicago, Illinois.

[19]Dan L. Johnston, "The First Amendment and Education--A Plea for Peaceful Coexistence," Villanova Law Review 17 (June 1972): 1025.

[20]Ibid.

rather, that the courts would no longer leave unchallenged an administrator's word that disruption will take place absent a given rule, regulation, or procedure.[21]

The failure of the Des Moines schools to meet that burden irritated Associate Justice Hugo Black. In a lengthy and often vitriolic dissent, the eighty-two-year-old associate justice wrote:

> This case . . . subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest students. . . . I wish therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent. [Tinker at 518, 526.]

Justice John M. Harlan, who cast the other dissenting vote, thought the burden of showing that "a particular school measure was motivated by other than legitimate school concerns belonged to the students, not the school administrators" [Tinker at 526]. Justices Black and Harlan, as well as Principal Klann, did not approve of the Court tinkering with in loco parentis (in place of the parent), the doctrine that holds that parents delegate absolute control of their children to school authorities while their children are in school.[22] The Tinker decision, of course, represents a major step away from

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[21] Stephen R. Goldstein, "Reflections on Developing Trends in the Law of Student Rights," University of Pennsylvania Law Review 118 (February 1970): 617.

[22] For a detailed discussion of in loco parentis, see Alan Levine et al., The Rights of Students: The Basic ACLU Guide to a Student's Rights (New York: Avon Books, 1973), pp. 9-12; and Stephen R. Goldstein, "The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis," University of Pennsylvania Law Review 117 (January 1969): 377-84.

the doctrine of in loco parentis, once considered absolute--recall the suspension of Pearl Pugsley in 1923 for wearing facial powder. But the Tinker rationale applies only to passive expressions of opinion. In addition, by discouraging suppression of unpopular views solely to avoid possible disruption that might accompany that view, the Court took a firm stand against suppressing minority opinions. This problem in schools had been sharply put into focus by a judge in the Fifth Circuit Court of Appeals. In a dissenting opinion, the federal judge wrote that school officials had suspended students who wore long hair because they feared other students would disrupt proper school decorum if the long-hairs had remained in school. The judge concluded that school officials should prohibit the acts of the presumably short-haired students who threatened disruptions, "not the expression of individuality by the suspended students."[23] This opinion, if supported by school administrators, would buoy the free marketplace of ideas by protecting the right of the minority to be heard.

The Court not only sought to protect the expression of minority views from suppression by unruly students but also sought to free student communication from those "sentiments" that are officially approved by school administrators. As Justice Abe Fortas wrote for the majority in Tinker:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as

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[23] Ferrell v. Dallas Independent School Dist., 392 F. 2d 697 at 706 (1968) (dissenting opinion).

> out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect just as they themselves must respect their obligations to the State. [Tinker at 511.]

Here was a crippling shot at in loco parentis.

The Court, however, did not set down any guidelines for determining the degree of disruption that it would classify as "material or substantial." Furthermore, it did not indicate how a school principal might be able to forecast material and substantial disruption. For example, the Tinker decision suggests that such a forecast need only be "reasonable." After reviewing the facts of the case, particularly for evidence of disruption caused by the wearing of the armbands, the Court concluded: ". . . The record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption or a material interference with school activities. . . ." [Tinker at 514.] Lacking here are standards to test the validity of the forecast.

Tinker also fails to distinguish between disruption caused by, or likely to be caused by, a student's actual incitement of others to lawless action as opposed to mere advocacy of lawless action unaccompanied by disruption. This important distinction was discussed by Judge Anthony J. Celebrezze in his dissent in Norton v. East Tennessee State University.[24] Celebrezze said school officials should be required to produce unmistakable evidence that literature provoked readers to violate the law rather than simply advocated the

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[24] 419 F. 2d 195 (6th Cir. 1969), cert. denied, 399 U.S. 906 (1970).

breaking of a law [Norton at 208-212]. He was relying on a case in which the United States Supreme Court held that the Constitutional guarantees of free speech and free press prohibit a state to forbid advocacy of the use of force or the violating of a law except in instances where such advocacy is directed at producing "imminent lawless action" and is likely to produce such an action.[25] In a school setting the latter requirement would place additional emphasis on school administrators to prove conclusively that a student's urging his peers to break a school rule creates a situation in which students actually break school policies and disrupt the school, or at least creates a climate in which such disruption is imminent. This view holds that without substantial evidence to buttress this fear, a school administrator should not be upheld in court for curtailing speech or printed expression that advocates illegal action.

For those who believe that the educational process associates deviation from the norm with disobedience, Tinker is a welcomed antidote. The Court has declared that, in effect, education must be democratic if it is to impart to students the democratic conception of an enlightened citizenry possessed of the critical powers required to sustain a democracy. Unlike Justice Black, who viewed the first amendment in students' hands as a potential source of disruption, the Tinker majority ruled that the nation's schools must practice what they preach. They must allow students to demonstrate what they have learned in school by action as well as by examination.

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[25] Brandenburg v. Ohio, 395 U.S. 444 at 447 (1969).

The Tinker ruling protects the expression of minority views within the schoolhouse walls. Its intent is to force school administrators to tolerate individual differences in thought and expression rather than demand a respect for and adherence to their views as school officials. As one commentator succinctly stated, Tinker attempts to "separate out for protection the elements of freedom to disagree from the imperatives of school discipline."[26] Finally, Tinker asserts that a student may exercise his rights not only in the classroom but anywhere on school grounds--as long as his actions do not materially and substantially disrupt achool activities or invade the rights of others.

The affect of Tinker on the student press--official and unofficial (or non-school-sponsored)--demonstrates the need for constitutional support of scholastic journalists. Following the Tinker decision in February 1969, a plethora of cases involving the distribution of student literature in or near schoolhouses made their way to courthouses. My analysis of these cases reveals that school administrators involved either did not understand Tinker or ignored the case, as well as advice from their professional association's chief legal counsel. In 1969, shortly after the Tinker decision was reported, The National Association of Secondary School Principals published The Reasonable Exercise of Authority, written by Robert L. Ackerley. In recommending guidelines for school administrators

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[26]Richard L. Berkman, "Students in Court: Free Speech and the Functions of Schooling in America," Harvard Educational Review 40 (November 1970): 581-85.

to follow concerning ten issues of student conduct, Ackerley wrote:

> Freedom of expression cannot legally be restricted unless its exercise interferes with the orderly conduct of classes and school work. . . . Requiring prior approval of a specific button or piece of literature is probably impractical and in all likelihood, would be ruled too restrictive. . . .[27]

The extent to which the federal courts have applied Tinker to student literature cases--as well as the extent to which school officials ignored the Tinker ruling--is crucial to this study.

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[27] The Reasonable Exercise of Authority (Washington, D.C.: The National Association of Secondary School Principals Association, 1969), pp. 7-9. See also Robert L. Ackerly, "Reactions to 'The Reasonable Exercise of Authority,'" The Bulletin of the National Association of Secondary School Principals 55 (February 1971): 1-12.

CHAPTER III

PRIOR REVIEW POLICIES IN PUBLIC SCHOOLS

The Doctrine of Prior Restraint

The first amendment to the United States Constitution guarantees a press free of prior restraint, or censorship in advance of publication or distribution--except for the most compelling reasons. This guarantee, however, does not prevent punishment of unlawful content after publication. The compelling exceptions to an otherwise absolute position against any prior restraint did not emerge until this century. In 1931 the United States Supreme Court declared that it would not prohibit prior restraint in every instance. In Near v. Minnesota, 283 U.S. 697, the Court struck down a Minnesota statute that sought to censor obscene, lascivious, malicious, scandalous, and defamatory content from newspapers and periodicals. Writing for the five-man majority, Chief Justice Charles Evans Hughes declared that the statute was an unlawful prior restraint of the press. The decision, however, sanctioned prepublication censorship only in "exceptional cases," such as interference with the conduct of war, obscenity, and incitement to violence [Near at 717]. Scholars have since debated the frailties of the absolutist position against any prior review.

The critical issue surfaced again in 1971 in an historic confrontation between press and government. On June 13, 1971, as the agonizing war in Vietnam continued to rouse public protest, the New

York Times began to publish a classified government report, "The History of U.S. Decision-Making Process on Vietnam." The Pentagon papers, as the report has since been known, had been leaked to the Times by Dr. Daniel Ellsberg, one of thirty-six authors of the forty-seven volume report. Two days later, the Court of Appeals for the Second Circuit, ruling on an appeal from the Justice Department, ordered the Times to cease publishing its daily installments. The Times thus became the first newspaper in the history of the United States to be enjoined by the federal government from publishing information the editors considered the public had a right to know.[1] But on June 30, 1971, the Supreme Court of the United States ruled 6 to 3 that the government had failed to justify its injunction, which it claimed was necessary to protect the national security; hence, the injunction was an unconstitutional prior restraint of the press [New York Times Co. v. United States, 403 U.S. 713 (1971), per curium]. The Court also upheld the refusal of the Circuit Court of Appeals for the District of Columbia to order the Washington Post to stop publishing its installments of the Pentagon papers.[2]

Although the Times and Post had prevailed, the absolutist position against any prior restraint of the press was again badly

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[1]For a detailed examination of clash between press and government over the Pentagon papers, see Columbia Journalism Review for September/October 1971.

[2]Other papers to publish slices of the Pentagon papers were the Boston Globe, the Los Angeles Times, the Knight newspaper chain, the Chicago Sun-Times, the St. Louis Post-Dispatch, the Christian Science Monitor and Newsday. Of these papers, only the Boston and St. Louis papers were enjoined from publishing additional installments.

shaken. In the justices' separately written opinions, five indicated they would make exceptions to the doctrine against prior restraint, such as national security, but only if evidence supported such action.[3] This opinion was emphasized in the Court's unsigned decision (per curium), which declared that under any attempt to impose prior restraint, the government must bear the heavy burden of justification [New York Times at 713].

As confirmed in Tinker, any attempt to limit or restrict student expression in public schools bears the equally heavy presumption of its invalidity. It is ironic, then, that the most ignoble of all restraints of expression, prior review, has acquired its license from Tinker. In justifying a system of prior review inside the schoolhouse gate, the federal courts have ruled that school officials have authority to establish reasonable rules to control student conduct. These rules enable a school administrator to forecast a reasonable connection between the content of literature distributed in school and the Tinker disruption factor--material and substantial interference with school activities. For this reason the courts have allowed school officials to read and approve written material before its distribution on or near school property. The courts also have sanctioned prior review regulations to remove libel and obscenity from student literature

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[3]Justices Hugo Black, William O. Douglas, Byron R. White, Potter Stewart, William J. Brennan, Jr., and Thurgood Marshall voted against continuing the restraining order. Justices Stewart and White joined dissenters Warren E. Burger (chief justice), John Harlan, and Harry A. Blackmun in allowing prior restraint for only the most compelling of reasons.

distributed on school property, a reason that does not necessarily relate to the Tinker disruption factor.

Court Approval of Prior Review Policies in Public Schools

Specifically written prior review policies have appeared for judicial scrutiny in fifteen cases, involving seven federal courts and one state court. Six decisions--including one ruling vacated by the United States Supreme Court--categorically rejected such policies on their face. In the remaining cases, including decisions in four different United States Courts of Appeals, the courts have approved of the doctrine of prior review in public schools, but rejected specific policies because they failed to include adequate clearance procedures. (See Appendix A, p. 159, for a list of all cases involving written prior review regulations in public schools.) I shall begin this discussion with cases in which the courts have given approval to a system of prior review in public schools.

Second Circuit Court of Appeals

In the leading case approving prior review in public schools, Eisner v. Stamford Board of Education, 440 F. 2d 803 (2nd Cir. 1971), administrators at Rippowam High School, Stamford, Connecticut, prohibited a group of students from distributing in school the fourth issue of the students' privately mimeographed newspaper, the Stamford Free Press. The first three issues had been distributed off campus without incident. School officials invoked a vague prohibition against "using pupils for communications" to ban in-school distribution. No specific regulation controlling distribution of student

literature was then (1969) in effect. After the students filed suit on June 23, 1969, the Stamford Board of Education promulgated a specific regulation that required school administrators to approve all student literature before it could be distributed in school. (See Appendix B, p. 162, for copy of policy.) This rule then became the contention in the litigation. The case did not concern the content of the Stamford Free Press.

The judge for the federal district court of Connecticut ruled the school board's distribution of literature policy constituted a "blanket prior restraint" and ordered the board to devise a reasonable regulation that would encourage--not suppress--peaceful channels of student protest [Eisner, 314 F. Supp. 833 at 836 (D. Conn. 1971)]. On appeal, the Second Circuit Court of Appeals affirmed, but for reasons that totally emasculated the district court's decision. The three-judge panel ruled for the students only because the challenged regulation failed to include an "expeditious review procedure" that would "obviate the dangers of a censorship system" [Eisner, F. 2d at 806, 810]. The appellate court instructed the Stamford Board of Education to consider the following when amending its distribution of literature policy:

1. the extent and circumstances under which the school board would permit school authorities to suppress criticism of their own actions and policies;
2. the manner in which school authorities will attempt to mitigate potentially disruptive reaction to the

distribution of controversial opinions before they prohibit those opinions from the schoolhouse;

3. the degree of disruption that will justify censorship; and
4. the location in school appropriate for students to distribute approved material [Eisner at 809].

Each of these issues strikes at the very essence of this study, yet, in fact, the appellate court was to require the new prior review policy to establish only:

1. a definite and brief period within which school officials must review and decide upon submitted literature; and
2. the manner in which and the person to whom the literature is to be submitted [Eisner at 810-811].

This is what the panel referred to as the "expeditious review" procedure it found lacking in the prior review policy of the Stamford school board. The other four critical considerations, which would help mitigate the danger of abusive use of prior review, were left only for consideration. The court, however, also declared that school officials could require prior review only when students plan a "substantial" distribution of written material [Eisner at 811]. Substantial was not defined. Commenting favorably on the contested policy, the court said it was "narrowly drawn to achieve its permissible purposes, and indeed may fairly be characterized as a regulation of speech, rather than a blanket prior restraint" [Eisner at 808]. The "permissible purposes" presumably intended for protection were the education of public school students and the prevention of disruptive

conduct in the schools. The second circuit also emphasized that since the regulation did not affect off-campus distribution, students who chose not to submit literature for prior review could not be denied their "marketplace." Finally, the court's outline of procedural safeguards, to be called the Eisner standard, was based on Freedman v. Maryland, 380 U.S. 51 (1965), a case that approved regulation of obscenity in films.

The revised prior review policy regulating the distribution of literature in the Stamford Public Schools includes the two required stipulations, but does not include items one, two, and three of the Eisner court's concerns listed on pages 44-45. Item four, concerning the place of distribution, is so broadly written as to leave the students to guess at its meaning. (See Appendix B, p. 162, for a copy of the revised rule.) The new rule, however, allows the school administrators up to two days to determine whether or not to approve and release literature for distribution. This restriction, of course, effectively limits the timeliness of news intended for immediate consumption.

The language of the original distribution policy, and carried in the revised policy, also prohibits written material that will materially and substantially interfere with school operations. This recalls the language in Tinker, of course, but the Second Circuit Court of Appeals dismissed the problem of its interpretation by declaring its faith in the Stamford school board: "We assume that the Board would never contemplate the futile as well as unconstitutional suppression of material that would create only an immaterial disturbance"

[Eisner at 808]. Apparently, the panel had forgotten why the students at Rippowam High School had challenged the school regulation sixteen months earlier.

Fourth Circuit Court of Appeals

The Eisner ruling gained support when the Court of Appeals for the Fourth Circuit approved its standard. On November 19, 1970, six months after Eisner, Charles Quarterman, a tenth-grade student at Pine Forest Senior High School near Fayetteville, North Carolina, received a ten-day suspension for his failure to comply with the school's prior review regulation. (See Appendix B, p. 163, for a copy of the rule.) Two months after his return to school, he again distributed his underground newspaper in violation of the regulation and received a second ten-day suspension. After the Federal District Court for the Eastern District of North Carolina refused to grant an injunction, Quarterman successfully appealed to the fourth circuit bench, which proceeded to rule that the Pine Forest prior review policy was procedurally deficient. In Quarterman v. Byrd, 453 F. 2d (1971), the appellate court extended the Eisner standard for acceptable prior review policy by ruling the school's prior review policy must include precise criteria for school officials to follow in determining whether or not to grant or deny students permission to distribute written material. This was suggested, not required, in Eisner. The fourth circuit took an additional step beyond Eisner by requiring prior review regulations to include an "expeditious review procedure," which would allow students a prompt appeal of a school administrator's decision [Quarterman at 59].

Although the student prevailed in this suit, the case legitimatized prior review of student literature in the fourth circuit. Oddly enough, however, students at Pine Forest Senior High School do not at this writing labor under any system of prior review, for the school board did not write a new distribution policy to replace the voided regulation.[4]

The fourth circuit affirmed its Quarterman decision two years later in Baughman v. Freienmuth, 478 F. 2d 1345 (1973). Students at Winston Curchill High School in Montgomery County, Maryland, just outside Washington, D.C., filed suit on December 3, 1969, after their principal refused to grant them permission to distribute literature that ironically criticized the school's prior review regulation. (See Appendix B, p. 164, for a copy of this policy.) Once again, the students won the court battle but lost their war against prior review in the fourth circuit. As in Quarterman, the panel struck down the regulation for its failure to include criteria school administrators were to follow in granting or denying permission, as well as an appeal procedure. The panel also cited a defect not reported in Eisner or Quarterman: the policy failed to set down action students should follow if the administration failed to act within a brief review period [Baughman at 1348]. Finally, the court followed Eisner in ruling the policy invalid because it did not define "distribution" and its application to different types of literature [Baughman at 1349].

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[4]Harold K. Warren, principal, Pine Forest Senior High School, Fayetteville, North Carolina, to author, May 20, 1974.

This decision is also significant because it cautions school authorities to avoid using prior review to censor content they disagree with as opposed to requiring prior review only to regulate expression beyond first amendment protection. Although the Baughman panel would approve a procedurally sound prior review policy, it suggested school officials administer only post-publication sanctions against students whose expression is not constitutionally protected: "We think letting a student write first and be judged later is far less inhibiting than vice versa" [Baughman at 1350].

The Montgomery County Board of Education clearly received this message from the fourth circuit, for its revised court-ordered distribution policy does not require students to seek administrative approval to circulate non-school-sponsored literature. The new policy merely urges students to seek advice from school officials. (See Appendix B, p. 164, for a copy of revised rule.) It is difficult to explain why a school district would spend time and money to defend a policy that in effect receives court approval, only to write a new policy that would have made the legal battle inoperative in the first place. The explanation, however, emerges from the legal debate: school officials cannot suppress student literature only because they disagree with its contents or fear community repercussion as a result of its distribution. Without court sanction for this type of censorship, school officials have little or no reason for prior review.

The Court of Appeals for the Fourth Circuit will have an opportunity to review both its Quarterman and Baughman decisions in Nitzberg v. Parks, appeal docketed, No. 7Y--1839, 4th Cir., June 13,

1974. Here officials at Woodlawn High School in Baltimore, Maryland, banned student distribution of an allegedly obscene publication, the Woodlawn Lampoon, because a story referred to the school cheerleaders as "sex objects." The editor of the Lampoon and the editor of a second paper affected by the ban filed suit against the Baltimore County Board of Education, charging pre-publication censorship. The United States District Court for the District of Maryland, in an oral opinion on May 13, 1974, denied an injunction. But following Baughman, the court ordered the school board to revise its distribution policy so as to define obscenity and libelous material to conform with constitutional standards. Also, the judge ruled that the board's prior review provision was acceptable only if accompanied by "narrow, objective, and reasonable standards by which material can be judged."[5] After rejecting two different revised standards, the judge affirmed a third set on May 20. The new regulation permits censorship of all student publications for libelous and obscene material (defined) and for information that would "disrupt school functions." It does not, according to the student plaintiff, set down procedural safeguards required in Quarterman and Baughman.[6] These regulations, now in effect in the Baltimore County school system, are therefore on appeal for unconstitutionally permitting prior restraint of high school publications.

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[5] Press Censorship Newsletter No. V, August-September 1974, pp. 27-28.

[6] Ibid.

State Court v. Federal Court

Prior review in public schools won another court victory in Egnar v. Texas City Independent School Dist., No. 109 670, 56th Dist. Ct., Galveston County, Tex. (June 9, 1972). But once again, the specific policy was found procedurally defective for lacking criteria for determining whether to grant or deny permission to distribute written material, as well as the procedural safeguard for review of an administrator's decision. The history of the case, however, distinguishes it from all other cases in this study.

Richard E. Egnar was suspended for five days for distributing a pamphlet, which he had helped to publish, during a bus trip with the school band. He did so without seeking the approval of the school principal, as school policy required. (See Appendix B, p. 166, for a copy of the rule.) Upon suspension, he filed suit in a state court rather than a federal court under provision of the Civil Rights Act of 1871, section 1983. The school district, however, removed the case to the Federal District Court for the Southern District of Texas, and the student countered with a suit to return the case to the state court. The district court held that the school district must avail itself to the state court under the requirement of exhaustion of state remedies. The court explained that the State's interest in the instant case overrode all other factors and scolded the school district for "judge-shopping." "The times must indeed be out of joint when an agency of the state flies headlong into a federal court in order to avoid subjecting itself to a federal constitutional adjudication in a court of its own State" [Egner [sic Egnar] v. Texas City

Independent School Dist., 338 F. Supp. 931 at 944-945 (S.D. Tex. 1972)]. Hence, Egnar stands alone as the only case in this study in which the doctrine of judicial abstention was applied to a case citing infringement of first amendment rights.

The Galveston County Court later found the school district's prior review policy "invalid on its face" for failing to provide the requisite procedural safeguards and ordered the school district to expunge the student's suspension from his school record. The judge also ordered the Texas City school board to formulate a procedurally sound policy of prior review and submit it to Egnar's attorney for approval. (See Appendix B, p. 166, for a copy of the revised rule.) The new policy regulating the distribution of literature in Texas City schools fulfills the Eisner standards and includes an appeals procedure first required in Quarterman. The code also includes a provision that bans distribution of material that fails to identify individual authors, editors, and publishers. (The issue of anonymity will come under discussion in Chapter VI.)

Fifth Circuit Court of Appeals

On the same day the Galveston County court released its Egnar decision, the United States Court of Appeals for the Fifth District handed down a decision that voided another Texas school district's prior review policy. In Shanley v. North East Independent School Dist., 462 F. 2d 960 (1972), the fifth circuit rejected the school board's prior review policy for failing to conform minimumly to the Eisner standard. (See Appendix B, p. 168, for a copy of the policy.)

The school principal at MacArthur High School in San Antonio had suspended five students for circulating their underground newspaper before and after school and off but near school grounds. The principal had objected to a statement in the students' publication, the Awakening, advocating a review of marijuana laws and another statement offering information on birth control. Following an unsuccessful appeal of the principal's decision to the school board, the students filed suit. The federal district court, however, denied the students' request to stop the school board from prohibiting distribution of the Awakening off campus outside school hours and also to remove the grades of zero each had received during their three-day suspensions. On appeal, however, the fifth circuit court granted the students' request [Shanley at 964-967].

In a lengthy decision, the appellate court panel flatly rejected the school officials' attempt to control student conduct off school property and outside regular school hours, stating, "the width of a street may very well determine the breadth of a school board's authority" [Shanley at 974]. The court respectfully reminded school officials in San Antonio that student offensives committed off campus are punishable only by the authority in whose jurisdiction the misconduct occurred. Thus, if the Awakening, for example, had incited a riot, the students distributing the paper would be subject to criminal law of the city, not of the school district. Because the distribution of the Awakening was peaceful, the judge then ruled the students' suspensions unlawful and ordered any zeros removed from the students' records. However, the court did not enjoin the school

board from banning circulation of the Awakening off campus under "any and all circumstances" [Shanley at 974]. It did not elaborate.

The appellate court then turned its attention to the school rule that the five students allegedly had violated, and firmly rejected it for failing to meet the Eisner standards of prior review. The rule included no provision for a short-administrative review period with specific instruction as to whom and how a student is to submit his written material for review. The court also found lacking a requirement only suggested in Eisner and recommended by the fourth circuit in Quarterman: criteria by which a school official is to accept or reject student literature for distribution. The court also found the prior review policy deficient in failing to include a provision guaranteeing an appeal of the school official's decision, coupled with a specific time limit in which the school official must respond--as required by the Quarterman court. Finally, the fifth circuit's scrutiny of rule 5114.2 found no guidelines stating the relationship between prevention or curtailment of distribution rights and the disruption the school seeks to avoid [Shanley at 975-977]. Although the fifth circuit appears to have borrowed heavily from the fourth circuit in stipulating procedural safeguards for prior review in public schools, it did not cite Quarterman in this context. Oddly, the court also did not order the North East Independent School District to rewrite its procedurally unsafe policy. As of January 8, 1975, the school board there has not changed one phrase

of its literature distribution policy 5114.2 requiring prior review.[7]

The fifth circuit reinforced its opinion on prior review regulations one year later in Sullivan v. Houston Independent School Dist., 475 F. 2d 1071 (1973), cert. denied, 414 U.S. 1032 (1973). Here the appellate court approved of the Houston school board's policy requiring prior review accompanied by Eisner safeguards. (See Appendix B, p. 170, for a copy of the Houston code.) In citing Shanley, the court said "nothing per se is unreasonable about requiring a high school student to submit written material to school authorities prior to distribution" [Sullivan at 1076].

The Sullivan decision originated in a 1969 case involving a student in the Houston school district who was suspended for distributing an underground newspaper across the street from the school. At that time, the school system had no specifically written policy regulating student distribution of literature, so the principal invoked a general conduct regulation empowering him to make rules necessary to the best interests of the school. (See Appendix B, p. 171, for a copy of the code.) The federal district court, in a decision favorable to the students, struck down this rule as vague and overbroad as applied to student literature controls [Sullivan, 307 F. Supp. 1328 at 1345 (S.D. Texas 1969)]. The court instructed the Houston school board to write a procedurally sound distribution policy. But the resulting policy included a provision for prior review. This

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[7]R. E. Windham, director of Continuing Education and Federal Services, North East Independent School District, to author, ca. January 8, 1975.

policy in turn was challenged by a different student at another Houston high school.

The student, Paul Kitchen, had been suspended for distributing an underground newspaper, Space City!, near the school grounds without first seeking approval. The new distribution policy included a provision that brought literature circulated off school property under the control of the prior review requirement if the distributed literature was calculated to appear on school grounds. The same district court judge who had heard the original Sullivan case struck down the prior review regulation in the second Sullivan case. The judge ruled the Houston board's prior review policy was violative of the first amendment and the terms of his original order directing Houston school officials to write a distribution policy [Sullivan v. Houston Independent School Dist., 333 F. Supp. 1149 at 1160 (S.D. Texas 1971)]. The judge, in fervent and direct language, declared that the school officials at Waltrip High School did not produce a scintilla of proof "to warrant the practice of blanket censorship" [Sullivan, 333 F. Supp. at 1161].

The fifth circuit, however, vacated the lower case decision. But to add to the confusion, the appellate court thereby approved the Houston policy of prior review that fails to conform to the requirements of prior review stipulated by another fifth circuit panel in Shanley; that is, the policy does not provide for an appeals procedure to challenge a school official's decision. The Sullivan panel said only that the Houston policy requiring a high school student to submit written material prior to distribution was a product of "an extensive and good faith effort" by the school district

[Sullivan, 475 F. 2d at 1076]. I must also note here that students outside the fifth circuit have successfully challenged four other provisions of the Houston distribution of literature code: the prohibitions against selling student literature on school property; against advocating disobedience to school rules; against publishing articles anonymously; and against distributing political campaign literature.

First Circuit Court of Appeals

While the foregoing cases clearly indicate a judicial acceptance of prior review coupled with procedural safeguards, one federal court ruling on the issue has not been as decisive. In Riseman v. School Committee of the City of Quincy, 439 F. 2d 148 (1st Cir. 1971), the principal at Ray E. Sterling Junior High School denied permission to a student who wanted to distribute leaflets in school on April 14, 1970. One leaflet announced an anti-Vietnam war rally in nearby Boston the following day and the second was entitled "A Student Bill of Rights," which discussed policies the student, Edward Riseman, believed the school should adopt. Riseman appealed the principal's decision to the superintendent of schools for the City of Quincy and then to the school board. His request for distribution rights was rejected each time. The school board's final decision came on June 17, 1970, two months after the student's initial request.[8]

The policy upon which the Quincy school board based its rejection of Riseman's request served originally to control in-school

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[8]Student Rights Litigation Packet, rev. ed. (Cambridge, Mass.: The Center for Law and Education, 1972), pp. 50-53. This source includes the student plaintiff's brief in Riseman.

advertising or promotional activity. It was not a specific policy defining the time, place, and manner of the distribution of student literature in school. (See Appendix B, p. 171, for a copy of the contested rule.) The federal district court ruled only that Quincy school officials must cease interfering with the peaceful distribution of political literature or other material of public interest, when such distribution takes place outside the school buildings on school property [Riseman at 149]. Riseman was not satisfied with this qualification and appealed to the first circuit court.

Here the panel ruled the policy as applied to in-school circulation of student literature was vague and overbroad and therefore an unconstitutional infringement of students' first amendment activities. Significantly, the court did not specifically reject the doctrine of prior review in public schools. Instead, the court cited Eisner and said the challenged rule "did not reflect any effort to minimize the adverse effect of prior restraint" [Riseman at 149]. It did not elaborate. Thus, the first circuit appears to accept a system of prior review if coupled with procedural safeguards.

The School Committee of the City of Quincy interpreted the decision likewise and proceeded to adopt a new policy to regulate the distribution of student literature in school. But while requiring prior review, the new distribution rule fails to meet even the most minimum procedural safeguards set down in Eisner; for example, it does not include a time limit for review of the content of literature. Furthermore, the policy is badly written and thereby confusing. (See Appendix B, p. 172, for a copy of the new rule.)

Following the muddy precedent its appeals court set in Riseman, the United States District Court for the District of New Hampshire did not hesitate to add its support to the list of courts approving prior review of student literature. In Vail v. Board of Education of Portsmouth School Dist., 354 F. Supp. 592 (1973), several students were suspended for violating a policy banning the "distribution of non-school-sponsored written materials within Portsmouth schools and on school grounds for a distance of 200 feet from school entrances" [Vail at 595]. The blanket proscription of distribution here did not necessitate even prior review. But the district court did not suggest it would reject a system of prior review. Instead, the court told the school board its regulation was unconstitutionally vague and overbroad because it failed to inform students exactly when, how, and where they can distribute written material. Furthermore, the court said the policy failed "to minimize the adverse effect of prior restraint" [Vail at 598].

In making this ruling, the court encouraged the Portsmouth school board to write a procedurally sound prior review system. Yet the school board chose not to require prior review in its revised regulation. It requires that students distributing literature in school comply with reasonable time, place, and manner requirements and that they provide the school principal with a copy at the time of its distribution. (See Appendix B, p. 172, for the revised policy.) Hence, Portsmouth joins Montgomery County in deciding not to adopt a system of prior restraint even after receiving court approval.

Court Rejection of Prior Review Policies in Public Schools

Seventh Circuit Court of Appeals

On the other side of the judicial fence, the United States Court of Appeals for the Seventh Circuit and the federal district court for the Northern District of California have firmly and flatly rejected prior review policies in public schools. In a decision incompatible with the Eisner prior review standard, the Seventh Circuit Court of Appeals ruled in Fujishima v. Board of Education, 460 F. 2d 1355 (1972), that the Chicago Board of Education's policy requiring the approval of the general superintendent of schools of any literature distributed in school was an unconstitutional system of prior review [Fujishima at 1357]. (See Appendix B, p. 174, for a copy of the challenged rule.) Two students at Lane Technical High School had received four- and seven-day suspensions, respectively, in 1970 for refusing to acquire administrative approval before distributing their underground newspaper, the Cosmic Frog, between classes and during lunch break. In the same case, a third student sought judicial relief after receiving two separate suspensions in 1970. He first was suspended for two days for asking a student between classes to sign a petition calling for teach-ins on the Vietnam war. A five-day suspension resulted for his distributing anti-war leaflets to about twenty students during a fire drill but off school premises [Fujishima at 1356]. After ruling that the school board rule requiring prior approval was invalid, the seventh circuit panel ruled that all suspensions under its authority could not stand. The court specifically

rejected Eisner, declaring that the second circuit had "erred in . . . allow[ing] prior restraint of publication--long a constitutionally prohibited power--as a tool of school officials in 'forecasting' substantial disruption of school activities" [Fujishima at 1358]. The Fujishima court simply refused to accept the Chicago Board of Education's argument that a system of prior review is necessary to forecast and thereby prevent disruption in school. The court said the Tinker disruption factor "is properly a formula for determining when the requirements of school discipline justify punishment of students for exercise of their first-amendment rights. It is not a basis for establishing a system of censorship and licensing designed to prevent the exercise of first-amendment rights" [Fujishima at 1358]. This interpretation of Tinker, therefore, allows school officials to punish a student who breaks a school rule regulating distribution, such as when or where to circulate the literature or if the literature is libelous or obscene. Such punishment cannot take place if based on apprehensive fear of disruption before distribution.

