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Legal Perspectives of the Student Media

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CHAPTER 1

INTRODUCTION

Concerns About Contents of Student Media

Student media is certainly one of the central functions of any university. However, there are strong implications that come along with a student group producing news around campus. Many criticisms have occurred since the beginning of student media, in regards to what should or should not be printed. Many feel that there should not be any rules for student newspapers and other forms of media to go by. However, some also feel that there is a certain line that students should not cross while reporting on campus news.

In 1968, an editorial printed by the *Index*, the student newspaper at Pacific University in Forest Grove, Oregon, cost a college editor his position. The editorial criticized the campus health service and a university physician. The director of the health service filed suit against the dean of students, the university president, the student writer, and the student body because he felt that he had been libeled. However, the doctor dropped the case after the student publication printed a retraction, the student writer was removed from the newspaper's staff and the editor of the *Index* resigned. (Stevens and Webster, 1973)

This case shows us that student newspapers should be very careful when writing about professionals in such a manner that might damage his or her reputation. However, the question is just how careful should student publications have to be without taking away their constitutional right of free speech.

Purpose

The purpose of this paper is to review Supreme Court and other cases of what student newspapers should publish. Through achieving this, these newspapers can prevent legal or disciplinary actions towards the student staff or the newspaper in general. Such suggestions could not only help those connected with student publications stay out of court but could also allow to work together harmoniously.

CHAPTER 2

JUDICIAL DECISIONS CONCERNING STUDENT MEDIA

Judicial decisions have provided some guidance for administrators and students. Most rulings have been in favor of students and their free expression rights.

One important ruling concerning the rights of student journalists in high school and college is the *Tinker V. Des Moines Independent Community School District* (393 U.S 503; 89 S. Ct. 733; 1969). The case actually did not directly involve college student journalists, but it is widely considered a landmark decision in the area of students and their right to exercise free expression. The court upheld the right of three Des Moines public school students to wear black armband in order to express their protest of the Vietnam War.

Justice Fortas ruled that although school officials have the right to form and maintain rules for the conduct of students they do not have the right to "possess absolute authority over their students."

Justice Fortas said for the majority that students are also protected under the Constitution. "In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

The *Tinker* decision upholds the views that the student newspaper should be granted First Amendment protection despite the manner in which the newspaper is funded. Administrators are unable to exercise prior restraint on student publications. Also, college student's right to free

speech is affirmed, as long the speech does not incite a riot or have an overriding reason to be censored.

In 1973 another decision ruled in favor of student free speech rights. *Papish v. University of Missouri Curators* ruled in favor of the student editor of an underground newspaper who was expelled for publishing obscene material in the newspaper. The university was ordered to reinstate the editor.

The U.S. District Court in Massachusetts ruled in 1970 that censorship could not be imposed by a college president on what could be communicated in a campus newspaper. This case entitled *Antonelli v. Hammond* resolved the important issue of whether or not a college president could withhold student activity funds from a student newspaper if he or she did not agree with what was being printed (308 F. Supp. 1329; 1970).

The ruling did provide for reasonable restrictions for the student press, but not an administrator telling a student what thoughts he may communicate. The decision claimed that "it would be inconsistent with the basic assumptions of First Amendment freedoms to permit a campus newspaper to be simply a vehicle for ideas the state or the college administration deems appropriate."

Another case in favor of the student press is, *Panarella v. Birenbaum* (327 N.Y.S. 2d 755; 1971). Along the same lines as the *Antonelli* decision it also restricted college presidents from censoring the campus media. In this case the court ruled that the university could not interfere with the publication of attacks against religions. The court stated that university newspapers functioned as "a forum for the free expression" of student opinions.

In *Trujillo v. Love*, the court decided that suspending a student editor for not following

vague instructions about "controversial" topics given by the faculty adviser was a violation of the First Amendment (322 F. Supp. 1266; 1971). The student editor published a cartoon attacking the college president and an editorial criticizing a local judge. The court declared that since the administration failed to outline clearly the newspaper's purpose they did not have a right to control content and discipline disobedient students.

One ruling, *Channing Club v. Board of Regents*, claimed that a publication could not be discriminated against by a university simply because it is a student publication (317 F. Supp. 688; 1970). The defendant, *Texas Tech*, was found to be guilty of discrimination. The court stated, ". . . the State does not become privileged to ban a publication merely because it is edited and published by students."

In *Bazaar v. Fortune* the University of Mississippi's chancellor ordered the school's literary magazine censored. The court reversed this order, however a note was allowed to be placed inside the magazine stating the school had no involvement with the content of the magazine.

Another case involving student press rights is *Hazelwood v. Kuhlmeier.* This case involved a principal withholding stories dealing with sensitive topics written by high school editors. The court decided that high school newspapers are not entitled to First Amendment protection. They are not considered public forums but are instead a part of the educational curriculum. The court did make it clear in the ruling that the *Hazelwood* decision would not apply to student journalism at the college level.

All of these case have helped to define what legal considerations students and universities should make while making decisions about what should or should not be published.

A U.S. District Court stated, "First Amendment rights must be balanced against the duty and obligation of the state the educate students in an orderly and decent manner to protect the rights not of a few but all of the students in the school system (Schwartz v. Schuker, 298 F. Supp. 238). One way to resolve and prevent conflicts between student and faculty would be to allow students to be involved in the decision-making process of student publications.

University staff member rely on such things as bylaws, constitutions, articles or incorporation, codes of ethics, statements of principles, handbooks, manuals, style books, policy statements, and notes from college officials. Annette Gibbs suggests to colleges that they "show no evidence of discrimination, deprival of due process, or arbitrary or capricious action" while forming guidelines for student publications (Gibbs, 1971). She also suggests that ethics and student journalist obligations be considered along with legal questions while adopting a set of guidelines.

Another suggestion made by the American Bar Association, recommends "right of reply" rules. It states, "When the student press is supported by compulsory student fees or other significant . . . subsidy or where there is a generally accepted public identification with the particular institution, it may properly be subject to rules providing for a right of reply by any person adversely treated in its publication or in disagreement with its editorial policy or its treatment of a given event ("Bar Association Report Excerpts," p.2).

Another policy to consider is a disclaimer on the editorial pages of a student publication. An example of this would be, "The *Reveille* is published by the students of Louisiana State University. The opinions are those of the writers and not necessarily those of the school administration or faculty.

The University of South Carolina not only recommended that the newspaper make it clear that its contents did not reflect the views of the university, but also did not necessarily reflect the views of the student body or student staff members.

In summary, the need for university officials to maintain order must be balanced with the student's right of free speech.

While examining this conflict of ideas one must look at the underlying laws dealing with protection for certain people, private and public, dealing with libel cases.

When publications are sued for libel there are three defenses that they normally rely on: truth, qualified privilege, and fair comment and criticism. Usually if the defendant can prove that the information stated about the plaintiff is true then the suit will not succeed. Qualified privilege allows the defendant protection if they obtained information that what printed from judicial, legislative or governmental proceedings, as long as the information is fair and accurate. Fair comment and criticism provided protection if the defendant fairly criticized a public person or institution. (Stevens and Webster, 1973)

CHAPTER 3

SUPREME COURT DECISIONS CONCERNING FREE SPEECH AND THE FIRST AMENDMENT

Free speech is a First Amendment right that has proven to be hard to define. The courts have attempted to define this right based on the democratic system and what it stands for. The court decisions have evolved into a clearer definition of free speech and what it entails.

In *Schenck v. U.S.* Charles Schenck was charged with sending publications via the U.S. postal system urging young men to resist the draft (249 U.S. 47;1919). They were found guilty of violating the Espionage Act of 1917 because of his using the postal system to attempt to obstruct recruitment. Schenck appealed to the U.S. Supreme Court and his attorney argued that the Espionage Act was unconstitutional because it prohibits free speech.

The Supreme Court found Schenck guilty under the Espionage Act. Supreme Court Justice Holmes claimed that Schenck's attempts at obstructing the draft and using the mail to do so were found to be an act, not a form of speech. The final ruling of the court was that, under the First Amendment, the government may impose restrictions on speech only if it is proven to present a clear and present danger.

Another case is *Gitlow v. New York* (268 U.S. 652;1925). In this case Benjamin Gitlow, a socialist party member who also sat on the state legislature, was arrested by a New York commission set up to investigate subversive organizations. The commission confiscated a journal edited by Gitlow, the Left Wing Manifesto. The contents of the publication dealt with the overthrow of the United States capitalist system. After being found guilty under the state's

criminal anarchy statute, Gitlow appealed to the Supreme Court. His attorney argued that the statute violated the right of free speech under the First Amendment as applied to the states by the "due process" clause of the Fourteenth Amendment.