Behind the Corn Cob Curtain

A year later, the seventh circuit repeated its position against any procedures for prior review in public schools. This decision was to be appealed to the United States Supreme Court, where it was vacated on a non-first amendment technicality in Board of School Commissioners v. Jacobs, 43 U.S.L.W. 4238 (U.S. Feb. 18, 1975).

In July 1971 Jeff Jacobs, an eighteen-year-old senior at Arsenal Technical High School, met with other students attending

public high schools in Indianapolis, Indiana. They were disturbed about the school district's control of the content of the official school publications in Indianapolis schools. The students decided to publish an independent newspaper, the Corn Cob Curtain. Their analogy to the Iron Curtain, and the lack of freedom of the press behind it, was unmistakable.

Four issues of the Corn Cob Curtain appeared on the campuses of the Indianapolis high schools--primarily Arsenal Technical--between September 1971 and February 1972. The students distributed the paper to students, faculty, and school administrators in exchange for voluntary donations.

The content of the first four issues included articles typical of the underground student press that emerged during the mid-1960s and early 1970s: poetry; letters to the editor; reviews of musical performances and books; opinion pieces on censorship, the authority of school officials, draft counseling; and editorial cartoons.[9] The school administrators did not try to prohibit the distribution of the first four issues, nor did the students seek administration approval for circulation.

But on February 9, 1972, shortly before the fifth edition of the Corn Cob Curtain was ready for distribution, a school official

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[9]Brief for Respondents at 8, Board of School Commissioners v. Jacobs, 43 U.S.L.W. 4234 (U.S. Feb. 18, 1975). For a detailed examination of the underground press movement, see John Birmingham, ed., Our Time Is Now: Notes From the High School Underground (New York: Praeger Publishers, 1970); Jesse Kornbluth, ed., Notes From the New Underground: An Anthology (New York: Ace Publishing Corporation, 1968); and Ethel Grodzins Romm, The Open Conspiracy: What America's Angry Generation Is Saying (Harrisburg, Pa.: Stackpole Books, 1970).

announced over the public address system at Arsenal Technical High School that students could not sell or solicit anything on school property. Furthermore, the principal of Tech High, Ray Reed, also released a bulletin that confirmed the message over the public address system. Reed's announcement was in reference to an Indianapolis School Board rule that stated:

> Section 11.05: No persons shall exhibit any book, map, pamphlet or other article in the public schools or on school premises unless authorized to do so by the General Superintendent.
>
> Section 11.06: No sales, collections of money or of any articles, nor any contests or exhibits shall be conducted or permitted by or in any school without the express prior approval of the General Superintendent.[10]

Jeff Jacobs heard this announcement and, on February 15, discussed its application to the Corn Cob Curtain with Karl Kalp, then assistant superintendent of schools. Kalp confirmed that the rule empowered school officials to approve or disapprove the publication in advance of distribution in the public schools. One day later, Reed ordered Jacobs to submit all issues of the Corn Cob Curtain to Kalp's office. Jacobs complied, and on February 18, he was told that Kalp had refused distribution rights to the fifth issue of the Corn Cob Curtain because it was, in Kalp's judgment, obscene.[11] The fifth issue of the Corn Cob Curtain carried stories on education, the draft, amnesty to war resisters, and reviews. Kalp, however, objected to the presence of four-letter words sprinkled throughout the unedited publication,

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[10]Brief for Appellee at 12, Jacobs v. Board of School Commissioners, 490 F. 2d 601 (7th Cir. 1973).

[11]Interview with Craig E. Pinkus and Ronald E. Elberger, attorneys for Jeff Jacobs et al., Indianapolis, Indiana, August 26, 1974.

especially the use of the word fuck. He also objected to the use of hell, pushy bitch, educational bullshit, and on your ass. Furthermore, Kalp was troubled by an editorial cartoon that pictured a principal sitting on a toilet in which a bomb had just exploded, with a student commenting: "I may have gotten rid of the school but I'm still eating the principal's shit." Finally, Kalp was seriously concerned about a story that accused a Tech coach of racial disrimination. He decided such content in the Corn Cob Curtain would disrupt the learning process by creating a disturbance.[12]

Jacobs agreed to cease distribution of the publication and sought legal advice from the Legal Service Organization in Indianapolis. Craig E. Pinkus and Ronald E. Elberger, representing Jacobs and five other students connected with the Corn Cob Curtain, met with attorneys for the Indianapolis Board of School Commissioners to discuss Sections 11.05 and 11.06 of the board's rules. The Seventh Circuit Court of Appeals had recently struck down a similar regulation in Fujishima, and both sides quickly recognized that the Indianapolis rule would likewise be rejected in court. The school board's attorneys, therefore, recommended a non-prior review regulation to govern distribution of student literature. Rather than accept this advice, the Indianapolis school commissioners fired their school attorneys, hired a new firm, and began to prepare for a court fight.[13]

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[12]Brief for Appellant at 5-6, 8-9, Jacobs v. Board of School Commissioners, 490 F. 2d 601 (7th Cir. 1973).

[13]Interview with Craig E. Pinkus and Ronald E. Elberger, attorneys for Jeff Jacobs et al., Indianapolis, Indiana, August 26, 1974.

Failing to reach a solution with the Indianapolis school board, Jeff Jacobs and the other students filed suit in the Federal District Court for the Southern District of Indiana on June 1, 1972. When the case came to trial on August 24, 1972, Jacobs, Martin Laubach, Nancy Rood, and George Yarbrough had graduated from Indianapolis high schools, while Susan Chandler was a sophomore and Sally Swan, a junior. The class action suit on behalf of all the students in the Indianapolis public schools sought to stop the Indianapolis school board from enforcing Sections 11.05 and 11.06. On August 29, the district court, having declared the distribution rules were unconstitutional, ordered the school board to adopt new policies regarding the distribution and sale of student publications in Indianapolis schools. A month later, the school board submitted its revised regulations, which the court promptly rejected for the continued requirement of prior review. The court once again ordered the school board to submit additional rules governing the distribution and sale of student publications in school. On October 19, 1972, the district court struck down the second revision of Rule 11.06 and five sections of revised Rule 11.05. (See Appendix B, p. 174, for a copy of the revised rules.) The judge also prohibited the school board from barring distribution of the Corn Cob Curtain, thus allowing the subsequent distribution of five issues of Volume II and four issues of Volume III [Jacobs v. Board of School Commissioners, 349 F. Supp. 605 (S.D. Ind. 1972)].

At this point the district court's rejection of the distribution of literature regulations touches upon prior restraint in two

sections of Rule 11.05. Section 1.1.1.4 banned distribution of material not written by students or employees of the Indianapolis public school system. The judge declared such a restriction unconstitutional for requiring prior censorship. Likewise, Section 1.3.1.6 of Rule 11.05, which required the names of every student or organization participating in the publication or literature distributed in school to appear in the publication, was struck down for constituting prior restraint. The district court also rejected as vague and overbroad three other sections of Rule 11.05--provisions that proscribed distribution of literature that was "productive of, or likely to produce a significant disruption . . . or injury to others"; that prohibited distribution of literature while any classes were in session; and that prohibited sale of written material in school. In addition the federal judge struck down Rule 11.06, which restricted the sale of merchandise or material or solicitation of funds or contributions from students. The district court ruled each of these proscriptions vague or overbroad and as such unconstitutional. (To test the vagueness doctrine, a judge must determine if the rule provides specific standards for its enforcement and if the rule is written so as a person of average intelligence can understand its meaning. A rule is overbroad if it is written in such a manner that a person can only guess at the proscribed conduct.) Finally, the district court did not rule on the obscenity issue.

On appeal to the Seventh Circuit Court of Appeals, the three-judge panel upheld the trial court's decision. It ruled, however, that the provision prohibiting distribution of literature written by

non-students or non-employees of the Indianapolis schools abridged first amendment rights, but not for the same reason as the district court. The appellate court ruled the provision overbroad rather than constituting prior censorship. The panel said the rule would prohibit use of materials written by individuals whose views might be considered worthy by students [Jacobs, F. 2d at 607]. The appellate court also chose not to call the rule prohibiting the distribution in school of anonymous articles in a publication an unconstitutional prior restraint. Instead, the court challenged the necessity of the rule in the first place, for if a student complied with all other sections of Rule 11.05, the content of literature he would then distribute could only be acceptable to school officials. Hence, there would be no need for school officials to know the identity of students writing acceptable literature, if their only reason for doing so was--as argued--to hold accountable those responsible for violations of the anonymity provision of Rule 11.05 [Jacobs, F. 2d at 607].

The seventh circuit also upheld the rejection of the provision that prohibited the distribution of any literature that is "either by its content or by the manner of distribution itself, productive of, or likely to produce a significant disruption of the normal educational processes, functions or purposes . . . or injury to others" [Jacobs at 606]. The court not only found that the Corn Cob Curtain provoked no disruption to justify the application of this rule, but also declared the rule both vague and overbroad; that is, students could only guess at its meaning and the conduct it prohibited [Jacobs at 605]. For example, in calling the rule vague, the court

asked: "Is decorum in the lunchroom a 'normal educational . . . purpose? If an article sparks strident discussion there, is the latter a disruption'? When does disruption become 'significant'?" Addressing itself to "injury to others," the court asked: "Does it mean only physical harm? Does it include hurt feelings and impairment of reputation by derogatory criticism, short of defamation. . .?" [Jacobs at 605].

The court then explained that the use of the phrases "productive of, or likely to produce" significant disruption resulted in overbreadth, for not all disruption accompanying expression is caused by the expression. "We do not read Tinker as authorizing suppression of speech in a school building in every such circumstance where the speech does not have a sufficiently close relationship with action to be treated as action," the court declared [Jacobs at 606]. In effect, the seventh circuit struck down a regulation for requiring prior review of literature to determine if the publication would be disruptive or cause physical harm or injury. As such, the rule was unconstitutional.

The court of appeals also ruled that content of the Corn Cob Curtain was "very far from obscene in the legal sense" and that the school board's rule prohibiting in-school distribution of literature "obscene as to minors" failed to define specifically the sexual conduct impermissible according to current legal standards [Jacobs at 609]. Furthermore, the federal panel ruled that the Indianapolis school officials had failed to show that the "occasional presence of earthy words" in the Corn Cob Curtain had caused substantial disruption

of school activity [Jacobs at 610]. (I shall discuss the issue of obscenity in the next chapter.)

On June 3, 1974, the Supreme Court of the United States agreed to hear an appeal by the Indianapolis Board of School Commissioners. The case was expected to resolve the several issues of school press law: the constitutionality of prior review in public schools; school officials' reliance on the Tinker disruption factor to ban content and sales of student literature in school; the legality of rules prohibiting anonymity of literature distributed in school; the constitutionality of rules prohibiting literature not obscene for minors, but which school officials find vulgar or indecent; and the requirement that school rules comply with the requirements of vagueness and overbroadness. The Court, however, resolved none of these issues. On February 15, 1975, the Court dismissed the case as moot. In an 8-1 decision, the Court ruled that because the six students who had challenged the regulation had since been graduated from Indianapolis schools, and because the district court judge had failed to issue a ruling to certify properly the named student plaintiffs as representing all the students in the Indianapolis public schools, a controversy no longer existed over the challenged school rules.[14] That is, the district court judge did not specifically certify the case as a class action suit, nor did he identify the members of the

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[14] Board of School Commissioners v. Jacobs, 43 U.S.L.W. 4238 (U.S. Feb. 18, 1975). Chief Justice Warren E. Burger and Associate Justices William J. Brennan, Jr., Potter Stewart, Byron R. White, John Marshall, Harry A. Blackmun, Lewis F. Powell, and William H. Renquist voted to vacate the lower court decision; Associate Justice William O. Douglas dissented.

class. The result of this decision, as Justice William O. Douglas declared in a stinging dissent, was to defer the underlying issues of the case to the future, while permitting the Indianapolis Board of School Commissioners to enforce regulations that have been declared unconstitutional by two federal courts. "In allowing the Board to reimpose its system of prior restraints on student publications," Douglas wrote, "we raise a very serious prospect of the precise sort of chilling effect which has long been a central concern in our first amendment decisions."[15]

The Federal District Courts in California

These cases of school press law have clearly demonstrated that courts have not disagreed over the application of the first amendment to public school students; instead they indicate judicial disagreement over the compatability of prior review with that freedom. This disagreement is highlighted by decisions in two federal district courts in California.

Three years before Jacobs, the Federal District Court for the Northern District of California had rejected all prior review regulations in public schools. In four separate cases filed by high school students attending San Francisco area school districts, the district court ruled that not only were the school districts' prior review regulations unconstitutional, but also Sections 9012 and 9013 of

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[15]Ibid. at 4240.

the California Education Code.[16] These provisions prohibited student distribution on school grounds of "sectarian, partisan or denominational" literature or any "propaganda."[17] The court ruled sections 9012 and 9013 unconstitutionally vague and overbroad, declaring that a school official could use them to ban distribution of any literature he disagreed with, including a leaflet explaining the first amendment. The court directed each defendant school district to submit proposed regulations governing students' first amendment activities--absent any requirement of prior review. (See Appendix B, p. 176, for a copy of the court-approved code submitted by Hayward (California) Unified School District.)

The results of a similar case in the District Court for the Eastern District of California, however, do not parallel the decision in the northern district--nor do the two district courts have to agree, for the Ninth Circuit Court of Appeals, which includes California, has not ruled on the constitutionality of prior review of literature distributed in public schools. In Poxon v. Board of Education, 341 F. Supp. 256 (E.D. Calif. 1971), the court's acceptance or rejection of prior review of student literature is unclear. Here students

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[16]The four unpublished decisions are Rowe v. Campbell Union High School Dist., Civil Act No. 51 060 (N.D. Cal. Nov. 20, 1970); De Anza Students Against the War v. De Anza Board of Education, Civil Act No. 80 1074 (N.D. Cal. Nov. 20, 1970); Mt. Eden High School Students v. Hayward Unified School Dist., Civil Act No. C 70 1173 (N.D. Cal. June 4, 1970); O'Reilly v. San Francisco Unified School Dist., Civil Act No. 51427 (N.D. Cal. Nov. 10, 1970).

[17]Martin Haberman, "Student Rights: A Guide to the Rights of Children, Youth and Future Teachers" (Bethesda, Md.: ERIC Document Reproduction Service, ED 070 752, 1972), p. 23.

who attempted to circulate a non-sponsored newspaper called Downwind without prior approval were denied permission by officials of the San Juan Unified School District. In a brief ruling, the court simply rejected the school district's policy requiring prior review as unconstitutional [Poxon at 257]. However, as in Riseman, the court left the door open for such a system if the school district could present "triable issues of facts, which, if true, would permit adoption of a system of prior restraints applicable to the students in its schools" [Poxon at 257].

Following the decision, the school district revised its distribution policy, but the new rule is confusing. While the school district specifically prohibits prior censorship, or the requirement of approval of the contents or wording of student-circulated material, the administration does require an advance copy of any literature to be distributed in school. Students circulating such literature also are to inform a school official of their intentions and to identify themselves. (See Appendix B, p. 178, for a copy of the revised policy.) Because the revised rule specifically bars prior review of content, it includes no procedural guidelines. However, the rule empowers school officials to prohibit certain proscribed material: libelous and obscene statements and literature that might or could create a "clear and present danger" by substantially disrupting school decorum. The new rule leaves to a student's imagination the procedure and manner by which the literature will be evaluated if school officials believe the literature submitted in advance of distribution--as required--fails to conform to the proscriptions of the revised rule.

This contradictory code is clearly more dangerous to free expression than a system of prior review accompanied by procedural safeguards. It also reflects a lack of good faith by school administrators, who apparently could not conjure up "triable issues of facts to justify a system of prior review."

The Federal District Court of Puerto Rico

A case involving school regulations of the State Department of Education of the Commonwealth of Puerto Rico did not concern a specifically written prior review policy, but nevertheless constituted a prior restraint of literature distributed in school. In Cintron v. State Board of Education, 384 F. Supp. 674 (D.P.R. 1974), a student was suspended from the Student Opportunities Center in Buchanan, Guaynabo, for in-school distribution of handbills advocating Puerto Rican independence. School authorities cited violations of a regulation of the State Board of Education in justifying the five-day suspension. The literature distribution policy prohibited the in-school circulation of "propaganda . . . alien to school purposes . . . including all political, religious, or commercial literature, notices, or posters" [Cintron at 679]. (See Appendix B, p. 179, for a copy of the rule.)

In striking down the rule, the Federal District Court for the District of Puerto Rico decided that school authorities made no attempt to restrict the invoking of the rule to instances when school was materially disrupted, however defined, or to instances when the rights of students were substantially infringed. The court also rejected the

school rule as vague and overbroad, thereby tending to sweep protected literature within its proscriptions. For these reasons, the federal judge declared the rule operated as an unconstitutional system of prior restraint [Cintron at 679]. Although the school rule was rejected and the student's suspension was declared void, the judge allowed the rule to stand until such time as the Puerto Rican State Board of Education promulgated a new policy. (My request for the new policy was unanswered.)

The decision was indecisive concerning the acceptability of a specifically written prior review policy with procedural safeguards. The court did allow, however, that school authorities could practice prior restraint of student-distributed literature, but they would necessarily have "to bear a heavy burden of its invalidity," citing the decision in the Pentagon papers. Having failed to do so in the instant case, and also having made no attempt to find a less drastic policy to control possible disruption, the court upheld the student's right to "robust and unfettered exercise of first amendment freedom in school" [Citron at 679].

Except for the Fujishima case in the seventh circuit and the four cases in Northern California, court decisions involving prior review regulations have gone in favor of student plaintiffs--not because of any vice associated with prior review, but only because the school districts' policies lacked procedural safeguards. What, then, did the students gain in their effort to rid their schools of prior review policies? Very little. The federal district court decisions

prohibiting prior review in the Northern District Court of California are not binding outside the district, as seen in Poxon. And while the Fujishima case abolished in theory prior review policies in Illinois, Indiana, and Wisconsin, the precedent has not been followed by any other circuit in the country. Two school districts involved in the litigation--the Montgomery County and Portsmouth schools--decided to drop their attempt to impose prior review on student literature, even after being given court approval. But the cases clearly indicate judicial sanction for a system of requiring approval of student-distributed literature, ostensibly to control student conduct and to ban obscenity and libel. Schools are simply required to establish procedural safeguards to satisfy courts favoring an Eisner-based standard. This would include at minimum (1) a statement in writing informing students to whom and how they are to submit their literature for approval before substantial distribution and (2) a reasonably brief period of time in which the school official should announce his decision on distribution (Eisner). In addition, a few courts also have required prior review provisions to include (3) instructions on what course a student should follow if the school official fails to announce his decision within the prescribed time period (Baughman), (4) a statement explaining the reasonable criteria on which the school administrator is to make his determination (Shanley), (5) a guarantee of an appeals procedure to challenge an administrative decision (Quarterman), and (6) a definition of distribution (Baughman). Although no court has so required, the procedures should also include

a provision that protects the peaceful exercise of lawful expression from disruptive reactors.

By approving prior review policies that include the minimum procedural safeguards, the federal courts have handed school officials an effective weapon to silence student opinion. The federal courts have relied on the Tinker disruption factor to justify their decisions. They reasoned that because the Supreme Court in Tinker had sanctioned a reasonable and accurate forecast of disruption--not disruption in fact--as a means to ban expression, prior review policies could stand if they serve this cause. But such a policy relies heavily on the good faith of school administrators. Without such assurance, a system of prior review in public schools, operating to ferret out potentially disruptive literature from circulation, can serve to inhibit the student press. This is especially true because the objects of the student criticism under review are frequently the same people at whom the criticism is directed. Chapter IV will reveal how the use of prior review--more precisely its misuse--has enabled school officials to screen written material they found personally objectionable, not necessarily potentially disruptive, as they had claimed in court.

CHAPTER IV

THE APPLICATION OF THE TINKER DISRUPTION FACTOR TO OBJECTIONABLE CONTENT

Censorship by Predictive Disruption

While prior review is the most ignoble means of curtailing student literature, it is not the only method students have challenged in court. School officials operating without a specifically written system of prior review have banned the distribution of student literature for precisely the same overt reasons as principals with prior review policies--predictive disruption. They concluded that the content of a publication--however it became known to them--if distributed, would have been reasonably likely to disrupt school decorum. Still other school officials have attempted to ban sales of student literature, which effectively limits distribution by threatening to destroy the fragile monetary foundation of most privately produced student publications. The cases reveal other school officials who have cited a non-constitutionally protected speech--obscenity--to stop circulation.

Regardless of what content the school official objected to in applying the disruption factor, he was faced in court with the burden of proving his forecast of disorder was based on substantial fear of material disruption, not an attempt to stifle critical or unpopular opinions with which he did not want to contend. Students affected by

an apprehensive forecasts of disruption--not necessarily a written policy of prior review--asked the federal courts to determine if their school administrators had properly applied the disruption factor in banning distribution of their publications. Predictably, in twelve of fourteen such cases, the schools failed to meet that burden. This is not to conclude, however, that banning student literature on account of the Tinker disruption factor is an unconstitutional method of controlling student conduct; rather, only that school officials in these cases improperly invoked its use to prohibit written material on or near school property because they disagreed with its content.

In handing down their rulings, the courts emphasized the danger inherent in applying the disruption factor to justify censorship of student publications. For example, in Shanley v. Independent School Dist., the fifth circuit explained that the "purpose of every screening regulation, at least in theory, is to prevent disruption and not to stifle expression" [Shanley at 968, emphasis added]. The balancing of expression and discipline, the court said, is dependent upon the intuitive judgment of school officials, subject only to reasonable assessment of the circumstances. And while the Shanley panel acknowledged its respect for school administrators, it declared that "such paramount freedoms as speech and expression cannot be stifled on the sole ground of intuition" [Shanley at 971].

The Fourth Circuit Court of Appeals, too, has expressed the same anxiety in giving school administrators the power to review student literature prior to publication in order to ferret out potentially disruptive content. Perhaps leery of the judgment of school

officials to exercise this critical function fairly, one fourth circuit panel said it would permit such action only under the watchful eye of the courts [Baughman at 1350].

These statements by the Fourth and Fifth Circuit Courts of Appeals--both of which have supported procedurally safe prior review rules--suggest the perilous position of the first amendment when in the hands of school officials. Because school administrators can restrict freedom of expression on an intuitive judgment of predictive disruption of their schools, the guarantee of a constitutional right in school must necessarily depend on reasonable men and women acting in good faith when applying the disruption factor to student literature. But my examination of the case law strongly suggests that public school officials have acted either unreasonably or in bad faith when denying students permission to circulate literature on or near school property. I shall show that in case after case, federal court judges were unable to uphold a school administrator's decision to prohibit distribution because of predictive disruption.

Because censorship by predictive disruption necessarily concerns specific content, the case law below appears under the general category of content found to be objectionable by school administrators--ostensibly because they feared disruption after its circulation. The categories break down into content that criticizes school officials or their regulations, with or without alleged inflamatory language; content that concerns political events; content that concerns sexual matters, such as birth control; and content alleged to be obscene, vulgar, or libelous. By far, objectionable content involving

critical assessment of school administrators and their regulations ranks as the most frequently suppressed subject matter.

Criticism of School Officials or School Regulations

On January 15, 1968, Raymond Scoville and Arthur Breen distributed sixty copies of their fourteen-page underground newspaper, Grass High, to students and faculty at Joliet (Illinois) Central High School. One week later, school officials informed them that the contents of the publications constituted gross misconduct and that they were therefore suspended from school for five days. Nine days later, Scoville was removed from his position as editor-in-chief of the school-sanctioned newspaper, and both he and Breen were removed from the school debate team. Then, on February 18, 1968, the Joliet school board expelled both students from day classes for the spring term, forcing the boys to attend night classes at their own expense.[1]

The content in Grass High that so infuriated the school officials primarily concerned an editorial criticizing a school board newsletter delivered by students to their parents. The editorial urged students in the future to "either refuse to accept or destroy upon acceptance all propaganda" of the school board; criticized the senior dean of students as having a "sick mind"; and called the school attendance policy "utterly idiotic and asinine" [Scoville, F. 2d at 16]. (For a copy of the editorial, see Appendix C, p. 186.)

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[1] Scoville v. Joliet Township High School, 286 F. Supp. 988 (N.D. Ill. 1968), rev'd, 425 F. 2d 10 (7th Cir. 1970), cert. denied, 400 U.S. 826 (1970).

Scoville and Breen filed suit in federal district court on May 3, 1968, to seek an injunction against enforcement of their expulsion and for an order to remove any record of expulsion from their student files. The school board responded by arguing that the publication constituted contempt for school officials and encouraged disobedience of school rules [Scoville, F. Supp. at 990]. In a pre-Tinker decision, the district court judge ruled on July 19, 1968, that the publication did include language that "amounted to an immediate advocacy of, and incitement to, disregard of school administrative procedures." This, the court said, was not conducive to orderly classroom activity or respect for school rules [Scoville, F. Supp. at 992]. After the court concluded that Grass High constituted a "direct and substantial threat to the successful operation of the school," it ruled that Breen and Scoville could be punished for their conduct in distributing Grass High on school property [Scoville, F. Supp. at 993].

On September 25, 1969, eight months after Tinker and twenty-one months after the initial distribution of Grass High, a three-judge panel for Seventh Circuit Court of Appeals affirmed the lower court's decision. But in a rehearing, the entire panel for the seventh circuit reversed and held for the students on April 1, 1970. The appellate court ruled that the Joliet school board had failed to forecast material and substantial disruption of school activities as a result of the contents or sale of Grass High [Scoville, F. 2d at 13]. In fact, school officials had never contended that Grass High had disrupted school decorum; they objected only to the contents per se.

By applying the Tinker forecast standard for the first time to the facts of a high school student literature case, and finding no basis for any potential disruption, the court ruled that the students' criticism fell under first amendment protection; hence, the expulsions were not justified. Even if the students had intended disruption, the court said, is of no significance, for none in fact threatened to take place or actually occurred as a result of the editorial; that is, mere words urging others to violate rules falls under constitution protection if those words are not accompanied by disruption [Scoville, F. 2d at 14].

The panel also acknowledged that imparting a "sick mind" to the dean reflected "a disrespect and tasteless attitude toward authority." But then the court asked: "Yet does that imputation to sixty students and faculty members . . . justify a 'forecast' of substantial disruption or material interference with school policies or invade rights of others?" The judges' answer was firm: "We think not" [Scoville, F. 2d at 14].

While Scoville was working its way through the judicial system, a parallel case appeared in Houston, Texas, that demonstrates again how the philosophy of a judge prevails over the intuitive reasoning of school officials in forecasting disruption. In Sullivan v. Houston Independent School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969), the court upset the suspensions of two students for distributing three issues of their underground newspaper, the Pflashlyte, which criticized school officials and school policy. The principal, in

particular, objected to one paragraph that satirically quoted Edmund P. Senile, a hypothetical school administrator:

> Ah wosh tew thank yew all for yore generosity en givin me this oppertunity tew express mahself. Furst of all, ah wosh to say that ah'm shure yew are all proud as punch to be en mah school. For mah fine capacity to supress ideas, ah have been awarded this school and all yore minds. If yew all should fall from the path we'll have them athletic boys put you raht back on the track real quick like. And there ain't no need to thank me, its mah sacred mission to save yew from them bastard hippies and sech like. Remember ah'm here for yor benefit and ah will employ evry means available under the divine raht of kings. In closin, ah wont to inform yew of the next Senior Project. "Under mah direction, the senior class is formen one of them extortion rackets to collect $500 for a 17-foot facsimile of mah posterior to be erected at the front gate so that all students might kiss the baloney stone each day before classes" [Sullivan, 307 F. Supp. at 1348].

(For additional criticism of school officials in the Pflashlyte, see Appendix C, p. 188).

In one of the strongest decisions upholding a student's right to criticize school officials, the district court declared that the appearance of the underground newspaper created no substantial disruption to warrant its banishment and that the content of the publication was "plainly the sort of speech protected by the First Amendment" [Sullivan, 307 F. Supp. at 1341-1342]. As in Scoville, this ruling flies in the face of the school's contention that the newspaper had created "complete turmoil" in the daily operation of the school; that the content of the paper amounted to an immediate advocacy of and incitement to disregard school administrative procedures and policies; and that the Pflashlyte was calculated to encourage student insubordination to school authority [Sullivan, 307 F. Supp. at 1336]. The judge concluded: "It appears that Mike [Sullivan] and

Dan [Fisher] were disciplined because school officials disliked the Pflashlyte's contents. The Constitution prohibits such action" [Sullivan, 307 F. Supp. at 1341-42].

The Sullivan court struck at the heart of the issue. Can school officials claim reasonable fear of disruption to halt distribution of literature whose contents they disagreed with emotionally or philosophically? Here, the court said no, because the school board had failed to meet the burden of providing evidence to support its fear of disruption.

In Hatter v. Los Angeles City High School Dist., 452 F. 2d 673 (9th Cir. 1971), the subject of the student criticism again came under court review, with a surprising decision. Here two high school coeds at Venice High School protested their school's dress code by urging students to refuse to contribute to the school chocolate drive. Shasta Hatter distributed leaflets on a corner across the street from the school and was suspended for the duration of the money-raising campaign. Julie Johnston wore a button that stated: "Boycott Chocolates." A school official removed the protest button and threatened her with suspension if she wore it to school again.

The district court, however, rendered the case moot, because the dress code was repealed and the chocolate drive had ended before the case came before the federal bench. But the judge also startled some observers by declaring that school officials should be able to suppress student expression so long as the subject of discussion does not relate to issues of "great national concern" [Hatter at 675]. The appeals court, however, reversed, declaring: "At issue is the

right of students to protest policies of their school that serve to restrain their freedom of action. That these policies may not directly concern the nation as a whole is of no moment" [Hatter at 645]. Because the apprehension of disruption of orderly school operations was not contended in the school's complaint--it was later cited as the reason for suspension, however--the issue remained unresolved. Hence, said the ninth circuit, student expression cannot be abridged simply because it is not of "significant social importance" [Hatter at 675].

The ninth circuit, however, later was to become the only appeals court to uphold school officials' curtailment of free expression based on the Tinker disruption factor [Karp v. Becken, 477 F. 2d 171 (1973)]. The case concerned student criticism of a school official's decision not to rehire an English teacher at Canyon del Oro High School near Tucson, Arizona.

A group of students organized a walkout during an awards assembly to protest the non-renewal of the teacher's employment contract. Warned that another group of students threatened to prevent the walkout, school officials canceled the assembly at the last minute. Denied the assembly forum for their protest, some students nevertheless walked out of their classes. The protesting students regrouped to plan another demonstration later that day. Stephen Karp, who had notified the local news media of the rescheduled protest, and about fifty other protesting students assembled in the school's multipurpose room during a free period. Karp left the room to retrieve protest signs from his car in the school parking lot. With

newsmen on hand, he distributed the signs to his friends, but the protestors then met resistance. The school's vice principal ordered the students to turn over all signs to him. Only Karp refused. The vice principal then ordered Karp to meet with him in his office. Karp then surrendered his sign. While Karp and the vice principal conferred, a group of varsity lettermen and some of the demonstrators began pushing and shoving each other. Others began chanting. School officials then quickly halted the altercation. Karp was suspended for five days, but school officials told him they would reduce the suspension to three days if he promised not to bring any more signs on school grounds. Karp refused and filed suit. The federal district court upheld the school officials' application of the Tinker disruption factor, and Karp appealed to the Ninth Circuit Court of Appeals. The federal panel upheld the lower court, ruling that the Canyon del Oro school officials had properly substantiated their forecast of disruption and therefore could curtail first amendment rights in an effort to prevent such disruption [Karp at 175-176]. However, the panel then ruled that the school administrators were not justified in punishing Karp for attempting to exercise his freedom of expression. The appellate court explained that the school administrators had to bear the burden of justifying not only any curtailment of student expression--which they did--but also any punishment for that expression. In reviewing the facts of the case, the federal panel concluded that Karp was suspended primarily for exercising his opinion through a protest sign, not for threatening disruption. The court ruled that school officials could not suspend Karp for his sign activity without

any justification, such as the breaking of a school rule. Because the school had no policy regulating the time, place, or manner of exhibiting protest signs, school administrators could not punish Karp for violating a non-existent rule [Karp at 176]. The court then reversed the suspension ruling and all records of it.