The Supreme Court found him guilty. In reaching this decision the Supreme Court found that the statute in itself is not unconstitutional and that there are no penalties for voicing ones opinion of a desire for governmental change. However, the court also found that the Left Wing Manifesto was in favor of bringing about governmental change by mass industrial revolts, political mass strikes, and revolutionary mass action. The final ruling was, under the First and Fourteenth Amendment's, a state has the right to punish speech that has a tendency to cause social unrest.

Brandenburg v. Ohio involved a Ku Klux Klan leader that invited a Cincinnati reporter and camera crew to publicize a Klan rally (395 U.S. 444; 1969). Local and national TV media aired some footage that occurred at this meeting. Ohio authorities arrested Brandenburg for violating the Ohio Criminal Syndicalism statute, which prevented the spread of unpatriotic views. Brandenburg was convicted for advocating crime, violence and unlawful methods of terrorism as a means of accomplishing industrial or political reform, and also for joining any such group whose purpose is to teach or advocate the doctrines of crime or terrorism.

The Supreme Court voted unanimously in favor of reversing the decision that Brandenburg was guilty. The court determined that the Ohio Criminal Syndicalism statute was unconstitutional, especially in regards to the First and Fourteenth Amendments, because it failed to make one important distinction clear. The guarantees of free speech do not allow a state to forbid proscribe someone from advocating his or her opinion unless it is directed to inciting or

producing imminent actions and is likely to incite or produce such actions. The Ohio Criminal Syndicalism statute failed to make this decision. The final court ruling was that, under the First and Fourteenth Amendments, a state cannot punish unless it qualifies an incitement to imminent lawless action.

In *Near v. Minnesota*, a local attorney brought action against Near and Guilford, who publish the Saturday Press (293 U.S. 697; 1931). He claimed that the newspaper was malicious, scandalous and made defamatory attacks on the city and its law officials. His complaint was filed under a 1925 Minnesota statute, which provided for the abatement, as a public nuisance, of an "obscene, lewd, and lascivious" or "malicious, scandalous, and defamatory" newspaper, magazine or other periodical. A District Court upheld the complaint of the attorney and declared the publication to be a public nuisance. Near then appealed to the Minnesota Supreme Court on the grounds that the prohibition against his publication was unconstitutional. After the State Supreme court affirmed the decision, Near appealed to the U.S. Supreme Court.

The Supreme Court judgement declared the Minnesota statute to be unconstitutional because it placed prior restraint on certain publications. It was a form of censoring publications, which is a violation of the Fourteenth Amendment. Even if it is to protect the community against the circulation of scandal and misconduct, the right of freedom of the press prevails under the former. The substance of the statute, not the nature is the reason the Court decided as they did. The final ruling was that, under the First and Fourteenth Amendments, a state law cannot prior restraint except in rare cases, such as in time of war, obscenity, incites to acts of violence, or the overthrow by force of orderly government.

In *Bridges v. California*, a union official, was held in contempt of court because he

publicly called a judge's decision "outrageous" (314 U.S. 252; 1941). He also sent a threat to the U.S. Secretary of Labor, saying that if the court rulings were enforced he would "tie up" the Pacific Coast. Soon after, newspapers in Los Angeles and San Francisco published his comments.

In a similar case, the *Los Angeles Times*, printed three editorials criticizing judges and their decisions. One of the editorials included views involving labor union members. A trial court said the editorials were intended to influence the disposition of the cases.

Bridges and the newspaper was found guilty of contempt because their statements had a "reasonable tendency" to intrude upon the fair administration of justice. The California Supreme Court upheld their convictions. When they appealed to the U.S. Supreme Court the court consolidated the two cases for consideration.

The court declared that the newspaper's rights are protected under the First Amendment. Unless they are proven to have a clear and present danger the newspapers right to free speech and publication should not be prohibited. Also, the court declared that in no way did the articles threaten the fair administration of law. The final ruling was that, under the First and Fourteenth Amendments, judges cannot punish publications of contempt of court unless there is a clear and present danger to the fair administration of justice.

New York Times Co. v. United States involved a study conducted by Vietnam Secretary of Defense, Robert McNamara that investigated the history of this country's involvement in Vietnam (403 U.S. 713; 1971). The results were published and entitled, "History of U.S. Decision-Making Process of Viet Nam Policy". A more common name was the "Pentagon Papers", which documented how both political parties misled American people of the nation's

political goals in Southeast Asia. The "Pentagon Papers" were submitted to the *New York Times* and the *Washington Post* by one of the authors, Daniel Ellsberg. On the grounds of protecting the national interest the Nixon administration sought to stop publication. A District Court denied his injunction and a Court of Appeals reversed it, the U.S. Supreme Court then temporarily enjoined the two publications and granted review of both cases.

The court declared that the only way the President could use the federal court to prohibit publication of material would be if there was an immediate clear and present danger to the national security. In this case there wasn't a clear and present danger, so the First Amendment would be violated. The final ruling was that, under the First Amendment, government cannot impose prior restraint against an immediate threat to national security and the burden of the proof of the government is high.

In *U.S. v. The Progressive*, Howard Morland, a free-lance writer wrote an article for the Progressive magazine that described the operation of the hydrogen bomb (467 F. Supp. 990; W.D. Wis., 1979). The manuscript entitled, "The H Bomb Secret: How We Got It, Why We're Telling It" was delivered in February 1979 to the Department of Energy. With it was a request for the Department to verify the technical accuracy of the material. Government officials declared that the article contained restricted data under the Atomic Energy Act of 1954. On the grounds that such information would aid other nations in their development of thermonuclear technology, he requested the data to be omitted. When the magazine refused, the government filed an injunction in a Federal District Court.

The court declared that the publication was a violation of the Atomic Energy Act of 1954 because some information should not be open to the general public. The knowledge of such

information could cause problems for the United States or it could give an advantage to other nations. The rule of law is that, when there is a likelihood of direct, immediate and irreparable harm to the national security a prior restraint on publication is appropriate and should be allowed.

Landmark Communications v. Virginia involved a Landmark newspaper, The Virginian Pilot (435 U.S. 829; 1978). The paper published an article, which accurately told of a state judge that was under investigation. The article also wrote that no formal complaints had been filed against the judge. Landmark was indicted for violating a Virginia law, which prohibits the publication of a judge while they are under investigation. During the trial the newspaper's Managing Editor claimed that the story had public interest and that the statute did not apply to newspapers. He also claimed that the statute did not protect the rights of the First and Fourteenth Amendments. Landmark was found guilty and the Virginia Supreme Court affirmed the conviction claiming that the newspaper's actions presented a "clear and present danger" to the carrying out of justice. The decision was then appealed to the U.S. Supreme Court.

The judgement of the Supreme Court of Virginia was to reverse the case because the Landmark did not violate any law and there was no intrusion in the effective carrying out of justice. The court claimed that since their publication was accurate it did not violate the First Amendment to publish the activities of public officials. The rule of law is that, under the First and Fourteenth Amendments, a state many not punish the media for publishing information lawfully obtained unless there is a compelling governmental interest.

In *Smith v. Daily Mail Publishing Co.*, a grand jury indicted the *Charleston Daily Mail* and the *Charleston Daily Gazette* for publishing the name and the picture if a 14-year old who

had allegedly shot and killed a 15-year old classmate (443 U.S. 97; 1979). They declared that the papers were in violation of a West Virginia statute, which prohibited any newspaper from printing the name of a child in connection with a crime unless they have a written order of the court. The same court then invoked the West Virginia Supreme Court's original jurisdiction because the statute acted

as a prior restraint on free speech and that the interest of protecting the identity of a minor was not more important than restriction.

The court declared that both newspaper publications were innocent. They revealed lawfully obtained, truthful information and it would be in violation of the First Amendment if the court allowed prior restraint on these publications. Other states have attempted the same interest, but only a few have accomplished this objective. The final ruling was that, under the First and Fourteenth Amendments, a state may not punish the media for publishing information lawfully obtained unless there is a compelling governmental interest, even if it is dealing with juvenile crime.

Miami Herald v. Tornillo occurred in 1972 when Tornillo was a candidate for the Florida House of Representatives (418 U.S. 241; 1974). The Miami Herald printed editorials during his campaign that criticized his character and candidacy. Tornillo then demanded the newspaper to allow his response to be printed. When the newspaper refused, he filed a suit based on a 1913 Florida "right of reply" statute. A Circuit Court declared that the statute was unconstitutional. The Florida Supreme Court reversed the decision, claiming that free speech was enhanced, not abridged by the statute. The Supreme Court granted certiorari to consider the issue.