It must be emphasized here that the court approved the abridgement of speech before the occurrence of overt disruption between the protestors and the lettermen. The court stated that school officials do not have to stay their hand until actual disruption occurs before they act [Karp at 175]. Once again, this is the only case as of this writing in which an appellate court has upheld a school official's application of the Tinker disruption factor in a pure speech incident. (See also Baker v. Downey City Board of Education, 307 F. Supp. 517 (C.D. Calif. 1971).

Another case involving student literature critical of school faculty also tested a principal's application of the disruption factor to printed material. In Hannahs v. Endry, Civil Act No. 74-1196 (6th Cir. June 17, 1974) (unpublished), the principal of Reynoldsburg (Ohio) High School banned circulation of the November 22, 1971, issue of the official school newspaper, the Doubloon, which was produced after school hours. He objected to an editorial criticizing the school's athletic coaches for not suspending student athletes for smoking and drinking alcoholic beverages. The editorial, entitled "Where Are You Mr. H. S. Athlete?" claimed the coaches had failed to enforce training regulations" for fear of losing

their best players."[2] The school principal, Mr. Joseph Endry, prohibited the distribution of the school-sanctioned newspaper because he feared the editorial and its related cartoon would disrupt school decorum. (For excerpts of the editorial and description of the cartoon, see Appendix C, p. 196.) Although the federal district court declared that Endry was wrong in predicting disruption as a result of the distribution of the editorial, it ruled that "he was wrong, at least . . . for the right reason," and held for the principal [Hannahs, Civil Act No. 72-306 (S.D. Ohio Dec. 13, 1973) (unpublished)].

On appeal, the sixth circuit reversed the decision, calling Endry's application of the disruption factor "clearly erroneous." As in Scoville, the court did not find any evidence that the content of the publication would support a reasonable forecast of disruption. Disappointed with the appeals court decision, Endry wrote: "I hope . . . that we can begin to teach young people that somebody is in charge of schools and institutions and that they cannot exist in an anarchy."[3]

Political Literature

School officials did not limit their objections to the content of student literature distributed in their schools to statements critical of school rules and personnel. Political topics, too, were also prohibited until the courts released them for distribution.

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[2]Joseph Endry, principal, Reynoldsburg (Ohio) High School, to author, September 17, 1974.

[3]Ibid.

Not surprisingly, literature urging opposition to the Vietnam war or support for political candidates presented conflicts between students and school officials. For example, as I discussed in Chapter III, school officials denied the students in Riseman and Fujishima permission to distribute material expressing anti-war sentiments, in the absence of predictive or actual disruption, and in Cintron, school authorities suspended a student who had circulated handbills urging Puerto Rican independence.

In the first student literature cases concerning political literature and settled on Tinker standards, a federal court ruled that students at New Rochelle High School in New Rochelle, New York, could place in the official student newspaper an advertisement in opposition to the war in Vietnam [Zucker v. Panitz, 209 F. Supp. 102 (S.D.N.Y. 1969)]. The school administrators argued that the school-sanctioned newspaper was "not a newspaper in the usual sense," but rather a "beneficial educational device." School policy limited news reporting and editorial matter to school-related topics and prohibited advertising that "expresses a point of view on any subject not related to New Rochelle High School" [Zucker at 103]. In November 1967, the editorial board of the student newspaper, the Huguenot Herald, approved for publication an anti-war advertisement submitted by the Ad Hoc Student Committee Against the War in Vietnam. (See Appendix C, p. 196, for a copy of the advertisement.) The principal of the school, Adolph Panitz, overruled the board's decision on the basis of the school-news-only policy, and curiously, the right

to deny access by the school newspaper, a right enjoyed by the professional press.[4]

The district court judge rejected the school official's argument. Citing coverage of Vietnam-war-related stories in the Huguenot Herald (e.g., a draft-information assembly and local draft counseling centers), he concluded that there was no logical reason to permit news stories on the Vietnam war while precluding advertisements on the war. The court also explained that an official school newspaper is published by the state--not a private organization--and therefore cannot refuse access to its pages [Zucker at 104-105]. The federal court relied on Tinker for its approval of non-disruptive forms of expression--"even on controversial subjects like the conflict in Vietnam. . ." [Zucker at 105].

Political literature concerning the 1972 presidential election was the topic of controversy in another New York federal district case involving the denial of distribution rights to a public school student. In the most recent ruling on this issue, Sanders v. Martin, Civil Act. No. 72 C 1398 (E.D.N.Y. April 24, 1974) (unpublished), a student at Mineola High School asked for and received permission to post on school bulletin boards leaflets asking for volunteers for the McGovern-for-President campaign. School officials, however, denied Robert Sander's request to distribute the leaflets in school. After finding the posted leaflets had been peacefully removed from the

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[4]The Supreme Court recently affirmed the right of a privately owned newspaper to deny its readers access in Miami Herald v. Tornillo, ____ U.S. ____ (1974).

bulletin boards, Sanders again sought permission to post them, but this time school officials refused his request, citing an unwritten policy prohibiting "political activities" in school. The district court judge ruled that both posting and distributing political literature in school are protected by the first amendment, subject only to the Tinker disruption factor. Because the judge determined that no disruption took place and that there was no basis for a reasonable forecast of likely disruption, school administrators at Mineola High School had violated Sander's freedom of expression. The judge also ruled that the school's unwritten rule banning political activity quite obviously did not stand the constitutional test for overbroadness and due process.

Sex and the Student Press

As might be expected, no discussion of content considered objectionable and banned on disruptive potential grounds by school officials can be complete without finding sex on the list of taboo topics. In Wesolek v. South Bend Community School Corp., Civil Act 73 S 101 (N.D. Ind. Oct. 2, 1973) (unpublished), the district court reversed a newspaper adviser's decision--supported by school officials--to prohibit distribution of the official school newspaper in North Liberty, Indiana. The paper featured a story on birth control and was written by the editor-in-chief of the Liberty Link, Jan Wesolek. It appeared under the headline: "Babies Aren't Found Under a Cabbage Leaf (And You Know It!)." The story quoted in part from a pamphlet prepared by

the Planned Parenthood Association and suggested babies can be avoided by either abstention or contraception. (See Appendix C, p. 197, for a copy of the story.)

The district court clearly found such censorship unconstitutional. The decision instructed school officials to cease prohibiting from distribution "articles in official school newspapers on the basis of the subject matter or terminology used unless the article or terminology used is obscene, libelous, or interferes with or disrupts school activities" [Wesolek at 1]. By 1973, this had become a familiar refrain in the law of the student press.

Yet, one year later, an almost identical case appeared in Brooklyn federal court. School officials at Farmingdale High School on Long Island seized 700 undistributed copies of the October 25, 1974, issue of the school-sponsored newspaper, the Paper Lion, which featured a supplement on contraception, abortion, and other sexual matters. Echoing the Wesolek court, the federal judge ruled: "It is extremely unlikely that distribution of the supplement will cause material and substantial interference with school work and discipline. In this court's opinion no clear and present danger is presented."[5]

Finally, in Shanley, the case ostensibly concerned with prior review regulations in San Antonio high schools, school administrators objected to articles in the underground newspaper on birth control information and a digest of marijuana statutes. (See Appendix C, p. 197, for a copy of these articles.) The panel for the Fifth Circuit

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[5]Editor & Publisher, November 23, 1974, p. 30.

Court of Appeals found neither story potentially disruptive so as to bar their distribution in what the judges referred to as the "vanilla-flavored" publication, the Awakening. Calling the school officials' concern for the two stories "peculiar" and the topics merely "controversial," the appellate court opined: "Ideas in their pure and pristine form, touching only the minds and hearts of school children, must be free from despotic dispensation by all men, be they robed as academicians or judges or citizen members of a board of education" [Shanley at 971-972].

Obscenity and Vulgarity

As of this writing, not one federal court has upheld the suspension of a student for disseminating obscene material in school. A state court in New York, however, ruled a student underground obscene, but the decision was reversed on appeal. Meanwhile, only one court has approved the suspension of students who distributed what the federal judge called "profanity" and "vulgarity" [Baker v. Downey City Board of Education].

According to the current legal definition of obscenity, as propounded in Miller v. California, 413 U.S. 15 (1973), literary works are denied first amendment protection if they (1) "depict or describe sexual conduct" and "which, taken as a whole, appeal to the prurient interest in sex; (2) portray sexual conduct in a patently offensive way; and (3) lack serious literary, artistic, political, or scientific value." This test must be applicable to the average person applying contemporary community standards [Miller at 22]. Furthermore,

obscenity may be suppressed even without a governmental unit defending its action based on overt acts of anti-social behavior.[6]

Significantly, when obscenity is applied to minors, a 1968 case is also applicable. In Ginsberg v. New York, 390 U.S. 629 (1968),[7] the Supreme Court of the United States ruled that the definition of obscenity may differ between adults and minors, resulting in a so-called variable obscenity standard. The high court upheld a New York law prohibiting the sale of obscene materials to minors under seventeen. The approved statute defined obscenity as meaning the quality of any description or representation of nudity or sexual conduct that: "(1) predominatly appeals to the prurient, shameful or morbid interests of minors; (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material to minors; and (3) is utterly without redeeming social importance for minors" [Ginsberg at 646]. The Court also said censorship based on obscenity must be premised on a rational finding that the material was harmful to minors [Ginsberg at 641].

It was by these standards, then, that students asked the courts to determine whether or not publications that had been banned from school grounds because of alleged obscenity were, by legal standards, obscene. It is important to remember here that obscenity does not need to be accompanied by disruption or the threat of disruption to be prohibited in schools. Nevertheless, the results of

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[6]Emerson, The System of Freedom of Expression, pp. 472-473.

[7]Ginsberg v. New York should not be confused with Ginzburg v. United States, 383 U.S. 463 (1966), which held three publications of publisher Ralph Ginzburg obscene.

court decisions involving charges of obscenity parallel the decisions in which the courts were asked to decide if banned student publications were potentially disruptive according to the Tinker forecast standard; that is, school administrators' judgment of what constitutes obscenity failed to meet the burden required by the definition of obscenity.

Obscenity charges against a high school student first appeared in court in a Michigan case that was to establish a precedent used in other cases. In Vought v. Van Buren Public Schools, 306 F. Supp. 1388 (E.D. Mich. 1969), school officials at Belleville High School expelled David Vought for the remainder of the school term (April to June 1969) for having a copy of an underground newspaper, Argus, in school. Because the school principal considered the publication obscene, he charged Vought was in violation of a school rule prohibiting possession of obscene literature. The district court ruled that the school principal had applied a double standard in his determination of obscenity and, therefore, the expulsion could not stand [Vought at 1395-1396]. A hearing had determined that literature in the school library included at least one book and one magazine in which the word fuck appeared. It was on the basis of this word that the principal had determined the Argus obscene. Calling such a position "rank inconsistency" and "preposterous on its face," the judge ruled for the student [Vought at 1396].

The novel idea of testing the consistency of a school official's obscenity standard by comparing material in the school library with the banned student publication also appeared in Scoville v.

Joliet Township High School. Here, the Seventh Circuit Court of Appeals flatly rejected a school official's notion that the phrase, "Oral sex may prevent tooth decay," is obscene. Instead, the full panel of judges called the phrase an "attempt to amuse." While perhaps shocking an older generation, the court said, the expression is legal. The court added that today's high school students are "insulated" from such language because of its use by demonstrators and protestors in streets, on campuses, and by authors of best-selling modern literature. The panel then suggested that a hearing would disclose that high school libraries include literature that leads students to believe that the oral sex statement in Grass High is unobjectionable [Scoville at 14].

In four other cases involving allegations of obscenity in student-distributed literature, the courts relied on the Miller-Ginsberg definition, coupled in one instance with the Vought double-standard test.

Sullivan v. Houston Independent School Dist., 333 F. Supp. 11219 (S.D. Tex. 1971) grew out of earlier litigation involving the underground newspaper, the Pflashlyte, which was critical of a school principal. In this, the second Sullivan case, allegedly obscene language in Space City!, a student underground newspaper, prompted--among other reasons to appear below--the school principal to suspend the student distributor. The principal said he objected to a headline for a letter to the editor, which read: "High Skool is Fucked." The letter also repeated the four-letter appellation for sexual intercourse, but not in a sexual connotation. The district court judge

concluded that the principal had failed to apply correctly the three-prong obscenity test in Ginsberg. The word, fuck, as used in Space City!, the judge ruled, did not satisfy the first requirement of obscenity; namely, a prurient interest in sex. Furthermore, the judge also found the principal guilty of applying the "absurdity" of the same double standard practiced in Vought [Sullivan, 333 F. Supp. at 1165-1167].

In upstate New York, the Supreme Court of Dutchess County ruled on April 23, 1971, that a student underground, Common Sense, was obscene as to minors and therefore prohibited the distribution of the paper on high school property, and to persons under seventeen years of age. The case was filed by the district attorney of Dutchess County after receiving a complaint from the principal of Arbington High School. The school official had observed the publication in the hands of a student he knew to be under sixteen years old. The principal particularly objected to a sexually graphic cartoon on women's liberation and a story that urged readers to become homosexuals.

On appeal, the lower court decision was overturned. In Matter of Rosenblatt v. Common Sense, 337 N.Y.S. 2d 56 (App. Div. 1972), a New York state appellate court ruled that the material the district attorney and the principal considered obscene failed to meet the definition of obscenity as defined in New York statutes (corresponding to Ginsberg). The panel ruled that the story on homosexuality and the cartoon did not make a "predominant appeal" to the "prurient, shameful or morbid interest of minors," nor was it "utterly without redeeming social value" [Rosenblatt at 58]. The case is significant

because it represents a reversal of the intuitive judgment of not only a principal untutored in the law, but also of a district attorney. But perhaps more importantly, the case tests the content of a student publication with a state statute, not a school regulation.

The search for obscenity continued in Koppell v. Levine, 347 F. Supp. 456 (E.D.N.Y. 1972), but also failed when the court applied the Ginsberg test. This case is distinguished from all others involving alleged obscenity because the challenged literary material was the product of a high school English department, not an underground publication. The contents, once more, had been approved by the publication's adviser and the chairman of the English department. Nevertheless, the principal at John Dewey High School in New York City objected to the presence of four-letter words and a description of a movie scene of a couple "falling into bed."

The court ruled that the content of STREAMS OF CONSCIENCE failed to excite sexual desires or appeal to prurient interests. Furthermore, the judge said the publication was of "significant constructive social and educational importance for high school students" [Koppell at 458-459]. The court, however, allowed the school officials to stamp a disclaimer of content on each issue of the publication, because the literary magazine had "the character of a private creation by the student editors" [Koppell at 460].

In Vail v. Board of Education of Portsmouth School Dist., a case discussed above under prior review, a principal found a local publication, the Strawberry Grenade, lacking in any "redeeming educational, social, or cultural value" [Vail at 596]. The district court

for New Hampshire, finding the language did not appeal to sexual interests, objected to the obscenity label here. The judge preferred to call the language "crude" [Vail at 599]. He further ruled that the Portsmouth school officials had wrongly applied the Tinker disruption factor to the content of the Strawberry Grenade, for they presented no reasonable evidence to support their fear of disorder [Vail at 599].

Hence, in applying the Ginsberg standard or the Vought test for a double standard, the courts in the preceding cases have not supported school officials' charges of obscenity. These decisions reinforce the 1973 Baughman warning of placing this responsibility in the hands of school administrators "untutored in the law" [Baughman at 1351]. But one exception to these findings exists, Baker v. Downey. School officials at Downey High School southeast of Los Angeles suspended two students for ten days for distributing an underground newspaper containing vulgar or profane expressions. David Baker was president of the senior class and William Schaffner was president of the student body. Both also were removed from their school offices. As with the previous issues, the distribution of the ninth issue of Oink took place just off school property as students entered the high school campus. This time, however, the principal objected to the four-letter words in a widely distributed article, "Student as Nigger," and the "vulgar" retouching of a photograph of former President Richard M. Nixon, in which Nixon was seen to be exhibiting a finger in a symbolic gesture, with the caption: "Here's a little something for you, justice" [Baker at 529]. After distinguishing the instant

case from Tinker, which did not include expressions of profanity and vulgarity or disruption of the school, the district court ruled that "first amendment rights do not require the suspension of decency" in the expression of views and ideas [Baker at 527]. The fact that the students distributed their paper off school grounds bore little weight with the judge. The state education code entrusted school officials, he said, with the responsibility for the morals of students coming and going from school, as well as during school hours [Baker at 526]. Finding the words vulgar and profane, the judge then ruled that there was "ample authority" to suspend the students for violating a state code prohibiting such usage in school. This case is further distinguished from the cases above in that school officials based part of their reason for the students' suspensions on the Tinker disruption factor. The school officials satisfactorily justified their limiting the students' freedom of expression on grounds that the distribution of 450 copies of Oink threatened loss of school control and discipline. The school principal reported that about thirty of his teachers had complained to him that their students were unable to concentrate on their studies because of their preoccupation with Oink during class [Baker at 522]. Baker is one of only two cases in the study in which a court found the Tinker disruption factor properly applied to the contents of literature. (See Karp v. Becken; see also Katz v. McAulay, 438 F. 2d 1058 (2d Cir. 1971), cert. denied, 405 U.S. 933 (1972); and Clark v. Cody, 326 F. Supp. 391 (1971), vacated, 449 F. 2d 781 (4th Cir. 1971)].

Only one case concerning a principal's charges of obscenity has led to a decision on the specific regulation prohibiting obscenity in school, Jacobs v. Board of School Commissioners. And that decision was recently vacated by the Supreme Court. As I have reported above, the seventh circuit ruled the content in the Corn Cob Curtain was "far from obscene in the legal sense." The appellate court preferred to call the alleged obscenities "earthy words . . . that in no way appeal to the prurient interests of adults or minors " [Jacobs at 610]. The court held that unless school officials can reasonably infer from substantial evidence that the use of earthy words--not obscene--is likely to cause substantial disruption of school activity, they must allow their use [Jacobs at 610]. On appeal to the high court, Lila Young, attorney for the Indianapolis school district, argued that "filthy" language has no place in schools and is potentially harmful to school children. She argued that the disruption factor left school officials virtually without power to proscribe the use of such language.[8]

On the issue of an acceptable obscenity policy, the seventh circuit struck down the school board's regulation, which read: "No student shall distribute in any school any literature that is . . . obscene as to minors. . ." [Jacobs at 609]. The appellate court ruled this policy was deficient in lacking "specific definition of sexual conduct the description of which is prohibited as now required for a valid law under Miller v. California. . ." [Jacobs at 609].

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[8]Oral argument by counsel for plaintiff, Board of School Commissioners v. Jacobs, 43 U.S.L.W. 4238 (U.S. Feb. 18, 1975).

When the Supreme Court dismissed the case, it left unresolved the question of whether or not school officials outside Indianapolis may prohibit a non-disruptive publication if it includes earthy words, not obscenity, as defined by current legal standards.

Clearly, there is no easy solution to this problem of the presence of earthy words in literature distributed in schools. Furthermore, the Vought double standard could conceivably be circumvented by removing from the school all literature that includes earthy words. An administrator can ban in-school distribution of a publication containing earthy words if he or she can reasonably predict that the language will materially and substantially disrupt school decorum. Such a ruling, of course, must be subject to challenges through a student-appeals procedure. But as my study has demonstrated, this policy has not worked to the satisfaction of the courts, which have disagreed with the judgment of school officials concerning the disruptive potential of literature distributed in school. Until the Supreme Court rules specifically on this issue, students and school administrators will continue to disagree over the likelihood of disruption caused by student publications, whether or not earthy words are the objectionable content.

Libel

Associated with control or proscription of student criticism of school officials is the threat of libel. Perhaps surprisingly, only one case of libel related to student publications has reached the courts, and that case had nothing to do with the social turmoil of

the 1960s that served as a catalyst for the cases included in this study.

The laws of libel, like the laws of obscenity, have changed dramatically during the past eleven years. The current definition of a libelous statement, as set down in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), greatly affected the school setting. In this case, the Supreme Court held that a public official cannot recover damages for a defamatory statement relating to his official conduct, unless he can prove that the falsehood was made with the knowledge that it was false (actual malice) or with little or no attempt to investigate the facts before publication (reckless disregard for truth).[9] Because school officials and teachers are employed by school boards, which are empowered by state legislatures, authorities agree that school officials and teachers fall under the umbrella of "public officials."[10]

The only libel case on record involving a high school publication occurred in 1970 in Essex County, New Jersey. In Mele v. Cuddy, Civil Act No. L 12 861-66, Essex County Court (May 1970), a caption under a 1966 yearbook photograph of Robert Mele, a ninth grade student at South Orange Junior High School, read: "A good fisherman and a master baiter." The defendants in the case were the adviser of the

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[9]Harold L. Nelson and Dwight L. Teeter, Law of Mass Communications: Freedom and Control of Print and Broadcast Media, 5th ed. (Mineola, New York: The Foundation Press, Inc., 1967), p. 86.

[10]Robert Trager, Student Press Rights: Struggles in Scholastic Journalism (Urbana, Illinois: ERIC Clearinghouse on Reading and Communication Skills, 1974), p. 37.

yearbook, Robert Cuddy, the South Orange-Maplewood school board, and the American Yearbook Company, which printed the 300 books distributed at the school.

The jury awarded Mele $27,000 in damages for "personal emotional disturbance and/or mental anguish," primarily on the strength of testimony by a psychologist and psychotherapist. Mele received an additional $11,000 for the damage to his reputation. The superior court judge denied the yearbook company's motion to exclude it from liability, as well as a complaint of excessive damages [Mele, opinion letter at 1-9]. The report did not clarify if the school board assumed the yearbook adviser's share of the damages.

Another libel suit asking $1 million in damages was filed in 1962, but the case was settled out of court for $3,846.57.[11] Here, a 16-year-old student, Irene Bickerton, charged that a cutline under her picture in the 1962 yearbook of Stanford H. Calhoun High School in Merrick, New York, was false, scandalous, and defamatory. The statement read:

> "A soft, meek, patient, humble, tranquil spirit . . .
> by Thomas Decker--"The Honest Whore"

About 500 copies of the yearbook were distributed before the book was recalled to make the necessary change:

> "Gentle of speech, beneficent of mind"
> --Homer, "Odyssey"[12]

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[11]Alan Sweetser, general counsel, Josten's/American Yearbook Company, to author, April 4, 1975.

[12]Samuel Feldman, The Student Journalist and Legal and Ethical Issues (New York: Richards Rosen Press, 1969), p. 22.

When the threat of obscenity and libel--both unprotected by the first amendment--are added to the disruption factor and systems of prior review to justify the suppression of student literature, school administrators become armed with enough ammunition to annihilate student literature, lest those publications surrender and become public relations organs for the schools. The decisions of the cases above provide little evidence to support the conclusion that school administrators have acted wisely when applying the disruption factor to block in-school distribution of literature or in justifying the curtailment of the distribution of literature on the basis of obscenity. Stated more pointedly, the disruption factor has allowed school officials to cite a court-sanctioned standard for suppressing literature the contents of which they abhor. This explains why the bad faith of school administrators--their ulterior motive--is seldom discussed in the legal opinions. (For an exception, see Sullivan v. Houston, 307 F. Supp. at 1341-1342.) The similarity of the cases also suggests that school officials did not bother to study the expanding law of the student press. As always, however, there are exceptions. The following chapter discusses case law in which school administrators tried--some successfully--to avoid student literature suits on first amendment issues.

CHAPTER V

ADDITIONAL RESTRAINTS ON STUDENT JOURNALISTS

The regulation of the content of student literature by the distribution factor, either with or without a written system of prior review, leaves the distributed expression to the judgment of school administrators. They decide whether or not the content of the literature is suitable for circulation at a prescribed time, place, and manner in their schoolhouses. A few school officials, however, have successfully defended their suspensions or expulsions of students who distributed literature in school without permission by charging the students with violations of general conduct policies rather than specific literature distribution policies. Others have successfully argued in court that school rules prohibiting the sale of literature are designed to prevent disruption, not to stifle the distribution of literature. As seen in Jacobs, still other school officials have promulgated rules that limit the distribution of literature to articles written by school-connected authors and to articles whose authors must be identified. And finally, while no court has ruled that school administrators have failed to control disruptive reactors to lawful literature rather than suppress the distribution of written material, the unlikelihood of such action poses another obstacle for students seeking to circulate literature in public schools.

"Clean Hands"

A student has always been expected to come to school clean behind the ears. Recently, a federal court said he'd better be there with clean hands, too. The court ruled that a student must test the validity of a school's regulation with "clean hands"; that is, the student must bear the burden of proof that he did not deliberately and with "malice aforethought" set out to break a school regulation simply to test its legaltiy. This was the lesson a student in the Houston school system learned when, according to the fifth circuit, he deliberately flouted the school's prior review policy.

The decision involved the second Sullivan case, in which a student was expelled after distributing an unapproved underground newspaper, Space City! in violation of the school district's prior review policy. During his suspension, the student, Paul Kitchen, returned to the entrance of the school to sell his paper. He again refused to leave and the school principal called the police. As they arrived to remove him, Paul directed a "common Anglo-Saxon vulgarism for sexual intercourse" at the principal, as the court explained. Based on his conduct, the court ruled that Paul had never intended to comply with the prior review policy and therefore had flagrantly, blatantly, and deliberately flouted school regulations and had defied school authorities. Recognizing the right of school authorities to punish such conduct, the court added: "we ask only that the students seeking equitable relief from allegedly unconstitutional actions by school officials come into court with clean

hands" [Sullivan, 475 F. 2d at 1077-1077]. The Supreme Court of the United States upheld the ruling by voting six to three to refuse to hear the case [Sullivan, cert. denied, 414 U.S. 1032 (1973)].

The decision amazed the student's attorney. He concluded that the court has ruled that a "citizen can obtain redress against a government agency which [had] violated the citizen's constitutional right only if the citizen was obedient while his rights were being violated."[1] The attorney had argued unsuccessfully before the fifth circuit panel that prior review was unconstitutional.

This Sullivan decision, which gained stature by virtue of the Supreme Court's approval, relied on a similar ruling in New York. In Schwartz v. Schuker, 298 F. Supp. 238 (E.D.N.Y. 1969), a student at Jamaica High School in New York City defied a school principal's order to cease distributing an underground newspaper on school grounds, in violation of the school's prior review policy. On January 24, 1969, almost a year later, the principal again observed the same student, Jeffery Schwartz, in school carrying thirty-five issues of the High School Free Press, a high school underground with a large circulation among New York City students. He demanded Schwartz relinquish the papers to him. The student refused, and the principal suspended him for "contumelious behavior" until his graduation a week later [Schwartz at 240]. The district court ruled for the school principal, Luis Schuker, in deciding that Schwartz had been suspended for "gross disrespect and contempt" for the school principal [Schwartz at 242].[2]

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[1]Robert E. Hall to author, October 2, 1974.

[2]Certainly Principal Schuker had no argument with the judge on this decision, as he did four years later. He then called a

The court, however, did not address itself to any of the other issues discussed above, although they were certainly present. For example, the newspaper to which Schuker had objected referred to him as "King Louis," "a big liar," and a person having "racist views and attitudes" [Schwartz at 240]. Although the court acknowledged the existence of a one-month-old Tinker ruling by the Supreme Court that declared for the first time that a student's freedom of expression cannot be limited inside the schoolhouse gate without evidence of material and substantial disruption of school activities, it decided that the student's gross disrespect for authority superseded first amendment considerations.

The issue presented itself again one month later in another New York federal court and with the same result. In Segall v. Jacobson, 295 F. Supp. (S.D.N.Y. 1969), school authorities suspended and then transferred John Segall, a student at Louis D. Brandeis High School in Manhattan, for distributing a publication containing what the judge called "a rather purile, name-calling article containing obscenities, among other matters" [Segall at 1121]. The underground also featured a forged masthead of the official school newspaper. The disciplinary action was also related to an incident about one month earlier, when Segall had participated in a school incident in which a student was injured. Segall then voluntarily signed an agreement "to obey school rules and not to involve himself in any activity

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court-ordered conversion of a junior high school into a special school for gifted students "yet another example of judicial assumption of the role of omniscience in American education." New York Times, August 3, 1974, p. 22.

which is not conducive to a proper school atmosphere" [Segall at 1121]. School administrators argued in court that Segall had disrupted school decorum by distributing the underground newspaper and thus warranted the disciplinary action. The federal judge, however, sidestepped the first amendment issue for lack of a complete evidentiary record but upheld the suspension and transfer as legitimate punishment for the student's misconduct [Segall at 1122].

This position was affirmed ten months later in Graham v. Houston Independent School Dist., 353 F. Supp. 1161 (S.D. Tex. 1970). Here the principal at Bellaire High School ordered three students to stop in-school distribution of The Plain Brown Watermellon, an underground newspaper. The principal told the students they had violated the school's prior review rule, seized the remaining copies of the paper, and suspended the students until their attitudes changed. The students all testified that a major purpose in distributing their underground paper was to flout the prior review regulation. The judge ruled that the students had been threatened with disciplinary measures for disobedience of school directives rather than for "the dissemination of material protected under the first amendment" [Graham at 1166]. Without testing the content of the publication with the disruption factor, the judge ruled that school authorities may discipline students for prohibited activities that may involve speech. This decision flies in the face of a decision reached two months before by another judge in the same district--Sullivan v. Houston Independent School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969), in which prior review was declared unconstitutional and the Tinker disruption

factor the controlling standard before suspension. This decision had not yet been reversed by the appellate court when the Graham ruling was handed down.

Had all courts applied this approach to student press cases, it is likely that few decisions would have favored the students. (A notable exception is Jacobs, where the students voluntarily submitted copy for prior review.) Instead of tackling the constitutional issue, judges could simply rule that students had come to court with "dirty hands." However, this conclusion would appear to require the courts to set down a standard by which school officials must measure the degree of willful disobedience by a student before suspending the student. In none of the instant four cases does such a standard appear. Hence, suspending a student for alleged violations of good conduct connected with the distribution of literature in school joins the list of court-approved administrative acts that limit freedom of expression in public schools.

Sales and Signatures

In cases involving the student distribution of literature in public schools, the courts have made clear that school officials may establish reasonable, non-discriminatory regulations to control the time, place, and manner of the distribution [e.g., Eisner at 805]. The manner of distribution embraces three unresolved issues: (1) rules that prohibit the sale of non-school publications on school property; (2) that prohibit in-school distribution of unsigned articles; and (3) that prohibit in-school distribution of material not

written by students, teachers, or other employees of the school district in which distribution is sought.

An underground newspaper in Lincoln, Nebraska, recently argued in court that the school district's ban against any sales in school should not affect the sale of newspapers. The case began at the start of the 1972-1973 academic year, when school authorities prohibited students and non-students from distributing copies of the Lincoln Gazette at the entrances of the city's four high schools on a free or donation basis. The principals of the high schools met and decided that the distribution had violated several school policies, including a prohibition against commercialism. School policy specifically banned sales, solicitation, advertising campaigns, and promotion of any commercial enterprise. (See Appendix B, p. 180, for a copy of the rule.)

After members of the cooperative that published the Gazette tried unsuccessfully to persuade the school officials to lift the ban against their paper, they filed suit in federal district court to seek an injunction against the policy. In Peterson v. Board of Education of School Dist. #1 of Lincoln, Neb., 370 F. Supp. 1208 (D. Neb. 1973), the court ruled the regulation was misapplied to sale of newspapers. Citing Tinker, the court said school officials can prohibit the distribution of a newspaper only to avoid material and substantial interference with school work or discipline. Because the school officials lacked evidence to support any claim of disruption attached to the sale of the paper, they failed to meet the criteria of the Tinker disruption factor. The court also cited uneven application of the anti-solicitation policy, after determining that Community

Chest, March of Dimes, and Junior Red Cross campaigns involved direct solicitation of students in school [Peterson at 1214-1215].

The court also held deficient three other school-board justifications for banning distribution of the Gazette: (1) dissemination of advertising, for the court's finding of advertisements in the official school newspaper; (2) authority of the school board to select instructional material, for the court's finding of no intention for use of the Gazette as a teaching tool; and (3) non-student distribution, for the school's failure to meet the criteria of the disruption factor [Peterson at 1214-1215].

The revised distribution of literature policy in the Lincoln Public Schools, however, requires prior review, prohibits circulation of materials carrying a commercial sales message, and fails to meet minimal procedural safeguards of prior review, with the exception of informing distributors to whom they are to submit their written material for approval or disapproval. (See Appendix B, p. 181 for a copy of the revised rule.)

In striking down the Lincoln school district's original policy, the court distinguished the instant case from Katz v. McAulay, 438 F. 2d 1058 (2d Cir. 1971) cert. denied, 405 U.S. 933. Here, a policy prohibiting solicitation of funds at Union Free High School District No. 5, Ardsley, New York, was upheld for "no abuse of discretion" by the trial court. School authorities, the appellate court ruled, had properly banned the distribution of leaflets prepared by a non-student organization seeking funds for defense expenses of eight persons in a criminal proceeding. The Peterson court

reasoned that this was a plea for money and, as such, was purely a commercial venture. It had nothing to do with charging for the sale of a newspaper and was therefore not apposite to the discussion [Peterson at 1213].

In Katz the judge upheld the regulation prohibiting sales in schools because school officials justified it as a measure to control a "sufficiently high probability of harm--i.e., the pressure upon students of multiple solicitations," and the "orderly operation of the school" [Katz at 1061]. The dissent in Katz, however, found the solicitation of funds when related to public issues an "integral part of propagandizing" and therefore subject to reasonable regulations of time, place, and manner [Katz at 1062]. In this sense, Katz joins Baker v. Downey and Karp v. Becken in a finding of support for a school official's ban on distribution of literature based on a reasonable forecast of disruption.

One other decision concerns school administrators' ban on in-school sale--not free distribution--of a student's privately published newspaper, the Protean/Raddish. In this case, Cloak v. Cody, 326 F. Supp. 391 (M.D.N.C. 1971), Daniel Cloak, an eleven-year-old junior high school student at Chapel Hill, North Carolina, disobeyed the school rule and was promptly suspended for three days. The district court upheld the suspension, recognizing no connection between the first amendment right to publish a paper and the accompanying right to charge for it. In this manner, the court evaded a first amendment issue and simply ruled that school boards have a right to adopt rules and regulations to control solicitation, sales, and fund-raising

activities in their schools [Cloak at 396]. Although the case was later dismissed as moot because Cloak moved to another state while the appeal was pending, the decision leaves the anti-sales policy unaltered at Grey Culbreth Junior High School.

In Jacobs, the Indianapolis case vacated as moot by the United States Supreme Court, the student plaintiffs challenged the school district's anti-sales rule, as applied to student literature, the identification of authors requirement, and the ban against distributing material not written by personnel or students of the Indianapolis school system. School officials there justified the ban on sales and non-school contributors on the disruption factor and the anonymity rules out of necessity to identify and hold accountable those responsible for libelous or obscene material [Jacobs at 608]. The attorneys for the students argued that these regulations of the manner of distribution serve only to impose as a system of prior review on the student's literature.[3] In one fell swoop, the seventh circuit ruled the regulations were an infringement on the students' freedom of expression. Ruling on the Tinker disruption factor, the appellate court found it impossible for the school board to forecast disruption caused by unsigned articles, by those written by persons not connected with the school district, and by the sale of the newspapers [Jacobs at 606-609]. In addition, the panel declared the ban against material not written by students or personnel in the Indianapolis school system overbroad, for it would prohibit the circulation of literature written

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[3]Interview, Craig E. Pinkus and Ronald E. Elberger, attorneys for Jeff Jacobs et al., Indianapolis, Indiana, August 26, 1974.

by people whom the students consider important [Jacobs at 606]. The seventh circuit also explained that prohibiting anonymity can function as an odious form of censorship, because some students are reluctant to discuss issues that might rankle the minds of school administrators yet be neither libelous nor obscene nor disruptive to school decorum [Jacobs at 607]. The point is well made. Reporters for the student press are likely to suffer reprisal for their opinions, and it is the fear of that punishment that limits freedom of expression.[4] The case law discussed in this study surely supports the belief that unexpected reprisals are not a rarity among student journalists. Given the choice of curtailing freedom of expression based on unpredictable reactions by school administrators to the content of literature, and the difficult task of seeking out an anonymous student who distributed literature that reasonably supports a forecast of disruption, I would not hesitate to choose the latter.

The major argument against prohibiting anonymity is set forth in Tallay v. California, 362 U.S. 60 (1960). Here, the high court rejected the requirement of identification as a restriction on distribution and thereby freedom of expression. It stated: "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. . . . Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names" [Talley at 64-65]. Also, while press law dealing with the distribution of literature in public schools permits

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[4]Robert Pressman, "Students' Rights to Write and Distribute," Inequality in Education, November 1973, p. 76.

a school official to ban libelous statements, not one decision justifies a requirement of identity of authors in order to punish those who have libeled another party. Furthermore, the argument that school officials must know the identity of student authors to punish those committing libel is without merit, for school authorities would hardly be held accountable for tort liability for libel published in a non-school-sanctioned publication. The anonymity rule also runs the risk of being overbroad, because it could result in signed editorials (a contradiction in itself) and signed letters-to-the-editor, both in conflict with established media practice. If applied evenhandedly by school officials, the rule would thereby prohibit the presence in schools of almost every newspaper, magazine, and journal published.

The failure to give merit to the argument that a ban on sales infringes on the right to distribute totally ignores a landmark case decided in 1936 that gave constitutional protection to newspaper distribution: "Liberty of circulating is as essential to that freedom [of the press] as liberty of publishing; indeed, without the circulation, the publication would be of little value" [Lovell v. City of Griffin, 303 U.S. 444 at 452 (1937)]. The freedom to publish, of course, is concomitant with the ability to pay for that publishing. To stop the latter is to abridge freedom of expression. Additionally, publishing a student underground newspaper, most of them financially frail, can hardly be considered a commercial activity. Still, the major criterion of meeting the Tinker disruption factor, as seen in Jacobs and Peterson, is the most reasonable approach.

Finally, the issue of sales and signature rules receives additional significance in the analysis of revised distribution of literature rules of school districts whose original rules were found defective by the court. Of the revised rules, five require identification of author of each article, or at least the name of the organization sponsoring the written material. (See Appendix B for revised policies in Baughman; Sullivan, 333 F. Supp.; Egnar; Mt. Eden; and Poxon.) Four revised rules of distribution also prohibit the sale of literature in school. (See Appendix B for revised rules in Baughman; Sullivan, 333 F. Supp.; and Poxon.) In addition, two revised rules prohibit distribution of literature containing commercial sales messages. (See Appendix B for revised rules in Egnar and Peterson.)

The Hostile Audience

While school administrators can stop expression of opinion by finding the content or distribution likely to cause a substantial disruption of school activities, a relatively neglected question poses another threat to the student press: does the disruptive conduct of those receiving a publication justify a school official's prohibiting that publication, even if its contents are lawful expressions of opinion? By lawful, I mean the content does not include obscenity, libel, or "fighting words"--words that actually "inflict injury or tend to incite an immediate breach of peace" [Chaplinsky v. New Hampshire, 315 U.S. 568 at 572 (1948)]. Stated another way, the violence that follows or accompanies distribution of literature may be caused by a hostile reaction to unpopular, yet lawful, literature, or by a disruptive interference with the distribution of

that literature. In both instances the crowd should be the object of control or punishment, a much more difficult task. As one authority has written: "It is the duty of the state to preserve order by controlling the mob, and the admitted difficulties of this procedure will not justify adoption by the authorities of the easy expedient of suppressing the speech."[5]

Several student press cases have mentioned this problem in passing; none has ruled on the issue, which is also referred to as the "heckler's veto." Perhaps the best expression of this particular danger to freedom of expression comes from the original Sullivan case:

> It is also clear that if a student complies with reasonable rules as to times and places for distribution within the school, and does so in an orderly, non-disruptive manner, then he should not suffer if other students, who are lacking in self-control, tend to over-react thereby becoming a disruptive influence [Sullivan, 307 F. Supp. at 340].

(See also Shanley at 962 and Jacobs at 606.)

The difficulty here, of course, is that school officials must bear the burden of proof if they decide the content has caused disruption or is likely to produce disruption. If they do not wait for actual disruption to ban a publication--and this study has shown that school officials do not--then they should make certain that their reason for prohibiting the distribution of student literature is based on something more than an apprehensive fear of disruption by those receiving the literature. That is, the literature must

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[5]"Freedom of Speech and Assembly: The Problem of the Hostile Audience," Columbia Law Review 49 (December 1949): 1120-1121.

include unlawful content. But because the Supreme Court has ruled that written material that is reasonably likely to cause material and substantial disruption of school activities is unlawful, school officials are faced with burden of weighing the content of the publication against the heckler's veto. If they decide that the mood in their school borders on imminent disorder--and can, if necessary, produce substantial evidence to prove it--they can apply the Tinker disruption factor and stop distribution. As we have seen, however, the courts have not exactly been convinced by the school administrators' evidence. On the other hand, if the school official recognizes the literature to be lawful and also recognizes a group who threatens to stop the circulation of that expression, he would be wise to deal with the potential hecklers rather that suppress student expression. And this is not to suggest that the school official should prohibit the lawful protest of student-distributed literature. The school official must protect the rights of both groups in this situation, a task requiring skill and patience.

This difficult position was reached in Karp v. Becken, the case involving the student suspended for protesting the firing of an English teacher. Here the judge ruled that school officials had justifiably taken a protest sign from the student because they had a reasonable apprehension of likely disruption. But the disruption the school officials anticipated was a threat by a group of school athletes to stop the planned protest. Rather than deal with the hecklers, the principal chose to punish the person attempting to express peacefully a particular point of view. I can only

speculate on the administrator's choice for dispensing discipline, if he had agreed with the suspended student's opinion.

Because such a decision is necessarily difficult to make when violence is reasonably likely to occur, the suppression of opinions because of a potentially hostile audience is still another threat to freedom of expression in public schools. When it is added to the other potential sources of controlling the content or distribution I have presented in this chapter and those above, the specific issues high school student journalists have raised in court is complete. But one area of school press law remains for analysis--the extent to which school administrators may control the content of official school publications. A discussion of this complex problem follows.

CHAPTER VI

THE OFFICIAL SCHOOL NEWSPAPER: ADMINISTRATIVE CONTROL OF ADVISER AND CONTENT

What some observers have found surprising in secondary school press law is that relatively few cases are filed by journalism advisers. Tinker, after all, established that neither students nor teachers can be denied their first amendment rights inside the schoolhouse gate [Tinker at 506]. Forty-three school press law cases have been decided or are pending at this writing. Of these, ten involve alleged censorship of official school publications--those published with the assistance of a faculty adviser, either as a class or an extra-curricular activity. And of these ten cases, it should not now be surprising to learn that prior review and objectionable content were the major reasons for contention. Furthermore, as in the cases involving non-official school publications, the courts have not been uniform in deciding whether or not school officials can exercise prior review of the content of school-sanctioned publications.

Wesolek v. South Bend Community School Corp. is the only case in this study in which a faculty adviser is named as one of the defendants. As discussed above, the case concerns the adviser's refusal to permit publication of an article on birth control in the school's newspaper, Liberty Link. But the district court ruled

against such interference with the content of official school newspapers unless the written material is obscene, libelous, or interferes with or disrupts school activities. This decision follows the precedent set by the Seventh Circuit Court of Appeals in Fujishima, in which the prior review regulation in the Chicago Public schools was prohibited with or without procedural safeguards.

In five other student-filed cases involving official school newspapers,[1] the advisers do not appear as defendants, and it is not known if the faculty advisers in these cases agreed with school officials' decisions to prohibit circulation of student literature. (In a time when the number of teacher applicants far exceeds the number of vacancies, perhaps the newspaper adviser was unwilling to support his or her students.)

The remaining four cases, all discussed below, concern official school publications in which the faculty adviser is named as a plaintiff. The journalism teachers charged school administrators had fired them for allegedly failing to perform their responsibilities as newspaper advisers, consistent with the expectations of their

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[1] See Hodes v. Namowitz, Civil Act No. 1412 67 (S.D.N.Y. June 1, 1967) (Principal removed editor of school newspaper from position following editorial critical of school regulations; court nullified this action after school principal failed to answer complaint); see also Koppel v. Levine, Zucker v. Panitz, Hannahs v. Endry, and the unpublished Paper Lion case on Long Island, as reported in Editor and Publisher, November 23, 1974, p. 30.

school administrators. Significantly, in none of these cases did those responsibilities take the form of a written policy.

Advisers Go To Court

At Yorktown High School, in Yorktown, Indiana, a high school journalism teacher with nine years of media-related experience was notified in April 1974 that her teaching contract would not be renewed for the following academic year. The notice coincided with the publication of the second of a five-part series of articles on sexual related problems of Yorktown High School students. The stories appeared in the official school newspaper, the Broadcaster, and discussed pre-marital sex, birth control, venereal disease, abortion, and unwanted pregnancy. The student editor who wrote the series interviewed doctors and clergymen to document his stories.[2]

After the second story of the series ran on March 29, 1974, the superintendent of Yorktown schools informed the journalism teacher, Mrs. Joan Lentczner, that she should seek a new job for the following fall and asked her to sign a resignation form. She refused. She and her staff, however, agreed to prior review of the remaining three articles in the series. However, following an editorial in the Broadcaster on April 28, 1974, assailing the administration's firing of Mrs. Lentczner and the school principal's intervention through prior review, Mrs. Lentczner was removed as the adviser of the newspaper. Subsequently, the principal added to Mrs. Lentczner's yearly

[2]Joan Lentczner, interview held during meeting of the Journalism Education Association, Chicago, Illinois, November 29, 1974.

evaluation, which included marks of average to superior, that she was "reluctant to work well with the administration concerning publications--especially in areas where togetherness is important, i.e., controversial issues."[3] This comment followed her compliance with prior review regulations.

Believing her dismissal by the Mount Pleasant Community School Board in Yorktown raised serious first amendment issues, Mrs. Lentczner sought legal advice from the Indiana Civil Liberties Union in nearby Indianapolis. Mrs. Lentczner decided to file suit and has moved to Virginia. Her case is awaiting trial.

In a second adviser case pending trial, a high school newspaper adviser in Torrance, California, was fired in 1969 for failing to agree to pre-publication review by his principal of stories appearing in the official school newspaper. Among the articles that initiated the firing of the teacher, Don P. Nicholson, were feature stories on the Mexican-American community in Torrance; a misleading headline that reported the voluntary retirement of the school's basketball coach ("Coaching Shakeup: Boerger Out"); an opinion piece on police-student relations; and an investigative story of the school board's building plans.[4] The principal's method of approving copy was to apply the four-way Fairness Test of the Rotary Club. The test asks: (1) Is it the truth? (2) Is

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[3]Editor and Publisher, August 31, 1974, p. 11.

[4]Don P. Nicholson to author, June 16, 1974. The letter included Nicholson's affidavit in which he sets down his statement of the facts of the case.

it fair to all concerned? (3) Will it build good will? (4) Will it be beneficial to all concerned?[5] In order for the copy to pass the test, the principal had to answer each question in the affirmative.

Nicholson, a lawyer, asserted that questions two and three of the test are unworkable and he refused to comply. (See Appendix C, p. 198, for copy of a story Nicholson refused to submit to principal prior to publication and which principal said would fail his system of prior review.) When informed that his teaching contract would not be renewed because of his failure to obey the principal's prior review directive, Nicholson appealed. School officials then added non-newspaper related charges, such as Nicholson's dismissing a class for lunch on the wrong bell and his failing to present his X-ray report to school officials on time.[6] After the Torrance Board of Education upheld the decision of a hearing examiner who ruled that Nicholson had violated school policies and voted not to reverse its decision to fire him, Nicholson filed suit in federal court in 1973, seeking $118,500 in damages. No date for the trial has been set as of this writing.

It is possible, however, that the issue of prior review in California may be settled by the California Assembly, not the courts. As I discussed in Chapter II, the Federal District Court for the Northern District of California in 1971 rejected prior restraint

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[5]"District Court (to Rule on) Rotary Test (as) Yardstick for School Papers," Communication: Journalism Education Today 7 (Fall 1973): 15.

[6]Don P. Nicholson to author, June 16, 1974.

on high school student literature. In 1972, the California Assembly codified the federal court's decision by adopting a new Education Code, Section 10611, which guarantees students first amendment rights on school property. The code also directs California school districts to adopt regulations to protect those rights.[7] The new provision, however, does not specifically prohibit prior review and because of this, has become the focus of a dispute between the Los Angeles Board of Education and the Los Angeles Journalist Teachers Association.

The school board has refused to change its pre-publication censorship requirement of school-sponsored publications. It contends that provision 10611 does not apply to official school publications because school publications produced by a class are "exercises" and are therefore subject to prior review "when necessary." (See Appendix B, p. 182 for copy of publications policy of Los Angeles Board of Education.) This same procedure is found in New York City Public schools. Although the Chancellor of the city's schools has ruled that non-official student literature cannot be subject to prior review, school sponsored literature may be reviewed prior to publication by school officials.[8] (See Appendix B, p. 182, for copy of Chancellor's ruling.)

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[7]Susan Martinez, attorney, Youth Law Center, San Francisco, California, to author, May 17, 1974.

[8]The New York City School system operates its own quasi-legal judicial system, with the Chancellor sitting as the trial judge and Board of Education, the appellate court. Board decisions may be appealed to state or federal courts. (See Caplin v. Oak, 356 F. Supp., 1250 (S.D.N.Y. 1975), approving distribution of literature policy of New York Public Schools.) For discussion of

The Los Angeles area journalism teachers argue that the state education code guarantees freedom of expression to all student publications. They specifically reject the board's decision that official school publications are subject to prior review by principals or their designees. Negotiations between the Los Angeles School Board and the journalism teachers failed to result in the board's reciding its policy at an April 22, 1974, board meeting. After threatening court action to resolve the issue, the journalism teachers organization established a committee to investigate charges of censorship in the student press in Los Angeles secondary schools. The new committee operates in conjunction with the Educational Task Force of the American Civil Liberties Union, which investigates student rights issues in the Los Angeles Area.[9]

More important, the struggle has led to a bill introduced in the California Assembly to amend Section 10611 of the California Education Code. The bill is intended to clarify the original intention of the provision by embracing official school publications.[10] (See Appendix B, p. 184, for copy of bill.) The new law would guarantee freedom of expression in all student publications, for school officials now concede that the present Section 10611 prohibits prior review on non-school sponsored literature.

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student rights in New York City schools, see Ira Glasser and Alan Levine, New York Civil Liberties Union Student Rights Project: Report on the First Two Years, 1970-1972 (Bethesda, Md.: ERIC Document Reproduction Service, ED 073 524, 1972).

[9]The Newspaper Fund Newsletter, December 1974, p. 4.

[10]JEA Newswire, January 1975, p. 12.

Meanwhile, the attorneys for Joan Lentczner and Don Nicholson will find little support from the two settled cases concerning a dismissal of a journalism teacher because of newspaper related responsibilities. Not too surprisingly, both cases involve prior review. In Calvin v. Rupp, 471 F. 2d 1346 (8th Cir. 1973), the Brookfield (Missouri) R-III School District voted unanimously on March 11, 1969, to reemploy Wilmer Calvin, Jr., a high school journalism teacher. Calvin did not receive the official form notifying him of his contract renewal until March 26. On April 1, the board rescinded its reemployment offer. The bizarre events that took place and came to light between March 26 and April 1 led to Calvin's dismissal. They are reported by the federal district court decision upholding the school board's decision, Calvin v. Rupp, 334 F. Supp. 358 (E.D. Mo. 1971). The appellate court affirmed the lower court decision two years later.

On March 12, 1969, Calvin belatedly reported to his school principal, Roy Rupp, and the district superintendent, Robert Crow, that he had information of drinking and possible sale of marijuana by students attending Brookfield High School. Calvin told his superiors that he had first learned of this information about four months before and, instead of reporting it to school authorities then--as required by school administrators--he informed the Federal Narcotics Bureau in Kansas City. Rupp and Crow instructed him to say nothing more about his suspicions. However, Calvin allegedly told one of the students he suspected of marijuana use about his discussion with school officials. The administrators learned of this

exchange and severely reprimanded Calvin on March 18, after which the journalism teacher left school, allegedly on account of illness. He did not return until March 25.

While he was absent, students on the B-Liner newspaper staff told Crow that the next issue of the paper would be "hot." When Calvin returned to school on March 25, Crow immediately requested that Calvin show him the next issue and all subsequent issues of the newspaper before distribution. According to Crow, Calvin agreed to this request. Rather than comply, the district court concluded, Calvin directed his publications students to cease work on the newspaper and told them not to plan any more issues unless he gave the word. The trial court also determined that Calvin led his staff to believe that he was protecting them against administrative censorship [Calvin, F. Supp. at 362].

The district court said Calvin's suppression of the school paper "justified a finding of insubordination," as did his failure to report promptly his suspicions regarding the possible use of marijuana and drinking by students. The court did not view Crow's requiring prior review as censorship because the paper was school sponsored and subsidized [Calvin, F. Supp. at 362].

Calvin appealed to the United States Court of Appeals for the Eighth Circuit (which had upheld school officials in Tinker), but without success. The appellate court, however, ruled that Calvin had failed to show any free speech issue because he, in fact, terminated publication of the school newspaper [Calvin, F. 2d at 1349]. Hence, the eighth circuit still has yet to rule

on prior review of student literature, either official or unofficial. Following his dismissal, Calvin left teaching for the ministry.

The second adviser case that the attorneys for Lentczner and Nicholson will study concerns a journalism teacher who was dismissed in part for his failure to delete from the school paper a story that school officials were to find objectionable. This case raises the specter of a form of subsequent restraint on publications; that is, advisers (or students), fearing administrative reprisal for publication of a controversial story, censor lawful literature.

In Jergeson v. Board of Trustees of School Dist. No. 7, 476 P. 2d 481 (Wyo. 1970), the Wyoming Supreme Court ruled that the Sheridan County Board of Education could, in deciding to fire a newspaper adviser, consider the contents of the school newspaper and the adviser's responsibility in the publication of the paper. School officials cited journalism teacher Raymond C. Jergeson with "incompetency" based on content of 1969 April Fool's edition of the school paper and "detrimental" teaching philosophy and practice [Jergeson at 482]. The April Fool's edition of the Ocksheperida, the school newspaper, featured a story entitled "meany master," that attacked the adviser of the cheerleading squad for imposing arbitrary rules on women students. (See Appendix C, p. 199, for copy of article.) School officials charged that the story did not meet objectives of producing a school newspaper: "to instruct students in

writing journalistic writing and putting together a newspaper," as the principal explained [Jergeson at 492]. The board also cited as detrimental to students Jergeson's allowing an alleged "dirty poem" to remain on the chalkboard of his classroom for two weeks; his alleged use of the word rape before a group of high school girls; his beliefs on use of marijuana; and his style of hair, beard, and dress, which the board considered "inappropriate for the teaching profession" [Jergeson at 486]. In upholding the school board, the Wyoming Supreme Court applied the Tinker disruption factor, stating that the school board "could have well decided" that the critical article did disrupt school decorum and did collide with the rights of others; namely, the teachers and administrators of the school. By allowing such expression to appear, the court said, Jergeson revealed his own incompetence. In so ruling, the court explained that Jergeson had failed to advise the author of the "meaney" article of its inappropriateness and thereby neglected his responsibility as a journalism teacher [Jergeson at 484-485].

In a strongly worded dissent, the Chief Justice of Wyoming Supreme Court appears to answer a question his associates left only to speculation; that is, no disruption or personal injury did in fact take place or was threatened to occur as a result of the April Fool's edition. The adviser who was target of the satire admitted only to being shocked, that her teaching ability was not affected, and that the article was exaggerated but not entirely erroneous. The Chief Justice also said the board failed

to provide Jergeson guidelines for the publication of the school newspaper and failed to justify "invasion of the author's right through the medium of the plaintiff" [Jergeson at 490-492]. Jergeson is now teaching in Burns, Oregon.

These four cases involving the firing of scholastic publications advisers present a formidable challenge to freedom of expression in public schools. Like the cases filed by students against school officials, these cases indicate that advisers, too, will be punished for speech-related activities. Because their punishment--dismissal--is potentially ruinous, I do not hesitate to conclude that scholastic publication advisers, in trying to meet the expectations of their principals, can chill freedom of expression in their classrooms by prohibiting the publication of lawful student literature they believe their administrators will not tolerate. This conclusion is supported by a recent mail survey of 300 public high schools in selected states. In this study Paula Simons, chairman of the Commission on Freedom of the Scholastic Press of the Journalism Education Association, found advisers, because of this fear, are the principal source of censorship of official school publications.[11] Her findings also suggest that the adviser's ignorance of school press law contributes to this situation. Hence, the pending decisions in the Lentczner and Nicholson cases are critical

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[11]Paula Simons to author, July 16, 1974. The results of Ms. Simons' study will be published by Quill and Scroll Scholastic Honorary Society.

to this study, for they will indicate the direction of this relatively small body of free-press law. The decisions of five other cases involving official school publications and filed by students, however, provide effective arguments for resolving the issue of prior review in public school publications.

Official School Newspapers

While ten of the forty-three cases in this study involve official school newspapers (excluding the libel case), the courts have not settled the primary issues these cases present: can school officials--including publications advisers--properly exercise a greater degree of control over the content of publications that are not part of the curriculum but are officially approved extracurricular activities that bear the school's name and utilize facilities, material, and perhaps funds, than over non-school sanctioned publications distributed in school? Also, can the teacher-adviser of official scholastic publications exercise supervisory discretion over the content of publications produced as a part of the requirements for a course offered for credit and as part of the school curriculum?

School-sanctioned newspapers not part of the curriculum but published as an extracurricular activity, wholly or in part with school monies, have appeared in Hodes (critical editorial banned), Koppell (alleged obscenity banned), Wesolek (birth control article banned), Hannahs (editorial criticizing school coaches banned), and the Paper Lion case on Long Island (birth control article banned). In these cases, federal district courts have ruled in favor of

publishing the articles, stating in almost exactly the same language that school officials cannot ban articles in school newspapers unless they show a reasonable likelihood of disruption in school because of the publication, or can show libel or obscenity. These decisions clearly do not give school officials any more control over the content of school-sanctioned publications than over underground publications. While the publication may be subject to the controls discussed in the previous chapter, such regulations at least apply equally to both school-sponsored extracurricular publications and non-school sponsored publications.

Newspapers offered as part of the school curriculum must rely on Zucker (anti-Vietnam war advertisement banned by principal) for help in justifying limited school control of content. The federal judge in Zucker, in ruling that school officials must allow publication of an anti-war advertisement, disagreed with the administrator's position that the paper, as a "beneficial educational device," developed as part of the curriculum, was therefore subject to all school regulations [Zucker at 103-104]. The judge ruled that school newspapers--even those that are included in the school curriculum--serve the school community as a forum for the dissemination of ideas; hence, the school must open that forum to all students. Once the school, as a federal agency, establishes such a forum, it cannot deny free expression of ideas in its columns, as long as such expression is not libelous or obscene and falls within the standards of the Tinker disruption factor [Zucker at 105]. Although Zucker granted access to the paper to students

seeking to place an advertisement free of administrative interference, the same would appear to hold for other expressions of opinion.

The unresolved issue not presented in Zucker, however, is the degree of authority of journalism teachers to control the content of stories submitted for course requirements and for publication. Because the role of the teacher-adviser varies from school to school, the teacher's degree of control over the content of curriculum publications also varies. While some advisers prefer to allow their publications staffs complete editorial freedom in producing the school publication, other teachers prefer to act as editor-in-chief, approving or rejecting all copy with the same authority of a professional news editor. The crucial problem is whether or not a journalism teacher can rule against a staff's decision and prohibit publication of an article for reasons other than libel, obscenity, or by applying the Tinker disruption factor. There can be no argument that a journalism teacher has a right to read his/her students' copy before publication; hence, the issue is not prior review as practiced by a teacher, as opposed to a school administrator, although the results might be the same. If Zucker, which ruled on the right of a student outside the journalism class to place an advertisement in the class-produced paper, is applicable, the teacher, as well as student editors, should allow publication of all lawful articles. (Zucker overruled the decision of a principal, who had rejected the decision of the student editorial board.)

But Zucker, nor none of the other cases involving school publications, faces this particular issue squarely. In fact, no case exists in which a student has charged a journalism teacher with violating his or her first amendment rights by censoring copy originating as a classroom assignment. (Wesolek concerned censorship by an adviser of an assignment prepared for an extracurricular newspaper that was officially sanctioned by the school district. Nicholson and Lentczner are journalism teachers who are challenging their principals' use of prior review; they are not students contesting their teachers' invoking of pre-publication censorship.) It is unlikely that this issue will ever reach the courts, for while the federal courts have not been reluctant to intervene in local school affairs, they undoubtedly will not invade a specific teacher's evaluation of classroom assignments. Nevertheless, if journalism teachers are concerned about practicing what I hope they are lecturing, they would be wise to apply the standards set down in Zucker to the classroom. This is only to say that journalism teachers cannot censor lawful content simply because they disagree with the opinions therein expressed. They must retain instructional authority in the classroom, and this might mean rejecting a student's story because it fails to meet publishable quality. Better yet, publications advisers should teach their students to make such editorial decisions.

Finally, it must be noted that no school official in this study, from school board member to journalism teacher or adviser, has sought to establish his or her authority over the content of official school publications on the basis of acting as publisher of those

publications. School authorities are licensed officials of the various states. To claim the status of publisher would contradict the very foundation of a free and unlicensed press. Furthermore, school officials do not own school publications. Hence, they do not enjoy the same control over school publications as the publishers of the professional media. While they may prohibit unlawful content, they simply cannot suppress student literature solely because they disagree with its contents, as a professional newspaper publisher may do.

As I have indicated above, any system of prior review in public schools runs contrary to democratic principles. It is completely incomprehensible to me to allow prior review by a school principal of copy produced as part of a school-sponsored activity or part of the requirements for a journalism course. The school's obligation is to teach students how to function intelligently in a democratic society--not to deny them the basic freedom of that society. It is also inconceivable to me that students enrolled in a journalism course in a public school--a course in which they are to learn the function of a press in a free society--would be required to learn that lesson under a system of prior review or under the tutelage of a repressive teacher. Those responsible for journalism education must abide by the standard, albeit vague, set down in Tinker and must be qualified journalism teachers trained in their field, not exiles from the English department who know nothing about journalism. A recent study of high school journalism in America revealed that less than half of the 363 journalism teachers responding to a mail survey have completed more than twelve hours in

journalism education.[12] This statistic, which is not shocking to anyone who has worked in scholastic journalism, is reinforced by a 1974 study of California high school journalism teachers, which revealed that only thirty-six percent of the 158 teachers responding to a mail survey have earned either a major or minor in journalism education.[13] The extent of knowledge of the attitudes of school administration, either of the scholastic press or the role of the press in a free society, has not been measured. However, nearly two-thirds (64 percent) of public school teachers in the country believe that school personnel should have the authority to censor stories in official school publications. Once more, 70.7 percent of the nation's secondary teachers hold this opinion, as compared to 58.2 percent of the elementary school teachers in the country. The study was conducted in 1971 by the Research Division of the National Education Association.[14] Solutions and recommendations to the issues I have presented in this study might begin in earnest with a requirement that all journalism teachers and school officials study the developing

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[12]Jack Nelson, ed., Captive Voices: The Report of the Commission of Inquiry Into High School Journalism (New York: Schocken Books, 1974), p. 89.

[13]David C. Henley, "Journalism Teachers' Backgrounds Are Single Most Important Factors," Quill and Scroll 49 (December-January 1975): 14. A 1973 study in Missouri revealed that 45.5 percent of that state's journalism teachers are not certified to teach journalism. Statistics are based on a mail survey, with 51 of 100 questionnaires returned. MIPA News-Gram, January 1974, p. 3.