The court reversed the Supreme Court of Florida's judgement on the grounds that it

intrudes into the functions of the editors. Therefore, the statute is in violation of the First Amendment. Editorial judgements, not government regulations, decide what to put into a newspaper. The rule of law is that, under the First and Fourteenth Amendments, a state many not require a newspaper to publish information it doesn't want to publish.

New York Times v. Sullivan involved several advertisements published by the New York Times in the early 1960's (376 U.S. 254; 1964). The ads were concerned with police brutality to black students protesting segregation. Several of the reported police actions were false. The city commissioner in Montgomery, Alabama, L.B. Sullivan sued the newspaper for libel. Sullivan took many of the statements in the ads personally because he was the head of the police department. The trial judge declared that the statements in the ad to be libel and not privileged. The jury claimed Sullivan was entitled to $500,000 for damages. The Alabama Supreme Court affirmed the decision and the U.S. Supreme Court granted certiorari.

The Supreme Court reversed the decision of Alabama, claiming that unless there is proof that the statement was made with malice public officials cannot collect damages for defamatory statements. The rule of law is that, under the First and Fourteenth Amendments, a public official cannot collect damages for libel in connection with official duties unless they can prove actual malice.

In *Curtis Publishing Co. v. Butts*, Wally Butts, the Athletic Director at the University of Georgia was overheard by George Burnett, an Atlanta insurance salesman, conspiring with the Alabama football coach to "fix" a football game between two conference rivals (388 U.S. 130; 1967). The Saturday Evening Post printed an article based on Burnett's allegations. The newspaper also claimed that the SEC had begun investigating Butts. Butts filed a libel suit

against the newspaper. He won in the federal district court and the Fifth Circuit Court of Appeals.

Associated Press v. Walker was a similar case that involved a riot that broke out on the campus of the University of Mississippi, when federal troops attempted to insure the enrollment of the African-American to the university (388 U.S. 130; 1967). A news dispatch claimed that Walker was responsible for leading a violent crowd into a charge against the federal marshals. Walker claimed they were false statements and he filed a libel suit against the Associated Press. Walker received damages and the decisions were also affirmed by the Court of Appeals.

The U.S. Supreme Court granted certiorari for both cases. In the Walker case the court claimed that the credibility of the eyewitness was acceptable to publish this story. However, in the Butts case the court declared that the newspaper did not check validity before publishing the article. Therefore, reversing the decision reached earlier. The rule of law is that, under the First and Fourteenth Amendments, in order to collect damages, there must be proof of actual malice.

In *Gertz v. Welch*, a young man named Nelson was shot and killed by Nuccio, a policeman. Erwin Gertz represented the Nelson family in litigation against Nuccio (418 U.S. 323; 1974). The American Opinion published an article declaring that the testimony against Nuccio was false and was just a way for Communist campaign to move in on the police. Even though Gertz had no dealings with Nuccio's conviction the publication said that he framed Nuccio. They also labeled him a "Leninist" and a "Communist". Gertz filed suit against the magazine. The publication then filed for and received a motion that public interest; not just public figures should receive constitutional privileges. Therefore, Gertz had to prove actual malice. The District Court of Appeals and the Court of Appeals accepted this. Gertz then

appealed to the U.S. Supreme Court.

The court reversed the decision declaring that since Gertz was a private individual and in no way tried to put himself into the public forum, he should be rewarded damages. They also declared that "so long as they do not impose liability without fault, they States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual". Also, the court declared that there should be a new trial with further proceedings because the jury in the District Court case imposed liability without fault and presumed damages without proof of injury. The final decision was that, under the First and Fourteenth Amendments, in cases involving private libel plaintiffs a state may define for itself any standard of fault it so chooses, but it may not impose liability without showing fault amounting to at least negligence.

Philadelphia Newspapers v. Hepps involved the publication of five articles in 1975 and 1976 by the Philadelphia Inquirer (475 U.S. 767; 1986). The articles concerned Maurice Hepps, a principal stockholder of a corporation. These articles claimed that Hepps had links to organized crime and also influenced the legislative and administrative governmental processes. Hepps sued for defamation in the Pennsylvania state court. The parties raised the question in trial of who has the burden of proving truth or falsity. The court decided to given the burden of proving the truth to the plaintiff. The trial court concluded that this was unconstitutional. The Pennsylvania Supreme Court reversed this decision and the newspaper appealed to the U.S. Supreme Court.