[14]"Poll Finds Most Teachers Favor Censorship," Communication: Journalism Education Today 5 (Summer 1972): 12.

case law of the scholastic press, as well as student rights and press rights in general.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

Probably every high school student has heard of John Peter Zenger, the printer whose trial for libel in 1735 forms the basis for freedom of the press in the United States. They may not remember that Zenger was acquitted by a jury of charges of printing, in the words of the warrant, "many things tending to raise factions and tumults, among the people of this province, inflaming their minds with contempt of His Majesty's government, and greatly disturbing the peace."[1] But many of those students nevertheless know that the bulwark against tyranny is the freedom to criticize the affairs of government, and that freedom is guaranteed by the first amendment to the Constitution. Although this study concerns the adversary relationship between student journalists and school administrators, I am not suggesting that all school officials rule tyrannically over the students in their schools. The forty-three high school student press cases herein cited do not warrant such generalization. But it is possible to conclude that the judgment of school officials cited above shows a remarkable consistency in denying students a right guaranteed to them by the first

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[1] James Alexander, A Brief Narrative of the Case and Trial of John Peter Zenger, Printer of the New York Weekly Journal, ed. Stanley Nider Katz (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1963), p. 59.

amendment and made applicable to them in the landmark decision in Tinker. I find this comment unpleasant to write. School personnel have been the favorite whipping persons (née boys) of societal critics since the Soviet Union launched a spaceship named Sputnik in 1957. In recent times, fears of material and substantial disruption in schools have extended a policeman's beat inside the schoolhouse gate. In short, the job of running a school is no picnic--if it ever was. Very recent intervention by the judicial system has not made it any easier. In the first two months of 1975, the United States Supreme Court has extended the rights of students, much as it had augmented the rights of criminals or those suspected of having committed a crime. In Goss v. Lopez[2] the Court ruled that a student could not be suspended from school without notice of the charges and a hearing. In Wood v. Strickland,[3] the Court ruled that school officials who discipline students unjustly cannot claim ignorance of students' constitutional rights (and that, of course, includes their first amendment rights). These two decisions, coupled with Tinker, require school officials to reevaluate carefully the ramifications of their disciplinary actions and regulations that enforce them.

My examination of school administrators' charges and subsequent punishment of students for literature-related offenses only underscores the necessity for such reappraisal. The student-press case law reveals that school officials have relied on unconstitutional regulations--procedurally unsound systems of prior review--to suppress student

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[2]43 U.S.L.W. 481 (U.S. Jan. 21, 1975).

[3]43 U.S.L.W. 4293 (U.S. Feb. 25, 1975).

opinion. They have repeatedly misapplied the Tinker disruption factor--albeit a fuzzy standard that empowers them to squelch student opinion if they reasonably foresee the outbreak of disruption in school. Others have banned the sales of written material on school property, which effectively prevents the circulation of non-school-sanctioned literature. Others have prohibited the distribution of unsigned articles or those written by persons other than students or employees of the school district. Still other administrators have received court approval for punishing students, not for attempting to distribute unauthorized literature, but rather for violating orders to cease such distribution--even if the student-challenged regulation is unconstitutional. And finally, other school administrators have apparently found it easier to suppress the expression of lawful literature instead of hostile reaction to that opinion.

Throughout the case analysis, the position of the defendant school districts has been to argue that the challenged administrative rules or decisions were made or carried out in good faith in order to avoid material and substantial disruption of school activities. With only a few exceptions, the courts have disagreed with that assessment. While school officials argued that a pre-publication screening process was necessary to launder potentially disruptive content, disruption, in fact, was linked in court to the content of student literature in only two cases involved in this study--and even then, not unequivocally. In Baker, the judge ruled that the student paper containing vulgar expressions had disrupted classroom decorum by distracting students from their lessons [Baker at 522]. While students in Karp were ordered

to surrender their protest signs, the actual disruption that followed was not explicitly associated with the signs, but rather the group of students protesting the firing of an English teacher. However, school officials took no action to protect the group's expression of opinion from the lettermen who disagreed with that viewpoint. If the students had been protesting at the wrong time or in the wrong place, the issue was not contested in court. Also, the court disallowed the suspension of the plaintiff for expressing his point of view with a protest sign. In one other case (Katz), the court upheld a ban on the sale of student literature as a reasonable regulation to avoid disrupting school decorum.

At the same time, I attribute part of the confusion over the free press rights of public high school students to the courts. One cuit court of appeals has ruled that all prior review policies are unconstitutional, while four others, in striking down only procedurally unsound policies of prior review, have thus sanctioned procedurally safe policies of prior review. Panels of these same four circuits, however, do not agree on just exactly what is procedurally sound. For example, the second circuit does not require an appeals procedure enabling students to challenge a school official's decision, while the fifth circuit does not require a school's prior review policy to include directions on what course a student should follow if school officials fail to announce their decision within the prescribed time period. Furthermore, none of the court-ordered prior review policies requires school officials to declare their opposition to disruptive reactors to controversial--yet lawful--literature distributed in school. This is an

important consideration, for it indicates an apparent disregard for the message, usually a minority or unpopular point of view, expressly protected by Tinker.

Despite their differences, the courts have made it clear that prior review regulations may exist in schools only to squash potentially disruptive language (or harmful, in instances of obscenity or libel), not to censor subject matter merely to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint [Tinker at 738]. As the Supreme Court has stated, "In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They must not be confined to the expression of those sentiments that are officially approved" [Tinker at 739, emphasis added].

I believe prior review regulations, no matter how procedurally sound, have no place inside the schoolhouse gates. They chill an essential freedom the schools are obligated to teach--the function of a free press in a democratic society. Students who must submit their written material prior to distribution in order to receive official approval are at the whim of their school administrators. The intuitive judgment the courts found lacking in the litigation prompting this study argues well against the efficacy of such a regulation. Furthermore, if the prior review system allows a student to appeal the school principal's decision, the administrative appeal structure might take longer than the news or advertisements featured in the publication can endure to remain timely. (See Appendix B, p. 166, for the elaborate appeals procedure set down in the revised distribution of

literature rule in Egnar.) Surely, prior review regulations that fail to provide prompt appeals procedures serve only to discourage--not protect--the fundamental freedom of expression. In addition, the likelihood of one school official overruling another is nearly nill, for neutrality is unlikely in any in-school appeals procedure. In short, the deck is loaded against students who must abide by a system of prior review, which I believe results in unacceptable abridgement of constitutionally guaranteed freedom.

Added to the grave consequences of a system of prior review in schools is its unmeasured effect on the students and schools operating with such a system. Surely, students who resort to court action to undo what they consider to be intolerable injustices are not in the majority. Countless other students grin and bear the same treatment out of fear of reprisals by school officials or lack of money or parental support to file suit. Their attitudes toward school, toward the institutions of government, toward equality cannot be enhanced by rules and regulations that run contrary to what they are taught in the classroom. The Tinker Court specifically declared that the permissible exercise of first amendment rights cannot be confined "to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom" [Tinker at 740]. Knowing this (I hope the issue in Tinker is part of every student's lessons), students whose first amendment rights are stifled in practice can only suffer the pains of disillusionment. The recent report on the status of high school journalism in America, commissioned by the Robert F. Kennedy Memorial, effectively summarizes the impact of a school's

denial of fundamental rights to students. Because the passage is succinctly worded, I shall quote directly:

> Not only does direct administrative censorship stifle the free expression of ideas in specific cases, but also it creates an atmosphere in which faculty and student alike know that to deal with controversial issues is to court official disapproval and perhaps disciplinary action. It breeds faculty censorship and self-censorship by students who otherwise would be more inclined toward participating in a free press.
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> The result usually is an unquestioning attitude among students, an unhealthy acquiescence in pronouncements of school authorities no matter how unfair or oppressive they may be. In such authoritarian schools, student rights are routinely denied, with little or no protest by students. The cost of such controls is not only the absence of a free student press, but also bland, apathetic students who are unaware or interested in their rights.[4]

This is strong language--and it is sure to be met with outrage by school officials.[5] Yet ridding school rules of prior review policies certainly will not result in the elimination of such sad comments as this. Tinker still authorizes school administrators to ban distribution of literature on school property if those officials reasonably forecast the likelihood of disruption caused by the act of distribution or the contents of the publication (the Tinker disruption factor). But at least a disruptive forecast should not serve to prohibit distribution of the written material before its circulation takes place. Given the failure of school administrators in this body of law to substantiate

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[4]Jack Nelson, ed., Captive Voices: The Report of the Commission Into Inquiry Into High School Journalism (New York: Schocken Books, 1974), pp. 24-25.

[5]See Editorial, NASSP Newsletter, October 1974, p. 2, in which the National Association of Secondary School Principals takes issue with the study's lack of input by school administrators. See also, NASSP Bulletin for February 1975. The entire issue discusses scholastic journalism, including criticism of the Robert F. Kennedy Memorial's report of high school journalism in America.

their apprehensive fears of disruption of school activities before distribution, perhaps it is only fair to make them wait for actual distribution before determining the likelihood of material and substantial interference with school decorum. This also would enable school officials to determine if the disruption is caused by the act of distributing, by the content of the literature, or by those practicing the so-called heckler's veto in an attempt to disrupt the distribution. Furthermore, if the content of literature is in fact unlawful, school officials would still be acting within their authority if they stop distribution and/or punish those who have violated a school rule. This still allows the student to challenge, in court if need be, the school administrator's decision. But at least the literature is distributed without prior approval and the students can proceed against their accuser if they believe they have been charged unfairly. Most important, the burden of proof remains with the school officials. The crucial issue here is the difference between prior and subsequent restraints, for the latter removes the onus of prior review from both student and school official. This, in effect, is the procedure recommended in Fujishima by the Seventh Circuit Court of Appeals. In such a system, school officials establish reasonable regulations as to time, place, and manner of distribution within the school. They can discipline students who violate these regulations, as well as those who distribute obscene or libelous literature, or literature that advocates and produces disorder. It is, of course, virtually impossible for everyone to agree on just exactly what is potentially disruptive or obscene or libelous--including the courts. However as a three-judge

panel for the fourth circuit stated: "We think letting students write first and be judged later is far less inhibiting than vice versa" [Baughman at 1355]. It is a point well made.

To avoid prior review procedures, then, school administrators should establish what one student-rights attorney has called neutral regulations of the time, place, and manner governing the distribution of student literature.[6] This procedure also was recommended by the Task Force on Student Involvement, convened by the National Education Association in July 1969--significantly before most of the cases in this study took place.[7] (See Appendix D, p. 204, for a copy of the freedom-of-expression code recommended by the Task Force.) Such regulations enable school officials, acting, I hope, in concert with student representatives, to determine when, how, and where students may circulate written material. If such a rule is clear and precise, students will know the exact requirements they are to meet in distributing their materials. The words clear and precise are important here if the rule is ever tested in court for vagueness or overbroadness. The critical aspect of such a rule is the degree of reasonableness of the time, place, and manner restrictions. For example, if the time is limited to after school hours only, and the majority of students must

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[6]Barbara Gold, interview held during meeting of the Journalism Education Association, Chicago, Illinois, November 29, 1974. Ms. Gold is director of the Student Press Law Center in Washington, D.C. The Center was founded in October 1974. It is supported by the Reporters' Committee for Freedom of the Press and the Robert F. Kennedy Memorial. The establishment of the Center was recommended by the Kennedy Memorial report on the status of high school journalism in the United States.

[7]Code of Student Rights and Responsibilities (Washington, D.C.: National Education Association, 1971), p. 24.

hurry to meet a bus to carry them home, such a restriction clearly would be unreasonable. Or, as seen in Jacobs, if the rule prohibits distribution of student literature while any classes are in session, it could prohibit all literature distribution, for classes at large high schools, or schools on split session, for example, are in session from early morning to late afternoon, including the lunch period. Each school, then, would be required to develop its own policy. (For sample policy, see Appendix D, p. 205, for a copy of the guidelines suggested by the Kennedy Commission and the Student Press Law Center in Washington, D.C.)

However, it is unlikely that a majority of the present Supreme Court justices will adopt this position. In Southeastern Promotions, Ltd. v. Conrad,[8] the Court ruled that procedurally safe prior review systems are acceptable for determining obscenity. The case involved the banning in 1971 and 1972 of the play, "Hair," by city officials in Chattanooga, Tennessee. Although the Court did not declare whether or not the controversial stage play was obscene, it ruled that the Chattanooga Municipal Auditorium Board failed to follow minimal procedural safeguards before banning the play. The 6-3 majority ruled that this constituted prior restraint, because the theatrical production was denied a "specific brief period" of review by a court to determine if the charges would be sustained.[9] Of the three dissenters, only Associate Justice William O. Douglas disagreed with any system of prior review, with or without safeguards--which he

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[8]43 U.S.L.W. 4365 (U.S. March 18, 1975).

[9]Ibid. at 4370.

called "procedural band aids."[10] Significantly, then, for the student journalist seeking to distribute written material in schoolhouses, this recent decision strongly suggests that the Supreme Court would uphold procedurally sound prior review policies in public schools.

When discussing official school publications, including those produced in a class for credit, as opposed to underground publications, the rules of the game must necessarily change. But not to the extent that some school officials would have; notably, the principals in the Nicholson and Lentczner cases. While the majority of school administrators claim they do not require prior review of student publications,[11] I sedulously recommend they take an official stand through their national organizations against any system of prior restraint, including those affecting school-financed publications written by students. Prior review is especially humiliating for students and teachers of publications classes or the advisers to publications produced as extracurricular activities. This is not to recommend that school administrators have absolutely no control over publications classes or activities. Obviously, the contrary is true. Principals are designated to run the total school program, which necessarily includes student-produced publications. Instead of requiring prior approval of the content of official school newspapers, however, school districts should hire qualified, professional journalism teachers who are better able

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[10] Ibid. at 4371.

[11] Education U.S.A. Special Report. Student Rights and Responsibilities: Courts Force Schools to Change (Washington, D.C.: National School Public Relations Association, 1972), p. 22.

to judge the quality and legality of written material than most school administrators. By comparison, if a principal is a former English major, he undoubtedly would leave the determination of elements of a chemical experiment to a trained chemistry teacher. The principal should follow the same policy for laboratory-produced school publications. A qualified journalism teacher (one who has at least a certified minor in journalism education) knows that freedom to discuss controversial ideas in the schools--either in class discussion or by class-produced publications--is "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."[12] A qualified journalism teacher knows that "compulsory unification of opinion achieves only the unanimity of the graveyard."[13] A qualified journalism teacher knows that to counsel against publication of unlawful material is not to squash unpopular student opinion. A qualified journalism teacher understands that parental pressure on school officials might become a heckler's veto of lawful student literature. A qualified journalism teacher also knows that the heckler's veto is an unconstitutional prior restraint on written material. The qualified journalism teacher knows that the courts have found the judgment of school officials deficient in suppressing student literature for reasons of predictive disruption. The qualified journalism teacher knows that "undifferentiated fear or

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[12] Keyishian v. Board of Regents, 385 U.S. 589 at 503 (1966).

[13] West Virginia V. Barnett, 319 U.S. 624 at 641 (1943).

apprehension of disturbance is not enough to overcome the right to freedom of expression" [Tinker at 508].

I also recommend that official school publications operate under written policy guidelines. Although such policies can never expect 100 percent acceptance, at least they represent a starting point for resolving conflicts among all factions of the school, particularly among staff members and faculty advisers and/or school administrators. Some schools, for example, have created a school publications board with authority to settle disputes. The board is comprised of students, faculty, administrators, and even parents. Although cumbersome, the board hears all sides of disputes and votes to determine its decision, which may be appealed to the school superintendent. Ideally, this system operates to rid both the principal and adviser of being placed in a position of censoring the content of student literature, especially content that involves ethical issues as opposed to legal questions. It requires the journalism teacher to relinquish some of his or her classroom control to the board, and most assuredly requires the cooperation of school administrators. If the adviser and/or administrators refuse to abide by the board's decisions, they thereby reduce the panel to a paper board. (See Appendix D, p. 207, for model guidelines of a board of publication; see also Appendix D, p. 214, for publications guidelines prepared by the Association for Education in Journalism, and Appendix D, p. 220, for guidelines prepared by the Journalism Education Association.[14]).

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[14]The Association for Education in Journalism is the leading professional organization for college and university journalism professors. The Journalism Education Association is the national organization of high school journalism teachers.

Basic to all this, however, is the underlying confidence a school principal and journalism teacher/publications adviser must have for each other. Such respect does not automatically accompany the title of principal or the completion of requirements for certification in journalism education. But once that rapport and respect is achieved between principal and teacher (as well as between journalism teacher and publications staff) the potential for unwarranted administrative interference with school publications and self-censorship by adviser out of fear of the administration drops. A study has shown that high school journalism programs considered "outstanding" by the Newspaper Fund, Inc., bear at least one common denominator: in the "outstanding" programs, the journalism teacher is more independent; that is, the principal supports and encourages the program and does not interfere with the teacher.[15] Conversely, where journalism programs have been rated "average" by directors of high school press associations, both the principal and teacher view the principal's role as more autocratic. Hence, the study concluded that the success of the program might well depend on the teacher's freedom to do the job.[16] School administrators must provide that freedom. (See Appendix E, p. 223, for a copy of publications guidelines for school administrators.)

I cannot overemphasize the importance of this harmonious relationship in developing loyalty in the student staff members as well.

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[15]Ronald L. Watson, "Administrative Attitudes Toward High School Journalism," Quill and Scroll 44 (October-November 1969): 10-11.

[16]Ibid., p. 11.

As one school principal has written, "In all my observations of different schools, loyalty, or its absence, stood out as one of the clear symptoms of harmonious conditions or explosive instability. Loyalty stems from the degree to which students are gaining emotional satisfaction from participation in school activities."[17] Obviously, "emotional satisfaction" of advisers and staff members of school publications will be strained by a system of prior review, which does not foster good will. (See Appendix E, p. 225, for a copy of guidelines for publications advisers and journalism teachers.)

Ultimately, however, somebody in the school must advise the students of the official school newspaper, magazine, or yearbook. I believe that person should be the qualified teacher of the journalism class, who simply must have control over his course. If he or she has inculcated the objectives of his course, if the journalism students have learned that responsibility runs concomitantly with the exercise of freedom of the press, there probably will not be much need for any interference with the editorial decisions of the class. But when the student-staff members fail to reach accord among themselves, following written guidelines established by the staff, the journalism teacher must be ready to step in and advise the staff in making its decision, or, together with the staff, refer the issue to the publication board, if one has been formed, for arbitration. Above all, the journalism students must know that they are publishing a school

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[17]Kenneth L. Fish, Conflict and Dissent in High School (New York: The Bruce Publishing Company, 1970), pp. 105-106. Dr. Fish is Principal of Roosevelt High School, Yonkers, New York.

publication, not an independent or private publication that excludes the views of others. And in this context, it is not unreasonable to consult with school administrators concerning controversial issues. If the principal and adviser are working in harmony with each other and the staff, no unlawful censorship should take place. If they are not, the students are simply at the mercy of their adviser or administrator or both. Staff members can do precious little to avoid pre-publication censorship of their publication by their administrator or adviser if these two factors are bent to censor. As the story goes, a student can cry out to his superior, "You can't censor me!" "But I just did," the authority replies. "What are you going to do about it?"[18] The student can appeal to the school board or failing there, to the federal court system. And that takes us back to where we began.

One final comment adequately summarizes my recommendations. It appeared in the Shanley decision involving a defective prior review policy: "Perhaps it would be well if those entrusted to administer the teaching of American history and government to our students begin their efforts by practicing the document on which that history and government are based" [Shanley at 978]. This is not a poke at American history and government teachers specifically; it is a serious directive to all school personnel. Once a school establishes a channel of communication among its students, it cannot limit the exercise of that channel of free expression to officially approved viewpoints. That lesson has served this country well for 200 years. It also should serve the public school system.

APPENDICES

APPENDIX A

CASES INVOLVING WRITTEN PRIOR REVIEW REGULATIONS

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CASES INVOLVING WRITTEN PRIOR REVIEW REGULATIONS

Baughman v. Freienmuth, 478 F. 2d 1345 (4th Cir. 1973).

*De Anza Students Against the War v. De Anza Board of Education, Civil Act No. 80 1074 (N.D. Cal. Nov. 20, 1970) (unpublished).

Egnar v. Texas City Independent School Dist., No. 109 670, 56th Dist. Ct., Galveston County, Tex. (June 9, 1972).

Eisner v. Stamford Board of Education, 440 F. 2d 803 (2d Cir. 1971).

*Fujishima v. Board of Education, 460 F. 2d 1355 (7th Cir. 1972).

*Jacobs v. Board of School Commissioners, 349 F. Supp. 605 (S.D. Ind. 1972), aff'd, 490 F. 2d 601 (7th Cir. 1973), vacated per curium, 43 U.S.L.W. 4238 (U.S. Feb. 18, 1975).

*Mt. Eden High School Students v. Hayward Unified School Dist., Civil Act No. C 70 1173 (N.D. Cal. June 4, 1970) (unpublished).

*O'Reilly v. San Francisco Unified School Dist., Civil Act No. 51427 (N.D. Cal. Nov. 10, 1970) (unpublished).

Poxon v. Board of Education, 341 F. Supp. 256 (E.D. Calif. 1971).

Quarterman v. Byrd, 453 F. 2d 54 (4th Cir. 1971).

Riseman v. School Committee of the City of Quincy, 439 F. 2d 148 (1st Cir. 1971).

*Rowe v. Campbell Union High School Dist., Civil Act No. 51060 (N.D. Cal. Nov. 20, 1970) (unpublished).

Shanley v. Northeast Independent School Dist., 462 F. 2d 960 (5th Cir. 1972).

Sullivan v. Houston Independent School Dist., 333 F. Supp. 1149 (S.D. Tex. 1971), vacated, 475 F. 2d 1071 (5th Cir. 1973), cert. denied, 414 U.S. 1032 (1973).

Vail v. Board of Education of Portsmouth School Dist., 354 F. Supp. 592 (D.N.H. 1973).

*Prior review policy rejected on its face.

APPENDIX B

DISTRIBUTION OF LITERATURE RULES

APPENDIX B

DISTRIBUTION OF LITERATURE RULES

Distribution of Literature Rule (Rejected)

Eisner v. Stamford Board of Education

Distribution of Printed or Written Matter

The Board of Education desires to encourage freedom of expression and creativity by its students subject to the following limitations:

No person shall distribute any printed or written matter on the grounds of any school or in any school building unless the distribution of such material shall have prior approval by the school administration.

In granting or denying approval, the following guidelines shall apply:

No material shall be distributed which, either by its content or by the manner of distribution itself, will interfere with the proper and orderly operation and discipline of the school, will cause violence or disorder, or will constitute an invasion of the rights of others.

Revised Eisner Distribution of Literature Rule

Distribution of Written Matter

The Board of Education desires to encourage individual freedom of expression and creativity by students within the Stamford School System and will approve the general distribution and/or display of any written and pictorial matter which upon review will not materially or substantially (1) interfere with the proper and orderly operation of the school, (2) disrupt class or school activities or (3) infringe upon the rights of others.

Prior to general distribution or display, all such material shall first be submitted to the principal or to such Review Board as may be designated within each individual school by the principal.

The principal or Review Board shall review the material to determine whether or not approval for distribution or display shall be given and shall inform the student or students of a decision by 9:00 a.m. of the second regularly scheduled school day following the date of

submission of the material or such sooner time as may be reasonably practicable. If the student or students do not receive notice of a decision within the time aforesaid, it shall be presumed that the material is approved for distribution.

In the event that the material is approved for general distribution or display or no notice is given within the time set forth above, the student or students may distribute or display such material at the time and place customarily designated for such purpose within each school or, if such place is inappropriate, shall be advised of the manner, time, and place for distribution or display and shall be given a reasonable opportunity to generally distribute such material consonant with the physical facilities, operation, and educational routine of the school.

In the event the material is not approved, the student, submitting the material, shall be notified in writing of the rejection and the reason for the rejection shall be included.

Where the principal or Review Board deem it desirable, each school may enact supplemental regulations relating to the general distribution or display of student material within the scope and spirit of this policy.

The purpose of this policy is to encourage responsible student activity and to this end the policy is to be applied reasonably and responsibly taking into consideration the rights of the students, faculty, and school administration in conjunction with the physical facilities and orderly operations of the school.

Policy Adopted
September 10, 1963

Amended
November 18, 1969
May 23, 1972 (completely revised)

Distribution of Literature Rule (Rejected)

Quarterman v. Byrd

General School Rules 7 and 8

7. Each pupil is specifically prohibited from distributing, while under school jurisdiction, any advertisements, pamphlets, printed material, written material, announcements or other paraphernalia without the express permission of the principal of the school.
8. All students shall be subject to suspension or dismissal by the principal, who willfully and persistently violate the rules of the school, or who may be guilty of immoral or disreputable conduct, during school term or out of school term whether on school property or not, or who may be a menace to the school as by law provided.

Distribution of Literature Rule (Rejected)

Baughman v. Freienmuth

Student Involvement in the Educational Process

Under the following procedures, student publications produced without school sponsorship may be distributed in schools:

d. A copy must be given to the principal for his review. (He may require that the copy be given him up to three school days prior to its general distribution.) If, in the opinion of the principal, the publication contains libelous or obscene language, advocates illegal actions, or is grossly insulting to any group or individual, the principal shall notify the sponsors of the publication that its distribution must stop forthwith or may not be initiated, and state his reasons therefor. The principal may wish to establish a publications review board composed of staff, students, and parents to advise him in such matters.

Students may distribute or display on designated bulletin boards materials from sources outside the school subject to the same procedures that govern student publications.

Revised Baughman Distribution of Literature Rule

Student Involvement in the Educational Process

7. School sponsored publications such as school newspapers, yearbooks, literary magazines, and similar publications are to be encouraged as learning experiences. As such, they shall have qualified faculty advisors and shall strive to meet high publications standards. It is essential that school newspapers provide an opportunity for members of the school community to express a variety of viewpoints.

The distribution of such materials as commercial advertising, partisan political materials, and certain religious literature is restricted by MCPS Regulation 270-2.

Any student publication without school sponsorship must bear the name of the sponsoring organization or individual; it may not be sold on school grounds, and a time and place for distribution must be cooperatively established with the school principal or his designee, so as not to interfere with normal school activities and the ongoing educational process.

Students are urged to confer with the principal or his designee (but are not required to do so), as to the advisability of making the distribution. In such a conference the principal shall clarify, if appropriate, that neither libel nor obscenity is constitutionally protected.

If, in the course of such conference, the proposed publication appears to contain material which leads the principal or his designee

reasonably to forecast substantial disruption of/or material interference with school activities, or that it endangers the health and safety of students, the principal or his designee shall advise the student that its distribution may be halted, if once begun. Within two school days following such advice, the principal or his designee shall state his reasons in writing for advising against distribution and shall give a copy to the student and to the area assistant superintendent.

Whether or not there has been this recommended discussion between the student and the principal or his designee and if there has been distribution of a publication, the principal or his designee may halt further distribution if the publication contains material which:

(a) has caused, is causing, or which reasonably leads the principal to forecast substantial disruption of/or material interference with school activities, or

(b) endangers the health or safety of students, or

(c) is in the judgment of the principal or his designee, unprivileged libel; is obscene in that (i) the average person, applying contemporary standards would find that it, taken as a whole, appeals to prurient interest, (ii) it depicts or describes, in a patently offensive way, sexual conduct currently defined by Maryland law, (iii) taken as a whole, it lacks serious literary, artistic, political or scientific value; or advocates the commission of a criminal act in the State of Maryland as defined by the Criminal Code of the United States or of the Criminal Code or Common Law of the State of Maryland.

If the distribution of the publication results in a substantial disruption of/or material interference with school activities; endangers the health or safety of students; or if the publication contains unprivileged libel or obscene material as defined hereinabove or advocates commission of a criminal act in the State of Maryland, the principal or his designee may censure or suspend students making the distribution. In no event, however, shall the principal or his designee retaliate against a student or students for failure to meet with him or to accept his advice concerning distribution of the material.

The student's right to appeal any decision halting the distribution is guaranteed and appeals shall be processed promptly and expeditiously by the school system with review by the area assistant superintendent, and the superintendent of schools, or his designee, if desired, within a maximum of five school days following statement of reasons by the principal. The decision of the superintendent of schools may be appealed to the Board of Education.

Students may display on designated bulletin boards non-school sponsored materials subject to the same procedures that govern non-school sponsored student publications.

Distribution of Literature Rule (Rejected)

Egnar v. Texas City Independent School Dist.

Duplicated, written, or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials shall not be sold, circulated, or distributed on any school building in the Texas City Independent School District without explicit approval of the principal of that school. Any student violating this policy may be suspended by the principal and/or superintendent until Board action can be taken. No person shall enter on any school campus to distribute such materials without explicit permission of the principal and/or superintendent.

Revised Egnar Distribution of Literature Rule

Student Publications

Student participation in the publication of the school newspaper, yearbook and similar publications is encouraged by the Texas City Independent School District as learning and educational experiences. Such publications have faculty advisors and strive to meet high standards of journalism.

In addition to school sponsored publications, students are entitled to express in writing their opinions and may distribute handwritten, duplicated or printed materials on school premises or at school sponsored activities at other locations in accordance with the following conditions and procedures:

1. The distribution on the grounds of any school or in any school building or at any school sponsored activity at other locations of the following is prohibited:
   a. Material consisting wholly or primarily of commercial advertising.
   b. Libelous material.
   c. Obscene material. "Obscene material" is that material which, considered as a whole, is devoted to the description or depiction of nudity, sexual activity, or generically similar matters in such a way that the material (i) predominately appeals to the prurient, shameful or morbid interest of minors, and (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors.
   d. Material advocating illegal action or disobedience to the published rules of student conduct adoptive by the Board of Trustees if: (i) the principal has convincing and credible evidence that the distribution of the written

material will result in or significantly contribute to a substantial and material interference with normal classroom activity or a normal school function and (ii) before the principal acts against students distributing the written material he makes a good faith but unsuccessful attempt to discipline the person or persons provoking the substantial and material interference. "Normal classroom activity" includes the time when a student is in the library, in indoor or outdoor physical education classes and official assemblies such as pep rallies, student elections and orientation or administrative sessions. "Normal school function" means such activities as athletic contests, band concerts, school plays and lunch periods.

e. Any other material if (i) the principal has convincing and credible evidence that the distribution of the written material will result in or significantly contribute to a substantial and material interference with normal classroom activity or a normal school function and (ii) before the principal acts against students distributing the written material he makes good faith but unsuccessful attempts to discipline the person or persons provoking the substantial and material interference.

2. Before its general distribution on the grounds of any school or in any school building or at any school sponsored activity at other locations, a copy of the material must be submitted to the school principal, who shall have up to one school working day to review it. The principal shall make a determination as to whether the publication should be prohibited as contrary to the provisions of Paragraph 1 of this policy.
3. If the principal finds that distribution of the publication should be prohibited, he shall notify the sponsor of the publication that it cannot be distributed. This notification must be given within the one school working day provided in Paragraph 2 of this policy.
4. If distribution of the publication is not approved by the principal, the sponsor of the publication may appeal to the superintendent, who may take up to one additional school working day to review the publication and the decision of the principal. He may either affirm or overrule the decision of the principal. If he overrules the decision of the principal, the publication may be distributed on the next school working day, subject to the provisions of Paragraph 6 of this policy.
5. If the superintendent affirms the decision of the principal, the publication may not be distributed on campus; however, the sponsor of the publication may appeal that decision to the Board of Trustees. Upon filing of a written request for a hearing before the Board with the superintendent, the Board of Trustees shall meet and hold a hearing and either affirm or overrule the decision of the superintendent. This hearing must be held within five school working days after the filing of the written request for hearing. If the Board of Trustees

fails to meet within the required time or overrules the decision of the superintendent, the publication may be distributed on the next school working day, subject to the provisions of Paragraph 6 of this policy.

6. If the distribution of the publication is approved, the time and place for distribution must be cooperatively established with the principal, except that in any event, the distribution can take place before and after the regular school hours on school premises.
7. The publication must contain the names of the individual contributors, editors and publishers.
8. Distribution of the publication shall not be prohibited because the publication contains the expression of any idea, popular or unpopular.
9. Distribution of printed material off school premises will be subject to the foregoing rules when the manner of distribution is calculated to and in fact does result in possession by students on school premises. This includes distribution at places adjacent to the school premises in the morning before normal classroom activity has begun.

Adopted: July 5, 1960
Amended: May, 1971
Amended: July 11, 1972

Distribution of Literature Rule
(Rejected; Rule Not Revised)

Shanley v. North East Independent School Dist.

Policies on Disruptive Activities

In keeping with the policy of this District to maintain, at all times, a proper learning situation, the Board of Trustees hereby establishes what will be known as Policies on Disruptive Activities and Unauthorized Publications.

Whereas several nonschool organizations have publicized their intent to involve students in school boycotts for the purpose of focusing attention on the various concerns of these individual organizations and

Whereas any distraction on a school campus works against the achievement of educational objectives and against the best interest of the entire student body and faculty and

Whereas any nonapproved loss of instructional time endangers a school's ability to meet accreditation standards and jeopardizes the value of scholastic records of all students and

Whereas there is in existence in the schools of the North East District a structure for student government which provides

opportunity for constructive involvement of all students in discussion and expression of opinion on appropriate topics and

Whereas students and their parents have access to communication with the administration in individual schools and with the central office administration and

Whereas there exists in each of the schools of the North East District many varied opportunities for student participation in school organizations and

Whereas the established curricular offerings of the North East District include opportunities for students to develop communicative skill in creative arts,

Be it resolved that any student who participates in a boycott, sit-in, stand-in, walk-out, or other related form of unauthorized activity shall by this action be subject to suspension or expulsion and

Be it further resolved that any attempt to avoid the school's established procedure for administrative approval of activities such as the production for distribution and/or the distribution of petitions or printed documents of any kind, sort, or type on school grounds without the specific approval of the principal shall be cause for suspension and, if in the judgment of the principal there is justification, for referral to the Office of the Superintendent with a recommendation for expulsion and

Be it further resolved that any staff member who initiates by his instruction or who supports by his position any student or any group of students who are involved in disruptive activity shall be subject to disciplinary action by the Superintendent and the Board of Trustees.

In addition to the above policies those disruptive activities which are specified and defined in House Bill 141 of the 1969 Session of the Texas Legislature (as shown immediately following this paragraph) shall be cause in this school district for suspension or recommendation for expulsion as appropriate in the judgment of the principal of the school concerned.

PROHIBITING CERTAIN DISRUPTIVE ACTIVITIES IN PRIVATE OR PUBLIC SCHOOLS OR INSTITUTIONS OF HIGHER EDUCATION

"Section 1. No person or group of persons acting in concert may willfully engage in disruptive activity or disrupt a lawful assembly on the campus or property of any private or public school or institution of higher education or public vocational and technical school or institute.

"Section 2. (a) For the purposes of this act, "Disruptive activity" means:

"(1) obstructing or restraining the passage of persons in an exit, entrance, or hallway or any building without the authorization of the administration of the school;

"(2) seizing control of any building or portion of a building for the purpose of interfering with any administrative, educational, research, or other authorized activity;

"(3) preventing or attempting to prevent by force or violence or the threat of force or violence any lawful assembly authorized by the school administration;

"(4) disrupting by force or violence or the threat of force or violence a lawful assembly in progress; or

"(5) obstructing or restraining the passage of any person at an exit or entrance on said campus or property or preventing or attempting to prevent by force or violence or by threats thereof the ingress or egress of any person to or from said property or campus without the authorization of the administration of the school.

"(b) For the purposes of this Act, a lawful assembly is disrupted when any person in attendnace is rendered incapable of participating in the assembly due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur.

"Section 3. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $200 or by confinement in jail for not less than 10 days nor more than 6 months, or both.

"Section 4. Any person who is convicted the third time of violating this Act shall not thereafter be eligible to attend any school, college, or university receiving funds from the state of Texas for a period of two years from such third conviction.

"Section 5. Nothing herein shall be construed to infringe upon any right of free speech or expression guaranteed by the Constitutions of the United States or the state of Texas."

Students and parents are advised that, in addition to the school administrative procedures, school officials, wherever deemed advisable, will initiate complaints with legal authorities against any person or persons who violate HB 141 or any of its terms.
(Adopted: June 22, 1972).

Distribution of Literature Rule (Upheld)

Sullivan v. Houston Independent School Dist., 333 F. Supp. 1149 (S.D. Tex. 1971), vacated, 475 F. 2d 1071 (5th Cir. 1973), cert. denied, 414 U.S. 1032 (1973).

Regulation of Student Publication

1. A copy of the publication must be given to the principal, who may take up to one school working day for the purpose of reviewing such publication before its general distribution. If, in the opinion of the principal and the attorneys employed by the Houston Independent School District, the publication contains libelous or obscene language or advocates illegal action or disobedience to published rules on student conduct adopted by the Board of Education, the principal shall notify the individual or sponsors of the publication that it cannot be distributed on the school premises. Distribution shall

not be prohibited because the publication contains the expression of any idea, popular or unpopular.

2. A time and place for distribution must be cooperatively established with the principal, except that in any event the distribution can take place before and after regular school hours on school premises.

3. The publication cannot be sold on school premises.

4. The publication must contain the names of the individual contributors, editors and publishers.

Distribution on school premises of material consisting primarily of commercial advertising or literature advocating the nomination or election of any person for public office is expressly prohibited.

Distribution of printed material off school premises will be subject to the foregoing rules when the manner of distribution is calculated to and in fact does result in possession by students on school premises. This includes distribution at places adjacent to the school premises in the morning before normal classroom activity has begun.

Distribution of Literature Rule (Rejected)

Sullivan v. Houston Independent School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969).

The school principal may make such rules and regulations that may be necessary in the administration of the school and in promoting its best interests. He may enforce obedience to any reasonable and lawful command.

Distribution of Literature Rule (Rejected)

Riseman v. School Committee of City of Quincy

1. Pupils, staff members, or the facilities of the school may not be used in any manner for advertising or promoting the interests of any community or non-school agency or organization without the approval of the School Committee. Exceptions to the above rule are:

a. The Superintendent of Schools may cooperate in the many activities of the community providing such operation does not infringe on the school program or diminish the amount of time devoted to the school program.

b. The Superintendent of Schools may authorize the use of films and materials or programs where the educational value of the material considerably offsets any incidental advertising disadvantages.

c. Appropriate advertising may be sold for the school publications.

Revised Riseman Distribution of Literature Rule

4.19 Distribution of Materials

Students shall be allowed to distribute papers in an orderly and nondisruptive way provided that the distributors or distributees are not then engaged or supposed to be engaged in school activities.

The principal of the various schools shall establish rules setting forth in detail the time and the place within the school and the manner in which the material should be distributed.

The principal shall require that he receive a copy of the literature and the time and place of its distribution so that he will be sure that it conforms with the reasonable rules that he set up.

The principal should not pass on the content of the paper, but if the information is of such an inflammatory nature or if in the opinion of the principal it could cause serious damage to the students or to the school operation, he should contact the Superintendent for a ruling. In no event should he unilaterally stop the distribution of any material.

Revised Distribution of Literature Rule

Vail v. Board of Education of Portsmouth School Dist.

Distribution of Written Materials

The purpose of this rule is to explain the right of students to distribute written materials on the school grounds and within Portsmouth High School.

1. What a Student May Distribute. A student may distribute leaflets, brochures, non-school sponsored papers, school-sponsored papers or other written materials. There is no requirement that a student has written the material which he or she distributes.

2. When a Student May Distribute. A student may distribute written material before and after his or her school day and during any free period. A student may not distribute written materials when he or she has a regular class period, a study period or other regular school duties. A student may not distribute materials to students engaged in regular school duties or who he knows are supposed to be engaged in regular school duties.

3. Where a Student May Distribute. A student may distribute written material in one or more of the following places:

--outside the school on the school grounds,
--in the various resource centers,
--in the foyer area.

Any student or students distributing printed materials in accordance with these procedures shall bear the responsibility to see that the immediate area or areas in which said distribution is made be cleared of all materials which may have been discarded by the recipients of same onto the floor or the area of distribution. If the distributor wishes to place a trash receptacle in the area, he may make a request to the janitorial staff in order to obtain suitable receptacles.

Attachment A

4. How a Student May Distribute. A student should distribute literature in an orderly manner, attempting to minimize noise. A student should not force another person to accept literature. A student distributing material should be careful not to block entrances and exits. A student may sell material, or distribute it free.

5. No Prior Review of Content. There will be no prior review of the content of any written material to which this rule applies. A copy of the material shall be provided to the school principal so that he will have an opportunity to familiarize himself with the nature and substance of what is being distributed.

6. Liability Disclaimer. The Portsmouth School System, its employees and all authorized representatives shall not, in any circumstances, be held liable for any action arising from the dissemination of information within the Portsmouth School System resulting from these rules and regulations. This liability limitation shall extend to all information disseminated under these rules unless it originates from the Portsmouth School System, its employees or one of its authorized representatives.

Distribution of Literature Rule (Rejected)

Fujishima v. Chicago Board of Education

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.

(Revised regulation in progress at time of request.)

Distribution of Literature Rule

Jacobs v. Board of School Commissioners

Rule 11.05

1. General. The following rules shall govern the distribution of literature and other communicatory material (hereinafter collectively referred to as "literature") by students in the Indianapolis public school system (any of whom is hereinafter referred to as "a student") in or upon the School Board's public school buildings, structures and/or grounds (the term "school" being used, hereinafter, to signify any such building, structure or the grounds of any such building or structure).

1.1. Distribution of Certain Kinds of Literature Prohibited.

1.1.1. No student shall distribute in any school any literature that is--

1.1.1.1. obscene as to minors

1.1.1.2. libelous or

1.1.1.3. either by its content or by the manner of distribution itself, productive of, or likely to produce a significant disruption of the normal educational processes, functions or purposes in any of the Indianapolis schools, or injury to others.

1.1.1.4. not written by a student, teacher or other school employee; provided however, that advertisements which are not in conflict with other provisions herein, and are reasonably and necessarily connected to the student publication itself shall be permitted.

1.1.2. Literature other than literature of the kind described in Section 1.1.1. above, is hereinafter referred to as "distributable literature."

1.2. Who May Distribute Distributable Literature.

Subject to the provisions of Section 1.3. below, distributable literature may be distributed by, and only by, any student, within any school in which the student is regularly enrolled.

1.3. Conditions Under Which Distributable Literature May Be Distributed.

1.3.1. No distributable literature shall be distributed by any student in any school--

1.3.1.1. while classes are being conducted in the school in which the distribution is to be made;

1.3.1.2. in any place other than a place designated by the principal of the school in which the distribution is to be made, which place shall be selected by the principal with a view toward insuring that the proposed distribution will be made without interference with other persons lawfully within the school;

1.3.1.3. in such a way that the place of distribution (or any other part of the school in which the distribution is made) becomes littered;

1.3.1.4. in such a way that any person within the school can reasonably be made to feel that the distributable literature is being "forced" upon him;

1.3.1.5. in immediate exchange for money or any other thing of value (or for an immediate promise of money or any other thing of value), whether the transaction is characterized as a sale of the distributable literature, as a contribution to finance the publication or distribution of the distributable literature, or as any other transaction whereunder money or any other thing of value (or a promise of either) immediately passes to or for the direct or indirect benefit of the student who is distributing the distributable literature; or

1.3.1.6. unless the name of every person or organization that shall have participated in the publication of the distributable literature is plainly written in the distributable literature itself.

1.4. Spirit in Which the Foregoing Regulations Are to Be Applied.

In the application of the foregoing regulations pertaining to the distribution of literature in the schools by students, principals and other school administrators shall take care to insure that the constitutional and other legal rights of students to express themselves freely shall not be infringed. The spirit in which the regulations shall be applied shall not be a repressive one, but shall combine a respect for the rights of students with an appropriate regard for the maintenance in the schools of the kind of environment that is necessary to the School Board's conduct of its public educational mission in the School City of Indianapolis.

1.5. Limitation of the Scope of the Foregoing Rules.

The foregoing rules define the conditions under which students will be permitted to distribute literature in the schools. Nothing in those rules is intended to be, or is, or shall be construed as, an indication that the School Board will permit, without its express prior consent, the distribution in any school of any literature or other article by any person who is not a student in the school where the literature is to be distributed.

1.6. Penalties for Violation and Student Rights of Review and Appeal.

1.6.1. For violation of any of the provisions of this Rule 11.05 a student may be suspended or expelled by the principal of the school where such violation occurs and the principal or any teacher of the school may take other disciplinary action which is reasonably desirable or necessary to help any student, to further school purposes, or to prevent any interference therewith.

1.6.2. In the event that suspension or expulsion is deemed necessary, the due process provision of public law 162 of the laws of the State of Indiana and the rules of this board adopted by Resolution #1030 shall apply.

1.7. Severability of Rule.

If any one or more sections, clauses or phrases of this Rule 11.05 shall be declared unconstitutional, such decision shall in no sense invalidate any other part of this act.

Rule 11.06

No person, including students and organizations or corporations, other than the school corporation acting through its designated agents, or organizations of parents and teachers or students whose sole use of funds is for the benefit of the particular school in which they are organized or in attendance, may sell merchandise or material, collect money, or solicit funds or contributions from the students for any cause or commercial activity within any school or on its campus.

Distribution of Literature Rule (Court-Approved)

Mt. Eden v. Hayward Board of Education

Procedure Regarding Student Use of Bulletin Boards, Circulation of Printed Materials and Petitions, and the Wearing of Insignia

In administering this policy and procedure and in imposing any limitations on student expression for any reason, school personnel must insure that rules are applied on a non-discriminatory basis and in a manner designed to insure maximum freedom of expression to the students. Particular care shall be taken to avoid action placing restraints on ideas prior to their expression. . . .

Only school sponsored individuals and groups shall be permitted to use school property for the production of printed material.

B. Distribution of Printed Material and Circulation of Petitions

1. Students shall be free to distribute handbills, leaflets, pamphlets, and other printed material and to collect signatures on petitions concerning either school or

out-of-school issues, whether such materials are produced within or outside the school.

There shall be no prior censorship or requirements of approval of the contents or wording of such material, but the following general limitations may be applied:

a. The time of such activity shall be limited to periods before school begins, after dismissal, during lunch time. Materials shall not be distributed during class time.
b. The place of such activity shall be reasonably restricted to permit the normal flow of traffic within the school and at exterior doors.
c. The manner of conducting such activity shall be restricted to prevent undue levels of noise, or to prevent the use of coercion in obtaining signatures or petitions. Students should avoid undue littering in distributing the material although the danger of littering is not a sufficient ground for limiting the right of students to distribute printed material.
d. The school shall require that all printed matter and petitions distributed or circulated on school property bear the date and name of the sponsoring organization or individual.
e. Printed materials shall be prohibited which fall within the restricted categories of paragraph A.1.a., above.

2. Student petitions presented to school authorities shall receive official response by the appropriate school authorities within a reasonable time.
3. Only school sponsored individuals and groups shall be permitted to use school property for the production of printed material. . . .

D. Right of Appeal

1. Any student or student group allegedly deprived of freedom of expression under any of the provisions of this policy and procedure shall have the right to request a hearing to determine whether such deprivation has taken place. Such a request is to be presented in writing to the Principal of the school.
2. Such a hearing must be held as soon as possible after a request, before an appeals board which will be composed of two teachers selected by the faculty, two students selected by the recognized student government and one representative selected by the Principal. The hearing shall provide for a full and fair opportunity for both sides to present evidence and argument as to the propriety of the application of the regulation in question.

Distribution of Literature Rule (Revised)

Poxon v. San Juan Board of Education

Procedures Governing the Distribution of Non-School Sponsored Literature by Resident Students

I. Bulletin Boards. School authorities may restrict the use of certain bulletin boards to school announcements. Ample bulletin board space shall be provided for the use of students and student organizations, including a reasonable area for notices relating to out-of-school activities or matters of general interest to students. There shall be no prior censorship or requirement of approval of the contents or wording of notices or other communications. However, the administrator shall prohibit distribution of material he believes meets any one or more of the following:

A. Is defamatory of any identifiable individual or group; (This category is not intended to prohibit comment on the actions or policies of school and other public officials.)
B. Is obscene according to current legal definitions applicable in the school setting;
C. Incites students so as to create a clear and present danger of the substantial disruption of the orderly operation of the school;
D. Is a commercial solicitation that does not conform to district policy and procedures.

Students shall inform the administration of their intent to post materials prior to posting.

The administration shall require that notices or other communications shall be officially dated before posting and that such material be removed after a reasonable time to assure full access to the bulletin boards.

II. Distribution of Printed Material and Circulation of Petitions. Students shall be free to distribute handbills, leaflets and other printed material and to collect signatures on petitions concerning either school or out-of-school issues whether such materials are produced within or outside the school.

There shall be no prior censorship or requirement of approval of the contents or wording of such material but the following general limitations may be applied:

A. The time of such activity shall be limited to periods before school begins, after dismissal and during lunch time, if such limitation is necessary to prevent interference with the school program.
B. The place of such activity shall be reasonably restricted to permit the normal flow of traffic within the school and at exterior doors.
C. The manner of conducting such activity shall be restricted to prevent undue levels of noise, or to prevent the use of coercion in obtaining signatures on petitions. The danger of

littering is not a sufficient ground for limiting the right of students to distribute printed material. However, littering caused by distribution imposes a responsibility upon those distributing, to assist in its removal.

D. The administration shall require that an advance copy of such printed material be submitted to a designated school official prior to distribution and that students shall inform the administration of their intent to distribute materials prior to distribution.

E. The administration shall require that persons distributing printed matter or petitions identify themselves.

F. The administration shall prohibit the distribution of material within the restricted categories of paragraph I A through D above.

III. Buttons and Badges. The wearing of buttons, badges, or armbands bearing slogans or sayings shall be permitted as another form of expression unless the message thereof falls within the restricted categories of paragraph I A through D above. No teacher or administrator shall attempt to interfere with this practice on the ground that the message may be unpopular with students or faculty.

In imposing limitations on student expression for any reason under any of the foregoing provisions, the school must ensure that its rules are applied on a non-discriminatory basis and in a manner designed to assure maximum freedom of expression to the students. The school shall particularly avoid any action placing restraints on ideas prior to their expression.

Secondary Schools Division
Adopted by the Board of Education 3/14/72

Distribution of Literature Rule (Rejected)

Cintron v. State Department of Education

ARTICLE VII--SCHOOL DISCIPLINE

The following actions constitute violations of the constitutional order and they are punishable with disciplinary sanctions:

F. Circulating propaganda in the school which is alien to school purposes, including the circulation of publications, political notices, posters, and other such material or means, aimed at promoting movements of a political-partisan, or religious-sectarian character, or commercial promotion on the school premises.

II. To recruit followers from the school population for organizations of political-partisan and/or religious-sectarian character within the school.

The parties have stipulated that Section G, Article VII, which prohibits all meetings or other activities of a "political-partisan

and/or religious-sectarian nature" in the school, or outside of the school if "they affect the institutional order", is also involved in No. 946-72. However, under the circumstances presented, this section merely overlaps section B, if the picket line can also be considered a "meeting or other activity". In any event, to the extent that Section G completely bans political activity in schools it suffers from the same defects as sections F and II, and to the extent that this section bans activities outside of the school which "affect the institutional order" it is as impermissibly vague and overbroad as sections B and D.

Distribution of Literature Rule (Rejected)

Peterson v. Board of Education of School Dist. #1 of Lincoln, Neb.

III. Miscellaneous Building Regulations

A. Commercialism in the Schools

It is the general policy of the Board of Education that teachers, employees, and students should, neither by design nor through inadvertence, comprise a captive audience for the furtherance of a private business of any sort. In keeping with that policy, school buildings, grounds, and facilities may not be used for any sales solicitation, advertising campaign, or promotion of any commercial enterprise.

1. The Lincoln Public Schools shall at all times be free from commercial advertising and the distribution of materials to pupils for the purpose of advertising is prohibited.
2. Promotional literature of commercial programs or events sponsored by independent commercial concerns, local organizations, or civil groups shall not be distributed to homes through the pupils in the public schools.
   a. Not-for-profit youth serving agencies may distribute materials through the schools to inform students or [sic] programs or events for youth, when cleared by bulletin from the central office and distributed according to instructions.
   b. Promotional material for events sponsored by not-for-profit, non-denominational, and non-political civic organizations which are pertinent to students' interests may, at the principal's discretion, be posted in schools but not distributed to students.
3. No school programs or tickets of admissions to school activities shall carry free advertising.
4. Advertising in Student Publications

Student publications may accept advertising provided that a faculty sponsor, principal, or faculty board establishes standards and maintains control. Advertising for the following is not acceptable:

--Liquor or tobacco
--Theatrical attractions, except as specifically approved by the Superintendent of Schools
--Dance halls
--Lotteries or other events carrying an element of chance
--Advertising in which art, composition, or content is salacious or in bad taste.

Distribution of Literature Rule (Revised)

Peterson v. Board of Education of School Dist. #1 of Lincoln, Neb.

Procedures for Distributing or Posting Printed Materials Through the Lincoln Public Schools

Each year a number of people and agencies request to have printed materials distributed through the schools or material posted on bulletin boards. Because of the increase in volume and frequency of these materials; the type of captive audience which is created by the procedure; the board's policy of non-commercialism and the need for someone to take responsibility by scanning the materials, we would like to request your help. Would you please follow the guidelines in this folder when requesting materials to be distributed through the school system?

1. Bring or mail a sample of the material to the superintendent's office, Public Schools Administration Building, 720 South 22 Street, for approval of material at least ten days ahead of distribution date.
2. Be sure that materials do not contain any commercial sales message.
3. Indicate clearly on your request the type of distribution you desire. Material will be distributed when most convenient in the school and as near to your request as practical.
4. You will be notified of approval or rejection of the material you propose to distribute as soon as possible after receipt of your request. Once approved, the superintendent's office will notify principals.
5. Package the materials in 25's and deliver or mail them directly to the school in which the distribution is to take place. The number required for each school and grade will be made available upon your request from the superintendent's office. Please do not deliver materials to the PSAB building for re-distribution to individual schools.
6. Please do not ask for specialized distribution which requires the singling out of oldest children in a family, etc. Plan your distribution allowing for one item per student.
7. If you are requesting a student response (essay contests, art posters, questionnaires, registrations, etc.), make clear on your materials where the response is to be returned. Unless you have made

specific arrangements prior to distribution, the Lincoln Public Schools will not act as a collecting agent.

If you will help us by following these guidelines, we will do our best to try and meet your desires within the boundaries of school policy. Should you have additional questions, direct them to the Superintendent's Office, Lincoln Public Schools, Public Schools Administration Building, 720 South 22 Street, Lincoln Nebraska 68510 Phone: 475-1081.

Distribution of Literature Rule

Los Angeles County Board of Education

1275. A school newspaper is primarily designed to serve as a vehicle for instruction and is, in addition, intended as a means of communication. Therefore, it is operated, substantially financed, and controlled by the School District. The ultimate decision regarding the material to be included in such a newspaper must, therefore, be left to the judgment of the school principal.

A school newspaper can best function when a full opportunity is provided for students to inquire, question, and exchange ideas. Articles should reflect all areas of student interest, including topics about which there may be dissent and controversy. Students should be provided with avenues for the research of ideas and causes of interest to them and should be allowed to express their opinions. Controversial subjects should be presented in depth with a variety of viewpoints published simultaneously.

In the event of disagreement with the principal over a news article or editorial, the student editor and the journalism teacher may appeal the decision of the principal to the area superintendent.

Distribution of Literature Rule: Decision by Chancellor or New York Public Schools

Matter of Williams v. New York City Board of Education, Feb. 18, 1971

Each such publication has or should have a faculty advisor. He or she is available to work with the students in resolving questions of whether specific material goes beyond the standards of responsible journalism related to libel, defamation, obscenity, or advocacy of racial or religious prejudice. Material submitted to student publication goes through many stages or approval over a period of time and

thus when a particular matter is believed to exceed permissible limits by the faculty advisor, the student editors, if unable to convince the faculty advisor or the principal of the correctness of their decision to print the material may have access to the appeals procedure provided in the Statement of Rights and Responsibilities without undue delay.

Official school publications have a special status. Supported by public funds and subject to the control and responsibility of the Board of Education, even with their content being determined by student editors, responsibility for libelous or defamatory material is ultimately the responsibility of the Board of Education. Thus, although the Chancellor supports fully the concept of giving to the students the fullest rights and responsibilities to determine the content of official school publications consistent with the standards of responsible journalism, I have concluded that the power and responsibility to determine whether specific material in official school publications exceeds the standards of responsible journalism because it is obscene, libelous, defamatory, or advocates racial or religious prejudice rests with the principals of the high schools and, acting under their authority, the faculty advisors to the student publications.

It should be noted however that there is no issue regarding the question of the content of views of students in official school publications. So long as the publications do not exceed or go beyond the carefully noted and narrowly drawn exceptions regarding defamation, libel, obscenity, or advocacy of racial or religious prejudice contained in the Statement of Rights and Responsibilities, the policy of the Board of Education is to permit the dissemination of any view, regardless of whether it is critical of the school system or its administration, raises social issues, or is the viewpoint of a minority within the school. In the present appeal, the principal, students, and faculty advisors are in agreement that nothing in the Statement of Rights and Responsibilities should be read to imply a power of censorship over ideas so long as they be expressed within the limits noted in the circular.

The parties stated that although there is sometimes disagreement on particular items, in fact during the entire school year to date, there have been no cases in which the student editors sought to publish material which the faculty advisors believed violated the cannons of responsible journalism. Although the principal and faculty advisors stated that some material had been submitted for inclusion in student publications which they felt did not comply with the prohibitions against obscenity, this material was not accepted by the students. The fact that there have been no cases in which the students, after consultation with the faculty advisors, have insisted on publishing material which required a "veto" by the faculty advisors is a testament both to the kind of cooperation that can and should exist between students and their faculty advisors and to the possibility of students being able to conscientiously apply the standards of responsible journalism. That such a result is possible is praise for all concerned.

Bill to Amend Section 10611 of California Education Code
(underlined words indicate proposed changes)

The people of the State of California do enact as follows:

Section 1. Section 10611 of the Education Code is amended to read:

10611. Students of the public schools have the right to exercise free expression including, but not limited to, the use of bulletin boards, the right of publication in student newspapers, the distribution of printed materials or petitions, and the wearing of buttons, badges, and other insignia, except that expression which is obscene, libelous, or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school, shall be prohibited.

Each governing board of a school district and each county superintendent of schools shall adopt rules and regulations relating to the exercise of free expression by students upon the premises of each school within their respective jurisdictions, which shall include reasonable provisions for the time, place, and manner of conducting such activities.

APPENDIX C

STUDENT-DISTRIBUTED LITERATURE FOUND OBJECTIONABLE BY SCHOOL ADMINISTRATORS

APPENDIX C

STUDENT-DISTRIBUTED LITERATURE FOUND OBJECTIONABLE BY SCHOOL ADMINISTRATORS

Objectionable Content

Scoville v. Joliet Township High School Dist.

MY REPLY

Recently, we students at Joliet Central were subjected to a pamphlet called "Bits Of Steel." This occurrence took place a few weeks before the Christmas vacation. The reason why I have not expressed my opinions on this pamphlet before not is simple: being familiar with the J-HI Journal at Central, I knew that they would not print my views on the subject.

In my critique of this pamphlet I shall try to follow the same order in which the articles were presented.

The pamphlet started with a message from the principal, David Ross. This is logical because the entire pamphlet is supposed to be "The Principal's Report to Parents." In this article Ross states why the pamphlet was put out and the purpose it is supposed to accomplish, namely, the improvement of communication between parents and administration. He has to be kidding. Surely, he realizes that a great majority of these pamphlets are thrown away by the students, and in this case that is how it should have been. I urge all students in the future to either refuse to accept or destroy upon acceptance all propaganda that Central's administration publishes.

The second article told about the Human Relations committee which we have here at Central. It told why the committee was assembled and what its purpose is. It also listed the members of the committee who attend school here at Central. All-in-all this was probably the best article in the whole pamphlet, but never fear the administration defeated its own purpose in the next article which was a racial breakdown of the Central campus. As far as I could see this article served no practical purpose. By any chance did the administration feel that such a breakdown would improve racial relations? I think not. This article had such statements as: Spanish American students were included with the white students. Well, wasn't that nice of the administration. In other words, the only difference noted was whether the student was white or Negro.

This was followed by an article called "Did you Know?" This was, supposedly, to inform the parents of certain activities. Intertwined throughout it were numerous rules that the parents were to see their children obeyed. Quite ridiculous.

Next came an article on attendance. There's not much I can say about this one. It simply told the haggard parents the utterly idiotic and asinine procedure that they must go through to assure that their children will be excused for their absences.

Question from the parents was the next in the line of articles. This consisted of a set of three questions written by the administration and then answered by the administration. The first question was designed to inform the reader about the background of the new superintendent. The second was about the paperbacks which were placed in the dean's office. They state that the books were put there "so that your sons and daughters may read while they wait. The hope is that no moment for learning will be lost." Boy, this is a laugh. Our whole system of education with all its arbitrary rules and schedules seems dedicated to nothing but wasting time. The last question concerned the Wednesday Que-ins. It was followed by a quote: "Sometimes we, parents and schoolmen must seem cruel in order to be kind to the children placed in our care." Do you think that the administration is trying to tell us something about the true purpose of the Wednesday Que-ins?

The next gem we came across was from our beloved senior dean. Our senior dean seems to feel that the only duty of a dean or parent is to be the administrator of some type of punishment. A dean should help or try to understand a student instead of merely punishing him. Our senior dean makes several interesting statements such as, "Proper attitudes must be part of our lives and the lives of our children." I believe that a person should be allowed to mold his own attitudes toward life, as long as they are not radically anti-social, without extensive interference from persons on the outside, especially those who are unqualified in such fields. Another interesting statement that he makes is "Therefore let us not cheat our children, our precious gifts from God, by neglecting to discipline them!" It is my opinion that a statement such as this is the product of a sick mind. Our senior dean because of his position of authority over a large group of young adults poses a threat to our community. Should a mind whose only thought revolves around an act of discipline be allowed to exert influence over the young minds of our community? I think not. I would urge the Board of Education to request that his dean amend his thinking or resign. The man in the dean's position must be qualified to the extent that his concern is to help the students rather than discipline or punish them.

This pamphlet also contained an article from the freshman dean. I should like to say that Dean Engers, in his article, shows a great deal of promise. He appears to be genuinely interested in the problems of the students entrusted to him. All I can say to him is to keep up the good work.

The last thing of any interest in the pamphlet was about the despicable and disgusting detention policy at Central. I think

most students feel the same way as I about this policy. Therefore I will not even go into it.

In the whole pamphlet I could see only one really bright side. We were not subjected to an article written by Mr. Diekelman.

Senior Editor
Grass High

Objectionable Content

Sullivan v. Houston Independent School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969).

The Christmas holidays have just passed us by and, for most people, the expression can be taken literally. As in one of the current tunes, it was the time of the season for loving. During Christmas most people put on their masks of peace and good will toward men, and after struggling find they can almost be tolerant of one another. The problem is that too many restrict their efforts to a minimum. They find that they can appease their puny minds by talking about equality, justice, tolerance, and love of fellow men. If they would make a sincere effort to practice the ideology of the democracy that they supposedly hold so dear they might find that refreshing and productive relationships are possible.

People are able to meet on common ground and establish a productive rapport providing that all parties make a sincere effort. They can overcome their differences and search for solutions to common problems and means to reach common ends.

It is well known that the relationships between school administrators, faculty members, and students have been more than slightly hostile in the past, and that in the wake of incidents such as the intolerable locker checks one would discover that the basic underlying problem was one of misunderstanding and lack of communications. The communications could be more closely described as ultimatums, threatening the use of destructive forces at the disposal of both parties. It is evident that this type of situation renders more harm than good. A reversal of these ills can be accomplished only through sincere co-operation of all factions.

The first phase of this rehabilitation is renewal of faith in the intentions of the opposing parties. This factor was obviously lacking in the past. As we enter the closing months of this school year, it is still possible to establish a worthwhile relationship between the power of the schools and students.

We cannot neglect the fact that both the schools and the students, if antagonized, are capable of using force sufficient to disrupt the well being of each other. It is also obvious that a confrontation of this nature would result in regression rather than progression.

The common goal of both students and school administrators is development of the students minds in order that the well being of our constantly changing society will be enhanced by the intelligence that may be gained from a formal education. The role of the school is to present necessary technical and historical information; and the students responsibility is to assimilate this information, along with his own moral code, into a working philosophy of existence. A dispute arises in regard to what constitutes necessary and valid ideas.

As in the past, those in authority resent being told that their ideas are outmoded and those governed equally resent attempts to stifle their individuality and mold them into puppets of old guard authoritarians. This resentment prohibits objective discourse on the validity of old ideas and the necessity of new concepts. But this type of evaluation is a prerequisite for reform. In order for this to be accomplished the issues and their proposed solutions must be articulated and rational arguments presented and examined in an objective manner. This cannot be done if either party decides to be the infallible authority.

WE ARE PRESENTING A SERIES OF ARTICLES IN AN ATTEMPT TO MAKE CLEAR OUR PROTESTS AND TO OFFER THE FACULTY AND ADMINISTRATION AN OPPORTUNITY TO INTELLIGENTLY DISCUSS THE ISSUES WHICH DIVIDE US AND DIVERT US FROM THE COMMON GOAL OF PROGRESS

--the editors

PFLASHLYTE

The Pflashlyte is made possible only by donations. All labor, time, writing, distribution, and use of printing equipment is supplied to us free of charge. The only money spent on this paper is for the purchase of paper, ink, and staples. We rely only on contributions made by students. If you are solicited for funds please contribute anything you can afford. Your donations will be greatly appreciated.

SCHOOL SPIRIT VS. CONSCIENCE

The Pflashlyte has found it imperative to speak out on an issue which is presently somewhat obscure. Far too few students are aware of the absurdity of the fund drive for the Senior Project. The student body is only told that the drive is short by $350 and that its goal is $500 for the planting of shrubbery in the planter box. Announcements are made (by order of the Administration) to the effect that all students are expected to "co-operate" in the raising of money for this noteworthy project. Yet how many know that Mr. Stewart refused to let a group of students, in association with the International Red Cross, collect money for starving children in Biafra. The students were told that there is a school policy banning solicitations from students except when approved by the downtown Administration; later it was acceptable to begin a drive to solicit $500 from students in order to buy a bunch of bushes.

Mr. Cobb, of the downtown office of HISD, told Pflashlyte investigators that the decision of which fund drives are to be allowed at schools lies in the individual principal's interpretation of school rules. In view of this, it is reasonable to assume that noble Mr. Stewart feels that planting bushes is far more important than feeding starving children. Pflashylte sincerely hopes that Mr. Stewart will get his bushes and that his conscience doesn't bother him too much. Anyone wishing to donate money for the needy in Biafra should contact the Red Cross headquarters, 2006 Smith--227-1151.

"The school program should be sufficiently flexible to meet all the needs of the student, whether physical, mental, moral, or social; and the teaching staff should give adequate consideration to the mental health, the emotional stability, and the physical well-being of every individual student.

Every phase of the school program should be explored for opportunities to promote democratic behavior through developing individual initiative, co-operation, and self-discipline. True democracy is attained only when every member of a group participates actively in planning and carrying out those activities which concern the group as a whole.

Every student should be taught to understand and appreciate the rights, duties, and priviledges of citizenship in a democracy; he should be taught to realize fully his own obligations as a member of his home, his school, his community, his state, and his nation."

The above is the way many of us feel that the school should be run. The points about democracy, and the schools striving for the welfare of the individual students are things I am sure none of us can deny as desireable. These points do seem fantastic, however, in that to have a school system as the above implies necessitates having school system personnel who accept these ideas. What is more fantastic, though, is that these three paragraphs are excerpts from the "Philosophy of the Secondary Schools" by Dr. Woodrow Watts, Deputy Superintendent Secondary Schools, Houston Independent School District.

We can now clearly see the humor and hypocrisy in the way the philosophy of the schools reads and its in fact application. Let us review the first paragraph and pick the major fallacies and discuss the reasons why they are false.

One, the school program is inflexible, and practically none of the physical, mental, moral, or social needs of the students (save for a small group) are provided for. Many teachers, especially those in the Athletic Department, could give a damn about the mental health, emotional stability, or physical well-being of any student.

The second paragraph states that democratic behavior should be encouraged. This is probably the biggest farce which exists in the school system. How can a school be democratic when locker searches are made, people are suspended for bearing flags, people are suspended for carrying literature that the administration doesn't agree with, suspending people for exercising free speech rights, and suspending students for repulsing teacher aggression? And if a student speaks out on these issues he is punished for questioning authority.

The third paragraph says that every student should be taught citizenship, its rights, privileges, and duties. Since we have just noted that we are certainly not being shown citizenship's duties either. We learn from example, and this is the example that is shown to us. The school tells us to be good American children and do what we are told, not because we have to, but because we want to. On page 2 of the Handbook for Secondary School Principals and Teachers, though, it states that, under "Jury Duty," teachers are not required to serve on a jury, and so if they elect to do so they will be penalized by having the days they miss deducted from their salary. Jury duty is a duty of all Americans, who should want to do it, but teachers can not serve even if they want to, because they cannot afford the deduction from the salary.

The school system has, for the preceding reasons, shown themselves to be weak because they have violated their own code of conduct and when an organization violates its own rules, there is an indication of corruption and incompetence.

JUSTICE vs. SCHOOL POWER

If their is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or matters of opinion or force citizens to confess by word or act their faith therein.

--Justice Robert H. Jackson

Are high-school students citizens? The fourteenth amendment to the Constitution of the United States answers this question; "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and to the state wherein they reside." [notice the word "all"] The 14th Amendment further states "no state shall make or enforce any law which shall abridge the priviledges or immunities of citizens * * * nor deny to any person within its jurisdiction the equal protection of the laws." An even more emphatic answer to the question is found in the recent supreme court ruling in favor of three Des Moines, Iowa high-school students who were expelled for peacefully protesting the Viet-Nam War. By its decision, the Supreme Court underscored the fact that high-school students are citizens under jurisdiction of the law and therefore entitled to equal protection under the law.

It is the duty of all governmental agencies, including school boards, to operate within the limits of the Constitution and protect the people's rights. Unfortunately there are a few die-hard school administrators who, over in the light of Constitutional amendments and precedent setting Supreme Court decisions, continue to openly and ruthlessly violate the basic civil rights guaranteed to all citizens. Students are suspended or expelled for exercising their legal rights of freedom of speech, press, and assembly. In an effort to justify their actions, administrators claim that forms of expression

such as newspapers printed without their approval and the display of American flags are in violation of civil law. Those who use this reasoning only make themselves look ridiculous because they are using laws as a basis for suppressing laws. For some reason, administrators never answer student proposals in a calm and intelligent manner; nor do they attempt to rationalize their stand on any particular issue. They merely hand down ultimatums. [Could it be that they are afraid to meet students as equals?] The days of "blind obedience" are over; intelligent people want reasons before they act.

In the long run, we must be prepared to work for the reforms we want. We cannot sit back and relax just because of a few Amendments and court rulings. Establishments are reluctant to change and are apt to ignore the escence of the justice that they themselves teach. To protect our rights we must understand them fully and we must be willing to work to preserve them. If we give up and knuckle under to injustices dealt us by a "dime store dictator" what will happen later in life when we have to face abominations considerably more unbearable than the ones we face here in school? Get on your knees and bow to autocratic administrators or hold out for something that fits a little better in a supposedly democratic society! ITS OUR CHOICE!!!

YOUR RIGHTS

This paper will present a series of articles discussing the rights insured by the Bill of Rights and how they specifically apply to students --the editors

If you read the final edition of the Chronicle of Monday, February 24, 1969, you would have undoubtedly read the article on the Supreme Court's ruling on student protests. "The Supreme Court insured today, the right of school children to hold protest demonstrations but emphasised officials may impose restraints if there are intrusions upon the work of the school or the rights of other students. The Chronicle quoted Justice Abe Fortas as saying "It can hardly be argued that either students or teachers shed their Constitutional rights to freedom of speech or expression at the schoolhouse gate." Further, "they (students) are possessed of fundamental rights which the state must respect * * *." This position was affirmed by the clear majority of support from the other justices. The decision was verified by 7-2 vote.

The primary principles in question involved the dispute over to what degree freedom of speech and expression should be extended. We do not see how anyone can deny students the right to express themselves as they desire when not endangering the lives or rights of others. The principle of equal treatment was one of the most fundamental rights guaranteed by the Bill of Rights.

A good discussion of freedom of expression may be found in A Living Bill of Rights, written by Justice William O. Douglas, published by Doubleday & Co., Inc. In his book, Douglas states,

"man has responded to this power of expression in one of two ways. Some have said that since ideas may be dangerous, their expression must be carefully controlled by those in power. This has been the approach of * * * all totalitarians." The other approach is that taken by the United States Constitution: "Congress shall make no law * * * abridging the freedom of speech or of the press." Which approach has the Administration of Sharpstown taken? If you are cunning enough to glimpse at a Handbook for Principals and Teachers--Secondary Schools, be sure to read the paragraph entitled "Principals." You will find that school principals"* * * may enforce obedience to all rules and regulations which are lawful and reasonable." In other words, principals, or schools, may enact rules only if they are lawful and reasonable, not lawful or reasonable, but lawful and reasonable. The Supreme Court and even the Constitution of the United States have asserted that it is unlawful to restrict human beings the right of expression. Therefore, schools may not enact a rule contrary to this principal. Yet schools have tried to place themselves in a higher position them the Supreme Court by in effect overruling the rights insured by the Constitution. Is the school so sovereign? We don't think so and neither does the Supreme Court.

EDMUND's THOUGHTS

Some students are confused by the regulations here. To make these rules clearer, I will explain--

1/ No boy shall be allowed to wear his hair longer than two inches. There have been numerous reports of students stranggling themselves while sharpening their pencils. But there are more important reasons. It is feared that another outbreak of Bubonic Plague is on its way very soon. Any day now, they may to start cleaning the floors of the school. Still another reason exists. The members of the coaching department obviously have a definite sight problem. The don't seem to be able to distinguish male and female students unless the males have hair cut in the style of a Tibetian monk. Several accounts of forcible rape have been filed by boys in all gym classes.

2/ No one shall wear a neckercheif or scarf about their neck. It has been reported that one of the faculty members is actually a missing link between man and the Orangutan. Necties are permissable since Orangutangs do not know there are such things and therefore will not strangle you.

3/ There is strong evidence that there are some students at this school who actually beleive in Democracy. NASTY, NASTY!!! All of this garbage about rights and dignity of man went out the same tiem justice, peace, love and sanity did (when you registered at Sharpstown). So get all of that out of your system. We want the school to be just as sterile and smooth-running as we can make it. Just act like a vegetable waiting to be eaten, close your eyes and you won't feel a thing.

4/ Due to an excessive number of students losing their eyeballs, no one will be permitted to give the peace sign. Medical authorities agree that the best way to cope with the problem is to break the students fingers so they will swell up and not fit into the eye sockets. Science wins again!!!!!!!

5/ Students are not allowed to remain across the street from school before classes. Geologists report that there is a very large crack in the earth in the park. Years ago it was sealed with 17 tons of bubble gum, but since we are now closer to the sun than we were at that time, there is a great danger that it will all melt and result in students falling to China.

6/ All fire alarms have been disconnected so that no one will miss all the excitement. If anyone discovers someone reporting a fire, take him to the office where he will be promptly be stoned to death with wet erasers.

7/ No one shall bear the American flag in the presence of the Administration. Although very quaint, it is also very dangerous as there are people in the school who do not believe in Life, Liberty and the Pursuit of Happiness.

8/ Beware of what type literature you posess. Excerpts from the PTA bulletins and the Handbook for Principals and Teachers--Secondary Schools are thought to be coded messages to communist agents seeking the overthrow of the schools. It is a well known fact the the Bible preaches communal living and in fact perpetrates a fanatic cult of weirdos called Christians. Beward of these people. They are occassionally seen nailed to the office walls.

9/ Do not, under any curcumstances, collect money for the starving children of Biafra. Some of the money goes to Nigeria and as soon as the babies are born there, they are inducted into the Communist Party.

10/ Last of all, do not think. This practice has recently been found to cause irreparable damage to brain-washed minds. This type of activity causes the brain to overheat and warp your values until instilling such beliefs as dressing as one wants and thinking and saying as one feels. You may even degenerate to the belief in love. Remember the Sharpstown slogan:
ALL FOR NOTHING AND NOTHING FOR ALL!!!!!!!!!!!

yours sincerely,
Edmund P. Senile

ATTEMPT TO COMMUNICATE

Many students have legitimate gripes about their school (and it is their school, supported by their parents' tax money) which they would like to express openly to the Administration. Some are able to do so indirectly through a faculty member who really cares about the student, but more often than not he is unable to do so and will not go to the Administration because of a deep fear of the office. We would like to encourage students to go to the office and find someone to talk to there and express their gripes, because, believe

it or not, there are some people in the office who want to help. Unfortunately, this attempt often fails because of several reasons. One, the student fails to make an appointment and finds the administrator at a very busy part of his day and is subsequently brushes off and leaves scared, dissapointed, and angry. Two, the student fails to clearly state his idea to the administrator; or, the administrator jumps to the conclusion. Third, the student seems beligerent and the administrator gets angry and yells at the student without listening to what is to be said. Worse, however, is the mutual misunderstanding between the student and administrator. All to often, something of importance to the student seems quite unimportant to the administrator to ignores the student. This attitude eventually results in a great wall of hostility between the student body and the office.

There are many faults with our school system which will be presented, but this is one which can be corrected easily, and should be corrected. But to correct it will take work and giving from both sides. Several times this year the Administration has offered us talk sessions and then retracted the offer. It is this paper's opinion that much unrest in the school could be eased if this plan were brought into effect, and certain rules under the jurisdiction of the principal (and we know what these are) were changed somewhat according to popular student vote and ideas. We hope that the Administration will consider all that has been said in an open light and do something about it because, then, we of this paper will have done something to help our school.

ARGUMENT FOR PREE SPEECH AND PRESS

As anticipated, the second issue of Pfsashlyte brought about unconstitutional and suppressive reprisals from the Administration. The School has obviously taken upon itself the sovereignty to overrule the Constitution of the United States, thereby castrating the ideals of democracy and suppressing the production of creative ideas.

They should pull the wax out of their ears and listen to the works of our forefathers; "Congress shall make no law * * * abridging the freedom of speech or of the press; or the right of the people peacefully to assemble and to petition the government for a redress of greviences" [Amendment I]. and "the Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself ad- all of its creatures"--boards of education not excluded. These have, of course, delicate and highly discretionary functions, but none that they cannot perforem within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedom of the individual if we are not to strangle the free mind at its source and teach youths to discount important principles of government as mere platitudes.

Such boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of

responsibility to the Constitution and agencies of publicity may be less vigilant in calling it to account. "* * * there are village tyrants as well as village Hampdens, but none who acts under the color of law is beyond reach of the Constitution."

Mr. Justice Jackson, in delivering the opinion of the Court, in West Virginia State Board of Education v. Barnette/319 U.S. 624 (1943).

Objectionable Content

Hannahs v. Endry

The November 1971 issue of our high school newspaper contained a cartoon showing two "RHS Jocks", one whose jersey number was 3.2 and another whose jersey number was 6%. (Ohio law considers beer with less than 3.2% alcohol non-intoxicating and 3.2% to 6.0% intoxicating). The scoreboard showed "RHS 4, Opponent 44". One athlete was saying, "Let's go drinking tonight" and the other was saying, "OK, ya wanna smoke?" He, by the way, had a cigarette hanging out of the corner of his mouth. The accompanying editorial had statements such as, "A number (of athletes) habitually smoke and even more frequently drink. They cough infinitely and cannot run long distances due to short windedness. This, in turn, is due to smoking. . . . How can the coaches not notice these things and enforce the training rules? Perhaps, they do not want to recognize them for fear of losing their best players."

The above material is the reason I decided to not permit the distribution of the paper. . . .

--From letter, Joseph Endry, principal, Reynoldsburg (Ohio) High School, to author, September 17, 1974

Objectionable Content

Zucker v. Panitz

Text of rejected advertisement read:

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.

Objectionable Content

Wesolek v. South Bend Board of School Commissioners

Babies Aren't Found Under a Cabbage Leaf (And You Know It!)

And so do over one-quarter of a million girls under 18 that will bear children this year. . . . And one-half of the teenagers that are married this year will know it. And over one million women in the United States that have pregnancies aborted this year will know it.

When a couple . . . whether married or unmarried . . . makes an unwanted baby, the results are often fear, disbelief, anger and disappointment . . . anything but the love that should be there. And the effects last much longer than just nine months. Becoming parents when you aren't emotionally or financially prepared can leave you self-defeated and personally devastated.

So, for your sake, your parents and the sake of the unborn child . . . be honest with yourself. You either don't have sex at all, or you have responsible sex that requires the use of effective and reliable contraception.

You can get birth control counselling at Planned Parenthood, 201 South Chapin Street, South Bend. Or check with your doctor or go to your neighborhood hospital or clinic. You can call Planned Parenthood, 389-7027, to find out where to get help and counseling about anything else you want to know.

Objectionable Content

Shanley v. Northeast Independent School Dist.

An estimated 23 million Americans have smoked marijuana including 43% of all college students. Under the existing laws [ca. 1972] all of them could go to jail. Smoking marijuana isn't the issue, unjust laws are.

NORMAL (National Organization for the Reform of Marijuana Laws)
For information write:

NORMAL
Washington, D.C.
2015 N. Street Northwest

- -

For information and treatment of

a. V.D.
B. Birth Control
C. Food & Nutrition

D. General Medical Treatment
E. Psychological Aid
F. Drug Counseling

San Antonio Free Clinic
Call 733-0383

Objectionable Content

Nicholson v. Torrance Board of Education

Opinions Differ in Pueblo Area

By Jose O. Solorzano
Latin Affairs Reporter

As there were differences of opinion about the Mexican-American community growing out of the last issue of the NEWS-TORCH, we decided to interview students from the Pueblo area.

Raul Martinez, Sluggo Villegas, Debbie Evans, and Roza Chavez agreed that the article concerning the Pueblo community should never have come out because, they said, some of the things written there were not true.

They do not agree with Mrs. Tobin's statement "many of the Pueblo women have their babies at home;" they also said that they never knew of any woman who had not gone to the hospital to have her baby.

These students do not agree with the statement, "until last summer no lights had ever lined the section's streets." They say there have been lights since a long time ago.

They agree that as in all communities, they have their problems: the streets need to be repaired; the young people are concerned and interested in the baseball field which is locked Sundays, so that they cannot use it. It doesn't mean that they don't know "how to ask for things."

They say that it is also not true that the Mexican-American detests welfare.

My own point of view is that the Mexican-American wants to have a better community but he doesn't have equal opportunities to do so.

I also noticed that they do not like to speak much about themselves, and it is probably because they are almost used to being treated unfairly and they are cautious of any stranger.

Objectionable Content

Jergeson v. Board of Trustees of School Dist. No. 7

Facing Number One Meany Master--The Crazy Ladies

by Sara York, alias SY, alias Samantha Dain

Once upon a time in the land of Pep there lived eight innocent Patriots and their 35 Followers. These lovely people had promoted patriotism through out the land for many years successfully. All across the land the villagers knew the names of these eight leaders, Lechar, Nalo, Atina, Enji, Anit, Lunev, Neran and Meren, and when the Patriots came to town the townspeople rejoiced and cheered their appearance.

Then, horror of all horrors, one year the Plague hit in the form of a mean master over the Eight Patriots. The Eight Patriots were crippled and nearly destroyed by the Meany Master, who thought her ways were but fair. At each rally throughout the year, the Patriots, not their usual selves, cried and wept as the Meany Master shot 'em down. The Eight Patriots became weak and pale and definitely downcast. Finally, after numerous tortures, Lynev was removed from the Group for a weekend. Being terribly loyal, Lynev managed to attend the rally that weekend. The Meany Master glared at her during the entire rally, while Lynev smiled and tried to be as inspiring as possible.

The next day Lynev begged for Meany Master's forgiveness, pleading, "Oh, Meany Master, let me again join the Eight Patriots for they are my Friends and my whole life. I enjoy so much agitating the crowds each weekend. It is my duty, my pledge. Oh, please, Meany Master, may I return?"

"We'll talk about it," the Meany Master replied calmly.

The 35 Followers of the Patriots were also being abused during this time of unrest. Their bus was taken away only to be used for short trips to relatively unimportant areas. Meany Master did offer an excuse however, "I don't got time to go with yer, yer little jerks."

The 35 Followers cried and cried as they were shot dowm time after time, but still Meany Master persisted her tormentation.

Soon it became evident that Meany Master was of below average intelligence. Her vocabulary consisted of 2 sentences, "We'll talk about it," which never seemed to happen somehow, maybe because "I don't have time" got in the way. The Eight Patriots began devoting more and more of their precious time conspiring against Meany Master instead of practising their agitation schemes, which is really what they should have been doing. They beban calling peace talks in hopes of breaking down Meany Master's Evil Rules.

(Note: Evil Rules. Definition rules which were set up by the Meany Master as the Supreme Law of the Land for the preservation of power by the Meany Master, and endorced by Meany Master on her Finger of Fate, which i may condescend to add was Fickle.)

The negotiations began peacefully enough; Meany Master always refused to come, retorting "I don't got time!" Finally, after much deliberation, Meany Master consented to "talk it over." The date was set and the Eight Patriots and 35 Followers felt they were finally making progress.

At the first peace talk, the Eight Patriots were shocked out of their ever-lovin' uniforms. Meany Master, instead of realizing the foolishness and unnecessity of the Evil Rules added a few choice gems to the ever growing, ever constant list.

Number (1): Thou, that is, the Eight Patriots, shall not attend any rally in the land of Pep with unshined saddle shoes on their feet. Note also that Thous shall always be in attendance with saddle shoes on the feet.

Number (2): Thou, that is the Eight Patriots will not make substitutions if Thou plans to be gone without the permission of Goddess, i.e. Meany Master.

Number (3): The Eight Patriot Squad will not be seen in public at rallies with slacks, i.e. levis, pants covering their bodies. Even if the temperature be -100°F, breaking of the Rule will not be tolerated.

Naturally, the Eight Patriots were extremely disappointed. All their weeks of plotting, and planning were now destroyed by Meany Master. Was there to be no escape from this endless torture?

The Ray of Hope came in March--District Rally. At District Rally the Patriots and Followers from all over Pep gathered to campaign and shout for a weekend. The Eight Patriots were elated by the news that Meany Master had consented to let them take the Followers to this glorious adventure. Preparations were immediately begun, and the Eight Patriots again sang their song in tune "Oh, S-H-E-R-I-D-A-N, Sheridan all the time!" Cheerily, the Followers busies themselves with agitation routines to aid the Eight Patriots in their quest of fantastic showings. Reservations for housing were made in a lovely cottage, protected by flowing willows and climbing ivy.

A slight bomb dropped as Meany Master, (now referred to as Not-so-Meany Master), announced the Followers would have to fork over 175 dollars for the chaperones. Naturally, an outrageous price for 4 people, but the Followers were eternally grateful that they could attend District Rally and suppressed any pangs they felt as they dug up the hard earned bread.

Still progress on District Rally continued at an amazing pace. The Eight Patriots kept their rosy red cheeks and bouncy appearances. The Followers wrote new songs like, "Mighty, we are mighty great!" and "Sock it to 'em!"

No on even considered the Evil Rules. They were assumed to have been removed. Unfortunately, the Meany Master had mimeographed them on long, long sheets of paper and titled them "THE SIX COMMAND-MENTS". Adding to the collection some which were even more horrible than the Patriots could imagine in their wildest nightmares, the Meany Master passed them out one day at the Follower Enthusiasm meeting. "Here, yer little jerks," the Meany Master began. The whole group was shocked--Meany Master was learning some new words!! "I

have typed up the Rules for you which you must obey at District Rally. Merry Adolf Hitler's Birthday!"

The Evil Rules were passed around and the Faces of the Followers grew longer and longer as the recorder read each terrifying commandment:

1) Thou shall not ride in autos, that is automated vehicles whither they be golf carts or cars.

2) Thou shall not socialize, i.e. be in the rooms of other Patriots and Followers.

3) Thou shall not be seen in public with slacks, i.e., levis, pants covering the bods. Even if the temperature reach -100°F the breaking of this rule shall not be tolerated.

4) Thou shall wear only the official uniform of the Sheridan Patriots and Followers while in public, i.e. all the time.

5) Thou shall wear only saddle shoes, i.e. brown and white on your feet. Said saddle shoe footwear will be shined and will look decent, i.e. new.

6) Any infraction of any of these Rules will result in the criminal being sent home."

With tears in their eyes, the Eight Patriots and Followers dragged themselves to their respective homes. "Good Grief," the Followers began to say. "Good Grief, Good Grief . . ."

But, the Eight Patriots were trying their best to be cheerful. Lechar began the coaxing, "Oh, come on. Followers. Be ye cheery. We will triumph at the rallies. We're Number One!"

"Yes, Yes," the Followers yelled and began to chant, "We are Number One, we're number one. . . ."

So plans continued and the Eight Patriots, Followers, and Meany Master travelled to District Rally singing songs of cheer, "Sheridan's gonna beat ya, oh yea. . . ."

Once at District Rally, Evil Rules Infractions began but surprisingly not by the Patriots or Followers; rather by Meany Master. Meany Master rode in cars, Meany Master socialized, Meany Master wore pants. When asked about Meany Master's delinquency, she was rumored to have answered, "I didn't sign those rules, yer can't do nothing to me."

One cold day, i.e. -100°F, when Sheridan had an evening rally, Lechar, Atina, and Nalo went to view the town but ah, for freezing their behinds off, did not wear their micro-short skirts and sweaters, i.e. their uniforms, rather they ware the sinful levis. OH HORRORS, DEAR COMRADES!!!!

Meany Master say them with her radar eyes and promptly informed them that they were no longer Patriots and were to be gone by the next morning.

The Patriots, knowing they had broken the Rules, were resigned to the fact they must go home, but to be removed from Patriot Squad!! Why, that was not part of the deal!!!!

When speaking to the victims, Meany Master is rumored to have said, "Give me your uniforms and don't bother to remove the letters; I'll mail 'em to yer, yer little jerks."

"Oh, but Meany Master" (Meany Master was now Double Meany Master), Lechar pleaded, "Why must we be removed from the squad?"

"We'll talk about it," was the traditional reply.

But the talk never came about and at State Rally time, a substitute was sent to replace the lost Patriots, Lechar, Nalo, and Atina.

Moral: No, I don't think I will tell you the moral. It is so obvious there is no reason but I will say this: "The poison pen, or pencil as the case may be, of SY strikes again!"

APPENDIX D

GUIDELINES FOR STUDENT PUBLICATIONS

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Publications Guidelines

The Right to Freedom of Inquiry and Expression*

1. Scope and limitations of permissible inquiry and expression. Students and student organizations must be free to examine and discuss all questions of interest to them; to express opinions publicly and privately, both verbally and by such visual means as buttons or insignia or other forms of symbolic speech; to circulate and present petitions; to assemble; and to support causes. This right must not be abridged unless the activity involved causes legally recognizable injury to persons or property or demonstrably prevents the learning process from continuing.

Any rule made regarding any aspect of freedom of speech, petition, association, or assembly must be stated with clarity and precision.

2. Speakers and programs. Students and student organizations must be free to invite and hear any person of their choosing. Demonstrations threatened in the event of a particular program must not be regarded as grounds for withholding permission for the program. They are expressions of opinion, subject to the specified limitations on such expression. No institution may require a student group to hear both sides of any issue, for this is a right, not a duty.

3. Location of active expressions or dissemination. Freedom of expression must not be restricted to areas especially designated for meetings, indoors or out. An effective opportunity to reach others whose interest a student may desire to attract may appropriately extend to other facilities on campus. There must be no special restriction on distribution of printed matter or the exercise of other forms of expression in places of general public access, including school buildings and grounds, and including display of materials on bulletin boards.

4. Financially independent student publications. To protect the institution and ensure editorial independence, it is desirable that student publications be as financially independent as possible

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*Recommended by National Education Association.

and that student publications be incorporated. Financially independent student publications must be free of all external regulation or intervention.

5. Financially dependent student publications. The institution must refrain from using its financial power as a means of controlling publications that cannot operate without institutional aid. Guidelines for any such publication--including policies concerning publication of libelous or obscene material--should be established by a panel selected in equal numbers by and from the student body on the one hand and the faculty and administration on the other. In no case may content of the publication be censored by this panel or any other agent. The student staff of the publication is responsible for following the established guidelines, and should consider itself legally responsible for consequences of failure to do so. When they are in doubt as to whether a statement is libelous or obscene, they should seek the opinion of an impartial legal authority in order to protect themselves. Publications financially assisted by the institution must make space available for expression of viewpoints opposed to those expressed by the publication's staff.

The staff of financially dependent student publications must be protected from removal or reprisal caused by faculty, administration, or public disapproval of editorial policy or content. It should also be protected from removal or reprisal caused by a small vocal minority of students. All staff members of such publications should be selected by students, and no external agency may have power to appoint or remove such personnel. If the publication's policy-making panel charges a staff member with deliberate malice or deliberate distortion, the validity of the charge must be determined through due process before student action based on it is requested.

6. Other media. Like freedom must be assured expression in other student communications media and artistic presentations, such as broadcasts, tapes, films, and theatrical productions. All student media should explicitly state that the opinions expressed are not necessarily those of the institution or of the student body as a whole.

Publications Guidelines*

It is undeniable that students, both on and off public school campuses, are protected in their exercise of freedom of expression by the First Amendment to the Constitution of the United States. Accordingly, it is the responsibility of the school district and its staff to assure the maximum freedom of expression to all students.

The following guidelines are intended to aid students, advisers, school officials, and school districts in drafting their own guidelines for both official school publications and off-campus publications.

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*From Captive Voices: The Report of the Commission of Inquiry Into High School Journalism.

Official School Publications

Content. School journalists may report on and editorialize about controversial and crucial events in the school, community, nation, and world. However, school editors and writers must observe the same legal responsibilities as those imposed upon conventional newspapers and news media. Thus, school journalists must refrain from publication of material which is:

(a) obscene, according to current legal definitions;
(b) libelous, according to current legal definisions, or
(c) creates a clear and present danger of the immediate material and substantial physical disruption of the school.

In determining the type of material that violates the above restrictions, it must be noted that the dissemination of material that invites or stimulates heated discussion or debate among students or in the community does not constitute the type of disruption prohibited.

Censorship of Content. Student publications may not be subjected to prior restraints or censorship by faculty advisers or school administrators. Accordingly, the responsibility for the contents of the student publication shall be that of the student staff and not the school administration or district.

Restrictions of Time, Place, and Manner of Distribution. The school district may adopt reasonable restrictions on the time, place, and manner of distribution. For example, distribution may be restricted to periods of time in which students are not in classrooms--e.g., before school, lunch time, and after school--and may be restricted in a reasonable manner so as not to substantially interfere with the normal flow of traffic within the school corridors and entrance ways. Limitations that effectively deny students the opportunity to deliver literature to other students may not be imposed.

Advertisements. If commercial advertisements are permitted in school publications, political advertisements may not be prohibited.

Unofficial School Newspapers

The constitutional right of freedom of expression guarantees the freedom of public school students to publish newspapers other than those sanctioned by the school. Such publications, however, may be restricted by reasonable regulations relating to time, place and manner of distribution. The prohibitions against obscenity, libel, and material which causes the immediate material and substantial disruption of the school are also applicable.

Any system of prior review is inconsistent with the traditional guarantees of the First Amendment. Students may not be required to submit unofficial school publications to school authorities prior to distribution.

Sales. The school must permit the sale of all publications, including student originated or distributed publications.

Anonymity. Students may publish and write anonymously and school officials have no right to require the identification of the author of any article or editorial.

Board of Publications

Model Guidelines*

Student publications at . . . . . High School

Basic Beliefs:

1. A high school journalism class is an educational laboratory in which students prepare for citizenship in a democracy.

2. The founders of the American democracy were convinced that the new government would stand or fall on informed public opinion. Instead of establishing a government information system, the founders decided to rely upon the free press to disseminate information about the government. Such a press, free from all obligations except that of fidelity to the public interest, is vital. A school publication which forfeits this educational and journalistic trust of independence by becoming a house organ--(a public relations handout not interested in presenting impartial, intelligent comment on controversial issues)--does violence to the best spirit of American education and journalism.

3. Freedom of the press in a democracy is not an end in itself. It merely enables people to express freely their troubles and thoughts on events so as to bring forth the best possible decision out of all shades of opinion. It is not merely "freedom from" but "freedom for." A person may cause evil not only by his actions (the suppression of information) but by his inactions (the failure to report issues freely).

4. School publications and staffs must support certain ideals. The American Society of Newspaper Editors adopted a set of ethical rules, the widely accepted "Canons of Journalism," emphasizing the journalist's:

   1. responsibility; 2. obligation to guard freedom of the press; 3. independence; 4. sincerity, truthfulness, accuracy; 5. impartiality; 6. fair play; 7. decency. These are to be aspired to. Also, the goals of American education, the professional standing of teachers, the responsibility of the student towards his school, and the dignity of education are to be respected.

5. Where the press is free, the people are free, for free schools, free publications, and free people are inseparable. In 1936 this statement appeared in a decision of the Supreme Court of the United States: "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves" [Grosjean v. American Press Co., 297 U.S. 233 at 250].

6. Students trained to accept censorship in a school paper are more likely to accept censorship of the professional press. Unquestionably this is undesirable in a nation which safeguards liberty of the press in a Constitutional amendment. Indeed, censorship really is out of place in an American school for the very reason that it is desirable in totalitarian countries.

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*Written, compiled and adapted by Robert Trager and Ronald Ostman.

EDITORIAL POLICY

1. The advisor helps staff members become mature in their judgment and sound in their taste.
2. The principal and others can and should object to the Board of Publications for (1) slovenly writing and editing to include English usage and objective writing; (2) dubious or suggestive humor; (3) inaccurate reporting of facts; (4) belligerent or abusive editorials, and (5) defamation or harm to any individual.

Model By-Laws

FOR . . . . . High School

Board of Publications

The Board of Publications would consider the following statements as basic to the deliberations and guideline policies of subsequent meetings:

I. Amendment I. United States Constitution.
"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."

II. Joint Statement on Rights and Freedoms of Students. (adapted for high school use: originally endorsed by U.S. National Student Association; Association of American Colleges; American Association of University Professors; National Association of Women Deans and Counselors; American Association for Higher Education; Jesuit Education Association; American College Personnel Association; Executive Committee, College and University Department, National Catholic Education Association; Commission on Student Personnel, American Association of Junior Colleges.)

These statements are made to High School Student Communications Media:

Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration in the high school. They are a means of bringing student problems and concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues within the high school and the world at large.

Whenever possible the student publications should be an independent corporation financially and legally separate from the high school. Where financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications.

In the delegation of editorial responsibility to students, the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community.

Institutional authorities, in consultation with students and faculty, have a responsibility to provide written clarification of the role of the student publications, the standards to be used in their evaluation, and the limitations on external control of their operation. At the same time, the editorial freedom of student editors and managers entails corollary responsibilities to be governed by the canons of responsible journalism, such as the avoidance of libel, indecency, undocumented allegations, attacks on personal integrity, and the techniques of harassment and innuendo. As safeguards for the editorial freedom of student publications, the following provisions are necessary:

1. The student press should be free of censorship and advance control of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

2. Editors and managers of student communications media should be protected from arbitrary suspension and removal because of student, faculty, administration or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal.

3. All high school published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the high school, administration, staff, faculty, or student body.

III. Excerpt from published preliminary report (Editor & Publisher, June 9, 1962) by a Criteria Committee of the Associated Press Managing Editors Association:
"Guide for a Good Newspaper:
A good newspaper should be guided in the publication of all material by a concern for truth, the hallmark of freedom, by a concern for human decency and human betterment, and by a respect for the accepted standards of its own community."

IV. Code of Ethics for Advisors (Adapted from National Council of College Publications Advisers): As a high school communications media advisor, I believe that my obligation is one of public trust which requires that, to the best of my ability, I--SHOULD BE:
-A professional counselor whose chief responsibility is to give competent advice to student staff members in the areas to be served--editorial or business.
-A teacher whose responsibility is to explain and demonstrate.
-A critic who will pass judgment on the work done by the staff and who will commend excellence as well as point out fault.
-An advisor whom staff members will respect for professional ability and my contribution to the high school publications.

As an advisor I

MUST:
-Have personal and professional integrity and never condone the publication of falsehood in any form.
-Be firm in my own opinions and convictions while reasonable toward the differing views of others.
-Be sympathetic toward staff members, endeavoring to understand their viewpoints when they are divergent from mine.
-Seek to direct a staff toward editing a responsible publication that presents an unslanted report.

SHOULD:
-Direct the staff or individual members whenever direction is needed but place as few restraints as possible upon them.
-Never be a censor; but when staff members are intent on violating good taste, the laws of libel, or high school principles, I should be firm in pointing out such errors.
-Make suggestions rather than give orders.
-Be available for consultation at all times.
-Instill in the staff a determination to make the publication as professional as possible by being truthful and recognizing that fidelity to the public interest is vital.
-Lead the staff to recognize that the publication represents the high school and that the world beyond the high school will in part judge the high school by the publication medium. I realize that, in many judgments, interpretation of a code of ethics becomes personal. I hold that a sincere effort to implement the spirit of these principles will assure professional conduct of credit to the profession and give honest service to the staff, the administration, the students, and the general public.

V. Excerpt from report A Free and Responsible Press, by The Commission on Freedom of the Press, The University of Chicago Press, 1947:

. . . Today our society needs, first, a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning; second, a forum for the exchange of comment and criticism; third, a means of projecting the opinions and attitudes of the groups in the society to one another; and fourth, a way of reaching every member of the society by the currents of information, thought, and feelings which the press supplies.

The Commission has no idea that these five ideal demands can ever be completely met. All of them cannot be met by any one medium; some do not apply at all to a particular unit; nor do all apply with equal relevance to all parts of the communications industry. The Commission does not suppose that these standards will be new to the managers of the press; they are drawn largely from their professions and practices.

VI. Statement of Publisher

. . . . . .
vested by law with the management, supervision and control of all high school property and concerns, has delegated the responsibility of publisher, along with all other management responsibilities, to
. . . . . .

VII. Statement of Financial Support:

Funds for the publications of these high school communcations media:
. . . . . .
. . . . . .
are provided by . . . . . .
and are re-evaluated and reallocated at intervals of . . . . . .
. . . . . .

VIII. Other Pertinent Documents Reflecting the Uniqueness of . . . . . High School:

Section I. Membership of the Board. (Should be an odd number with majority of student representation).

A. The Board shall be composed of the following individuals who will serve one year:

1. The chairman shall be the High School Principal, who shall vote only in the event of a tie.
2. The faculty advisors of all publications and communications media. (votes).
3. Two faculty-at-large appointed by the faculty governing body (or high school principal if there is not a faculty governing body). (Two votes).
4. The student editors or managers of the high school media. (votes).
5. Two students-at-large appointed by the student governing body (or ad hoc committee of editors and managers if there is no student governing body). (Two votes).
6. A Communications Commissioner, a student who applies to the Board and is elected by a simple majority. His election will be subject to confirmation by a simple majority of the student governing body. (If none, the election will stand). (One vote).

B. Non-voting members shall be the business managers of the high school media, or other key staff members.

C. Interested parties will be welcome to Board meetings, have the right to address the Board, but shall not vote, or be present during voting, at the chairman's discretion.

Section II. Officers and their duties.

A. Duties of the Chairman shall be:

1. Preside over the meetings of the Board.
2. Call a meeting of the Board at least twice per grading period.
3. Prepare an agenda for all meetings.

B. Duties of the Secretary (one of the members elected to this position at the first meeting of every fall term. Term of office shall be one year.) shall be:

1. To take minutes of every meeting and send copies of the minutes to each of the Board members, the advisory members, to the faculty and student governments and to whoever else expresses a desire for such information.
2. Inform the members of the Board of upcoming meetings.
3. Assist the Chairman in preparing the agenda.

C. Duties of the Parliamentarian (one of the members elected to this position at the first meeting of every fall term. Term of office shall be one year.) shall be:

1. Assist and advise the Chairman and Secretary on Parliamentary matters.
2. Referee and ensure that meetings are conducted in the spirit of Robert's Rules of Order.
3. Rule in the event of disagreement as to procedure, according to Robert's Rules.

Section III. Meetings of the Board.

A. The Board will meet at least twice per grading period or more frequently at the discretion of the Chairman or request of a Board member. The Board member requesting a special session should submit to the Chairman in writing at least three days prior to the desired meeting the topic of special concern for the meeting, so that the Chairman and Secretary can prepare an adequate agenda.

B. An agenda shall be compiled prior to each meeting and distributed early to each member so that business may be thoughtfully considered and conducted.

C. Meetings shall be carried on in a parliamentary manner with Robert's Rules of Order or other reliable source as the official guide.

Section IV. Duties and Responsibilities of the Board.

A. Selection of Editors and Key Staff. Notice shall be given in the appropriate communications media two weeks previous to the date upon which new editors and key staff will be selected by the Board. All students shall have equal opportunity to apply for the positions. A formal written application is required. All aspirants should apply in person to the Board on the date set for selection. In addition, each applicant may submit credentials and ideas concerning high school communications media to the Board for consideration in making the final selection, which shall be by simple majority of the secret ballot.

B. Vote of Review. Editors or key staff on high school publications media may ask the Board to vote in review of editorial policy (a broad term of content of the medium's content) such that approval or disapproval will be granted. The Board may originate a vote of review (approval or disapproval) and it may request that an editor or key staff member appear before the Board to answer questions. Any member of the Board requesting a vote of review or an editor or key staff member subject to review shall not have a vote in this action. A 2/3 majority of all Board members shall constitute a valid vote of review.

C. Dismissal of Editors and Key Staff. A Board member must originate any action to dismiss an editor or key staff member after a vote of review has been conducted. The grounds for dismissing an editor or key staff member will be a 2/3 vote of those present of the Board after advance notice of three days has been provided each member of the Board. Two-thirds of the Board voting members present must find an editor or manager guilty of gross neglect of duties and/or incompetence, libel, or obscenity, or irresponsible journalism before dismissal can take place. A member of the Board requesting dismissal action of an editor or key staff member and the editor or key staff member in question shall not have a vote in this action.

D. Approve the Budget. The Board will approve the budget for each high school publication on a regular basis. The Chairman will submit the final approved budget request to the appropriate funding body. Board approval will be a necessary prerequisite to submission of the budget to the appropriate funding agency.

E. Reports of Editors and Key Staff Members. Reports from editors and key staff members will be heard at the Board meetings. (Optional).

F. Miscellaneous Reports. The Board should hear and act upon criticisms, complaints, and compliments concerning the high school communications media. This will normally originate from individuals outside the immediate high school community.

Section V. Responsibility and Censorship Guidelines.

A. Each editor shall determine editorial policy and shall be responsible for his or her communication content in the high school publication.

B. In these responsibilities, editors and key staff members will be assisted by faculty advisors, appointed by the faculty governing body (or the high school principal in the event that there is no faculty government) at the beginning of each school year for a one year term. His responsibilities include offering technical advice on news and editorial matters and urging caution in avoiding libel, obscenity and other acts of journalistic irresponsibility. The Board shall not exercise powers of prior censorship. Electronic media are subject to Federal Communications Commission regulations.

Section VI. Adoption and Amendments.

A. These rules and guidelines shall become effective immediately upon a 2/3 vote of the originating ad hoc committee. Clauses pertaining to membership will go into effect following approval by the faculty and student governing bodies. Initial Board meetings will begin . . . . . 19. . .

B. New amendments and additional by-laws shall be enacted upon 2/3 vote of all members of the Board. Proposed amendments and changes or additions to these by-laws and guidelines should be circulated to all members of the Board at least two weeks prior to the time they are acted upon.

(Guidelines originally appeared in Scholastic Editor/Graphics Communication 50 (February 1971): 28-32.

General Guidelines for School Publications*

1. Student publications really mean many different areas--not just newspapers and yearbooks. News-magazines, general magazines, photo-magazines, literary magazines, student manuals and guidebooks, newsletters, printed programs are among others which should be encouraged.

2. The publications serve the students of a high school in many ways. Some are entirely utilitarian in functions--others encourage creative imagination, all of them provide significant learning opportunities and "laboratory-like" experiences for student staff members. Perhaps most important is the communication opportunities the students have.

3. In large schools, students need to know their school community. Student publications provide this essential channel.

4. Since student publications are so important to the student of the school, all or as many students as possible should receive copies of each publication.

5. Some schools have found it helpful to establish publication boards composed of students, faculty, and administrators to help operate the student publications program, review and provide its policies, select principal staff members, look for solutions for problems, supervise financial matters, and provide a wealth of ideas for good publications. Chairman of this board should be a journalism teacher or publications adviser.

6. Although students may accomplish considerable production of publications within journalism classes, much work will need to be done at other times during the day, afternoon, and evening. Provision should be made to provide access to the publications area as it is needed.

Guidelines for School Newspapers

Each high school should have a well-written, well edited student newspaper published weekly. It should be printed by the offset method. Here are specific guidelines:

1. Each year the student staff and the adviser should prepare a statement of policies and practices for guidelines to the staff. The school principal, superintendent, and school board should examine these policies, suggest improvements, and accept them as official school policy.

2. The student newspaper needs a well-qualified adviser-teacher.

3. The student newspaper needs a large room with typewriters, file cabinets, several desks, and worktables.

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*Recommended by the Association for Education in Journalism.

4. The student newspaper needs a photographic darkroom, with standard darkroom sink, enlargers, safe lights, and 120mm and 35mm cameras.

5. The student newspaper needs a large room with strike-on or photographic body type and headline type setters, make-up and layout tables, and related materials if possible.

6. If nearby commercial facilities, or the school's industrial arts department, cannot provide prompt, economical printing services, the school newspaper will also need a small offset printing press and plate-maker.

7. If the typesetting and printing facilities listed above are too expensive or not available, the school newspaper probably should be produced on mimeograph or similar quality duplicating equipment in order to assure frequent (weekly or bi-weekly) publication.

8. Content of the paper should be determined by the student staff with the help of the adviser, who must be tactful and resist the temptation of being "editor."

9. The adviser could be considered as functioning as "publisher" of the paper, representing the "owners," (the school).

10. This relationship, technical in nature, does not parallel similar arrangement in the commercial press, particularly in public schools. School board members, superintendents, principals, teachers, etc., are state officials and are specifically enjoined by federal and state constitutions from placing restrictions on the freedom of the press rights of high school students, even though the school may "own" the paper.

11. This means that school officials or teachers or advisers really are not entitled to serve as censors. Indeed, it appears that the common practice of approval of contents before publication is probably an illegal procedure.

12. Since such practices are questionable and since restrictive regulations are difficult to impose, it appears that a different approach to the student newspaper would be advisable. As a matter of fact, private schools are bound by the same general principles as are public schools.

13. Integral to this new approach is a highly qualified adviser, knowledgeable about journalism in every way who can teach students both technical and ethical concepts.

14. Simply stated, the approach is this: When enough good students learn enough about the best kind of journalism in well-taught classes, they will view their newspaper as a high-calling and produce a publication that will be an effective student communication media that the school will be proud of and find to be a constructive part of the lives of all its students.

15. The paper, of course, will cover on occasion articles about controversial and disturbing matters and will present editorials sometimes sharply critical of school affairs.

16. This and other less startling contents will help student staff members and student readers mature in their understanding of the complex world in which they truly live.

17. When school patrons read such a school paper they come to admire the intelligence of the students and realize how effective the total teaching program and the faculty really are.

18. Developing such a newspaper is a thrilling challenge for a school, requiring administrative patience and skillful teaching.

19. The school newspaper thus becomes a true student newspaper serving its community by publishing the news of interest and consequence to that student community. It also performs these functions fairly: Provides entertainment for its readers, comments on the news with editorials, serves its student community by encouraging worthwhile activities, and develops fiscal stability.

20. Since the teaching aspect is so important, a journalism classroom should be near the student newspaper area.

21. The school should provide an adequate financial base for the newspaper. Ideally about one-third of its production cost should be borne by instructional funds, one-third by advertising, and one-third by student subscriptions (preferably provided from a student activities fee).

22. Students would thus be able to learn the business aspect of journalism as well as the editorial side by utilizing school accounting procedures and records.

23. Student learning objectives should include:

a. Careful evaluation of information to distinguish between facts and opinions.

b. News writing for clarity, fairness, and attribution.

c. Use and adherence to journalistic style and the principles of good writing.

d. Elimination of propaganda, gossipiness, poor taste, or personal anger from the paper.

e. Development of a sense of news values based on timeliness and significance.

f. Creativity in design.

g. Wide coverage of news and subjects of interest to students.

h. Development of the reporting skills of research and interviewing.

i. Use of headlines, pictures, and captions to reflect accurately story content.

24. In order to learn and to produce a fine newspaper, student staff members should discuss student work as production proceeds. Critique sessions should follow publication.

25. The student staff should be directed by an editor-in-chief chosen jointly by the adviser and other staff members for his superior abilities.

26. Other staff members should be assigned to duties by the editor-in-chief and the adviser on the basis of their interest and abilities.

27. These abilities can be improved in these ways:

a. Diligent service on the staff.

b. Attendance at learning seminars sponsored for the staff.

c. Enrollment in high school journalism classes.

d. Attendance at press conferences.
e. Attendance in summer workshops sponsored by universities or press associations.

28. The adviser and the student staff should utilize the services of state, regional, and national press associations and organizations to encourage improvements of the school newspapers.

Guidelines for School Yearbooks

Introduction

Each high school should have a student yearbook, which presents a permanent pictorial and written record of each school year. The school yearbook, like the school newspaper, needs a well-qualified adviser, and should be directly related to the journalism instruction program.

Here are specific guidelines:

1. Each year the student staff and the adviser should prepare a statement of policies and practices for guidance of the staff. The school principal, superintendent, and school board should examine these policies, suggest improvements, and accept them as official school policy.

2. The school yearbook staff needs a large room with typewriters, file cabinets, desks, worktables, and layout tables for page design and perhaps layout.

3. The yearbook also needs its own darkroom with standard darkroom sinks, enlargers, cameras, etc.

4. These facilities should be located near the newspaper area and journalism classroom for convenience of double use of equipment, especially if the yearbook wishes to set its own type and paste-up its pages.

5. The quality of printing normally required for a yearbook takes the services of an excellent printer or a yearbook specialty printer. The yearbook staff should appoint this printer on the basis of competitive bids submitted on specifications prepared by the adviser and the student staff.

6. Individual pictures of students appearing in the yearbook call for the services of an excellent studio photographer or a yearbook specialty photographer. The yearbook staff should appoint this photographer on the basis of specifications prepared by the adviser and the staff.

7. Covers for the yearbook normally are produced by a specialty company. Provisions for covers can be included in the yearbook printing contracts or a cover contract can be based on competitive bids submitted on specifications prepared by the adviser and student staff.

8. Since the yearbook emphasizes pictures, adequate provisions to obtain these must be made. They may be purchased from professional photographers, or taken by student photographers (the preferred plan).

9. The yearbook should also contain a considerable amount of written material or "copy." This content should be excellent writing, adhering to consistent style and tone. The same consideration of student freedom must prevail for the yearbook as for the student newspaper.

10. Yearbooks can be very expensive, so great care in planning and budgeting is essential.

11. A yearbook should have a total number of pages divisible by 16. For example, 80 pages, or 112 pages, or 144 pages, or 160 pages, etc. A 16 page unit is called a signature; if the book is planned and produced in signature units, the most economical printing can be effected.

12. If color (either one additional color or four color pictures) is to be used, try to confine such color to the 8 pages printed on one side of a signature. This is relatively economical. Scattering color indiscriminately on pages throughout the book is extremely costly.

13. The staff and adviser should develop a careful production schedule to allow adequate time and provide efficient steps to assure completion of the book in time for the planned distribution date.

14. The school yearbook should provide the finest opportunities for creative, imaginative writing, excellent photography, and artistic design for students to achieve.

15. Student staffs and advisers should examine outstanding high school and college yearbooks to discover the unlimited ideas and creative potential of such a publication.

16. Attendance at national, state, and regional yearbook conferences for idea exchanges and evaluation of new techniques is essential for the development of better yearbooks.

17. Perhaps the best opportunity to learn about yearbook editing, creativity, photography, design, production, and financing can be found in summer yearbook workshops sponsored by universities and press associations. As many members of each yearbook staff as possible should attend summer workshops. Advisers can also find graduate level summer courses or evening courses available in various universities concerning student publications.

18. It is essential that the school yearbook be financially stable. Probably several sources of income will be needed. One would be copy sales to students (preferably provided through a student activity fee). Since the yearbook is part of the instructional program, instructional funds should also be used to pay part of its production costs. Other typical sources of income include advertising, space charges paid by student organizations, compensation provided by commercial photographers to the yearbook for its staff's clerical and handling services of class pictures (This compensation can be in the form of money, photographic material and services, a summer workshop scholarship, etc.) All income arrangements should be on the basis of written contracts and careful accounts kept so that school auditors may verify all transactions.

19. Yearbook staff members and advisers are advised never to accept proffers of money or other items from yearbook printing firms,

or photographers, or other suppliers for personal use. This prohibition includes meals, cokes, coffee, or any gratuity or blandishment.

20. Yearbook content should not be trite, corny, sarcastic, or mean. It should be interesting, fresh, lively, and elevating.

21. The yearbook's reason for existence is to record the school year in pictures and words. If the memory of a person were strong enough to record that year in personal remembrance forever, yearbooks wouldn't be necessary. But human memory is fallible and fades. The yearbook is a human invention to remember in the most dramatic and complete way possible the school year which could well be the most important one in a person's entire life. Our memory needs the yearbook, needs the "copy," needs the pictures. Our memory fools us into thinking we can remember the story and the people in the pictures for a long while, especially if the picture is dramatic. But we cannot lock time up in our memory with a picture alone. That picture, to be meaningful for us in our next 60 years of life, needs words to help us remember, and more important, recapture and re-live that moment of our life in a wonderful high school year. Pictures and words together communicate meaning and revive the spirit and the tone of the experience. Pictures alone soon become abstract torments. A yearbook should never be an impersonal art gallery; instead it should live as a re-creation of life itself. Please give us back our life by placing helpful, lively captions with each picture--and even identify the people for us. They are important to us especially if we have names for them all the rest of our lives.

Guidelines for School Magazines

Introduction

Students in many high schools find magazines to be excellent publications. The diversity of type and purpose is almost limitless. Some are essentially journalistic in nature; others are not. Because of this diversity, a high school could have several such publications.

For the journalism area there could be a news-magazine (in some schools this substitutes for a newspaper) or a general magazine (in some schools this substitutes for a yearbook).

Literary magazines really should be the province of the English program; other academic areas may have magazine-like publications. The journalism teacher could be helpful to these areas in technical matters.

Magazines could be published as infrequently as once each year. It is doubtful if many could be produced more than three or four times yearly with the exception of the news magazine.

In all cases, they need adequate financing, a well-qualified adviser who enjoys such an assignment, and freedom of content selection by the student staff.

Publications Guidelines

Statement on Freedom of the High School Press*

In a high school community, students involved in student communication media shall convey information with accuracy and insight and in such a manner that truth shall remain predominant.

Within the standards determined by and relevant to its campus environment, a scholastic publication shall serve as a training ground, not only for those students who may be progressing into the field of journalism after high school graduation, but also for all students so involved in the school press, as a means of teaching them to function in a democracy where they understand the importance of a free press in a free society.

Serving both as an educational tool as well as an instrument through which students, faculty, administration, and the community can gain an insight into student thinking and student concerns, the high school press shall operate under the First and Fifth Amendments which guarantee freedom of speech and shall uphold the backing of the Fourteenth Amendment that guarantees these freedoms.

With freedom of expression, inherent journalistic responsibility shall be paramount, thus the functions of a democratic press--to inform, to educate, to entertain, to investigate, and to interpret--shall predominate. To insure understanding of the responsibility which is incorporated with such freedom, a professionally trained adviser should be provided to teach journalistic performance in 1) accurate and impartial news coverage, 2) complete, in-depth reporting in features, 3) well-researched, factual information supporting opinion in editorials, 4) a sound and ethical financial program, especially through the advertisements published, and 5) complete and meaningful photographic coverage of the school and its many programs.

Furthermore, the student press shall provide a forum in which members of the school community may have the opportunity to exercise freedom to express dissenting opinions, since publications are valuable peaceful channels for student protest which should be encouraged, not suppressed.

Suppressing results when administrators, advisers so governed by administrators, community pressure groups, or merchants providing financial aid act as censors for any item which may imply disagreement with school policy, faculty decisions, or local systems of opinion.

In order to achieve the full experiences and opportunities demanded of journalism in its learning experience, only articles alluding to the following should be withheld from the press:

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*Recommended by the Journalism Education Association.

1) Libelous material--That which may result in defamation of character, as a statement concerning a person which may unnecessarily expose him to hatred, ridicule, or contempt, or which may cause him to be shunned or avoided, or which has a tendency to injure him in office or profession.

2) Malicious statements--Those articles which are motivated by and convey feelings of hatred or contempt, whether based upon false or misleading statements, half-truths, or distortions of the truth; those articles which give evidence to flagrant ridicule of race or creed; those articles which deride a private rather than a public figure.

3) Language and pictorial content--That (a) in which the dominant theme of the subject material, when taken as a whole (in context) is utterly without redeeming social value, (b) which offends contemporary community standards, and (c) which appeals to the prurient interest.

4) Invasion of privacy--Those articles not published for the common good, those which have little or no general news value, and those events which have taken place in a private situation on private property.

Considering the aforementioned conditions, privilege must be recognized. This privilege, fair comment, involves printing an article in which the position or reputation of one individual has to be sacrificed for the good of the majority. Supposed defamatory comments against a public figure are not considered libelous unless they show actual malice or knowing falsity. In all fairness, comment in newspaper articles should confine itself to those public occurrences and activities of individuals or groups, and comment should not go so far as to attack personal character or to impute immoral or corrupt motives or behavior. Privilege involves reporting any official event (school board meetings, student government meetings) since the news belongs to the people.

A final guide to follow involves the relationship between the publication and the educational process within the institutions of learning. That material which encourages students to disobey existing law or to take action which is incompatible with the school's obligation to maintain order and discipline or which may endanger the health and safety of members of the school and community is not protected by the First Amendment.

Suppression and censorship of news coverage and editorial opinion violates the Constitutional and traditional guarantees of freedom of expression, press and inquiry. The scholastic press is the marketplace of ideas. Curtailing expression will limit the academic freedom of the instructor to teach the students to operate under the Constitutional guarantees of freedom.

APPENDIX E

GUIDELINES FOR PUBLICATIONS ADVISERS, JOURNALISM TEACHERS, AND SCHOOL ADMINISTRATORS

APPENDIX E

GUIDELINES FOR PUBLICATIONS ADVISERS, JOURNALISM TEACHERS, AND SCHOOL ADMINISTRATORS

Guidelines for School Principals, School Superintendents, and School Board Members*

Introduction

School Administrators and policy makers are in a position to assist in the establishment and maintenance of a strong student publications and journalism instructional programs.

Here are series of statements, perhaps repetitious of earlier sections of these guidelines, which are of special interest to principals, superintendents, and school board members, who should:

Publications

1. Accept as school policy the written policy statements developed by student staff and faculty adviser of each publication with improvements based upon suggestions made by the principal or superintendent.
2. Develop these policies in cooperation with the adviser and student staff members so that all persons connected with each publication can use them.
3. Accord student publications status similar to other major programs since students and adviser spend many hours during the school day, in the late afternoon and in evenings at their endeavors.
4. Be available to student publications staff members for discussions of school events or problems. Make complete information available to the student publications for articles or editorials.
5. When student publications staff members deserve commendations for their achievements, accord them that priase. On the other hand, do not hesitate to discuss their mistakes or failures with them, but make criticisms be as constructive as possible.
6. Do not be surprised when mistakes do occur! However, encourage high quality and standards in all student publications. (It probably is almost impossible for students, even with the help of a fine adviser, to produce a completely error-free publication. Professional journalists haven't managed to do so either.)

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*Recommended by The Association for Education in Journalism.

7. Allow students to publish viewpoints and editorials, even those critical of the school and its programs. Evaluate such criticism and use its constructive elements to improve the school.

8. Rely upon the students who should have been given wisdom by their adviser and journalism studies to determine the content of the paper. It is not advisable for a principal or school official to approve content prior to publication since this is considered to be censorship by courts who usually forbid such practices.

9. Encourage the development and publication of comprehensive, free, and responsible student newspapers, magazines, yearbooks, and other student publications.

10. Since as many students as possible in the school should receive copies of publications and since publications provide many learning experiences, arrange for an adequate and stable financial base for each publication, using instructional funds as well as advertising, student fees or subscriptions, or other income.

11. Recognize the desirability of including advertising in student publications as part of a communications function, a learning situation, and the financial program.

12. Approve special income sources for specific publications on the basis of written contracts available to auditors and others. The yearbook may have photographic sales income. If publications occasionally produce special "public relations" editions, administrative funds should also underwrite that expense.

13. Encourage business-like procedures and assist the adviser and students to set up and maintain records, billings, collections, budgeting, and all business operations. Advisers should have readily available copies of all records, billings, collections and budgeting information.

14. Insist that all agreements for supplies and services, especially printing and photographic, be based on legally valid bids or price quotations and that all contracts be based upon recommendations of the adviser and the student staff.

15. Adhere to the general principle that the goal of the journalism instructional program is to equip the students to do all of the work, both editorial and business, of the student publication.

16. Always work through the adviser in all matters of policy.

17. Hire qualified advisers and journalism teachers. If a teacher-adviser does not have journalism certification, require and assist him to obtain it.

18. Allow adequate duty time during the school day for instructional duties and for publications production.

19. Provide extra compensation to advisers for the hours required beyond the normal school day.

20. Provide modern facilities recommended by the adviser in so far as possible.

21. Give administrative endorsement and support to advisers and students, especially in creative, original endeavors.

22. Realize that well-done student publications benefit the student staff participants, the student readers, and the entire school.

23. Encourage the establishment of a weekly student newspaper. Consider also the establishment of daily news broadcasts over school radio stations or perhaps intercom address systems. Closed circuit television could also be used.

24. Acknowledge that irresponsible, libelous, or poor taste publications result where advisers are unqualified, where administrative understanding is too limited or too restrictive, where administrative and teacher support is too restrained, where financing is inadequate, where facilities are poor, or where insufficient student class or extra-class time is allocated for publications production or is allocated for teacher preparation opportunities.

25. Understand that underground publications appear and flourish whenever there is censorship by arbitrary administrative agencies or in schools with poor, unrepresentative school publications.

26. Realize that the impact of offset printing and "cold" or photographic typesetting has changed the nature of newspapers and publications. This means the student staff should have adequate equipment available to make their publications at least "camera-ready." Many go beyond this and also have offset printing presses in the journalism area. This is particularly desirable if commercial printers or the industrial arts area can not provide printing services at reasonable prices.

27. Set a positive tone toward student publications to encourage staff members to do their best and not fear reprisals. Teachers should not be overly critical of student publications in classes; they too should reflect a generally positive attitude. However, criticism of specific errors or flaws should be welcomed by the student staff.

28. Understand the student publications program fully so that it can be explained accurately to its critics--in school and out--as part of the public relations interpretation responsibilities of administrators.

Guidelines for Journalism Teachers and Advisers*

Introduction

Journalism Teachers and publications advisers perform many specialized duties which require thorough knowledge of both technical and instructional aspects of the field. A teacher who does not have adequate background will find such an assignment very difficult and almost impossible to carry out.

General Standards

General standards for teaching and advising should include:

1. Understanding the nature and function of contemporary journalism.

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*Recommended by The Association for Education in Journalism.

2. Understanding the nature and function of scholastic journalism.
3. Acquaintance with the principles and ethics of professional journalism as outlined in "The Journalist's Creed" of Walter Williams, "The Canons of Journalism" adopted by the American Society of Newspaper Editors, and the "Criteria for a Good Newspaper" prepared by the Associated Press Managing Editors Association.
4. Acceptance of the responsibility to uphold these principles to student staff members, other students, and the school.
5. Realizing that advising quality student publications requires large amounts of time outside the regular school day.

Professional Preparation

A Journalism teacher should meet specific requirements by having:
1. An official journalism teaching certificate or license issued according to his state's teacher certification regulations.
2. Either a journalism major or minor in journalism at the bachelor's level with a selection of courses in editing, journalism writing, typography, advertising, photography, publications productions and management, journalism history, mass communications, radio and television, and publicity and public relations.

Helpful Experience

In addition to adequate academic background, the journalism teacher would find the following experiences to be helpful preparation.
1. Service as a student staff member for the school yearbook, newspaper, or magazine while a high school student.
2. Service as a student staff member for a college yearbook, newspaper, or magazine while a college student.
3. Employment as a staff member of a professional newspaper.
4. Student teaching and publications advising while completing undergraduate professional education requirements.
5. Actual teaching experience in journalism or publications advising at the high school level.
6. Service with a professional photographer, shooting and processing pictures.
7. Work with a company or agency in advertising sales, design, or copy writing.
8. Freelance writing or working for a commercial magazine.
9. News broadcasting experience with a college professional radio or television station.

A teacher-candidate should submit examples from such experiences to his prospective employer along with his letters of recommendation and credentials.

Continued Professional Growth

If a journalism teacher or publications adviser has not completed adequate undergraduate study, he should be encouraged to do so by attending evening or summer classes. Summer might provide

opportunities for employment or commercial media also. Even if a teacher has met such criteria, however, he should continue his professional growth in these ways:

1. Earn a master's degree major or minor in journalism.
2. Join state and national scholastic press associations for advisers and journalism teachers.
3. Participate in seminars, conferences, workshops, and institutes about school publications and journalism.
4. Conduct research studies about school publications and journalism and make reports available for publication.
5. Seek summer employment within professional journalism.

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