The court reversed the decision claiming that the plaintiff must prove falsity because of the constitutional requirement that "we protect some falsehood in order to protect speech that

matters". The rule of law is that under the First and Fourteenth Amendments, matters involving public interest must be proven to be false by the plaintiff in order to protect "speech that matters".

A case that occurred in Louisiana, *Mashburn v. Collin*, involved a restaurant critic, Richard Collin, who wrote a column for the New Orleans States Item Newspaper (355 So.2d 879; La. Sup. Ct., 1977). The column was extremely harsh and defamatory in regards to describing the Maison de Mashburn's food. The owner of the restaurant, Donald Mashburn, filed suit against the newspaper's publisher, Times-Picayune Publishing Corporation and Collin for $2 million to compensate for humiliation, injury to professional reputation and loss of business allegedly caused by publication. Following an out of court settlement, the claim was allegedly caused by publication. Following an out of court settlement, the claim was dismissed. Collin then claimed the column was privileged as "fair comment" and filed a motion for summary judgement. A trial court granted this to him on the grounds that there was no evidence of "actual malice" in the publication. The decision was reversed in the First Court of Appeals because Mashburn was not required to prove actual malice because he was a private citizen. The Louisiana Supreme Court then granted certiorari.

Under the First Amendment, expressions that deal with public concern cannot be made defamatory unless it was made with knowledge that it was false. This decision also pertains to the press or news media, as noted in *Gertz v. Welch.* Because Mashburn had a public restaurant, it is a matter of public interest and is subject to fair comment. The final ruling was that, in Louisiana, under the fair comment privilege, statements of opinion by members of the press or the news media concerning matters of public interest or concern when made without knowledge

of reckless falsity are protected.

In *Milkovich v. Lorain Journal Co.*, a high school wrestling coach got his team involved in a fight with another high school team while at a match. Milkovich's team was put on probation as a result of the occurrences (497 U.S. 1; 1990). Eventually, an article was published in the *Lorain Journal*. The article claimed that Milkovich was guilty of lying under oath. Milkovich filed suit against the paper for defamation. The Ohio Court of Appeals declared the article was merely an opinion. The U.S. Supreme Court granted certiorari.

The court declared that opinions are not protected by the First Amendment. Before there can be liability under state defamation law a statement on matters of public concern must be provable as false. The rule of law is that the First Amendment does not require a separate constitutional privilege for opinion in light of existing constitutional doctrine.

Cox Broadcasting Corp. v. Cohn involved a case that occurred in 1971 when six youth were indicted for the rape and murder of Cohn's daughter (420 U.S. 469; 1975). Because of a provision in the Georgia Code, which made it a misdemeanor to publish or broadcast the name or identity of a rape victim, the victim's name was not disclosed. Five of the six youths that were indicted pleaded guilty, while one pleaded not guilty. During the proceedings a WSB-TV reporter learned the name of the victim from public records made available in the courtroom. The reporter then broadcast a report on the proceedings, including the victim's name. Under a state criminal statute that made it illegal to broadcast the name of a rape victim, the victim's father filed suit against the station.

The court ruled in favor of the victim's father despite the defendants claim that they were privileged under the First and Fourteenth Amendments. The court gave summary judgement in

terms of liability and declared the amount of the damages to be decided by a jury. The appellants appealed and the Georgia Supreme Court claimed that Cohn's complaint was under the common law a need for action for invasion of privacy. However, the First and Fourteenth Amendments, did not require judgement. WSB-TV claimed that the rape victim's name was a matter of public interest. Therefore, they motioned for a rehearing. The Supreme Court then denied the request stating that the statute was a "legitimate limitation on the right of freedom of expression contained in the First Amendment".

The court decided that the function of the press is to report fully and accurately any information obtained from governmental proceedings or official documents and records, such as the one containing the victim's name. Since the criminal proceedings and prosecutions are matters of public interest, Cohn should not be rewarded for invasion of privacy. If privacy interests should be protected the states must not allow them to get into public records. Once it is in public records, nothing prohibits the press from printing them as long as they are reported accurately. The final ruling was that, under the First and Fourteenth Amendments, a state may not impose liability for publishing truthful information obtained from the public records.

The Florida Star v. B.J.F. occurred in 1983. B.J.F. reported to the sheriff's office that she had been robbed and sexually assaulted by an unknown person (109 S.Ct. 2603; 1989). The department violated a Florida law and prepared a report on the incident with B.J.F.'s full name enclosed and placed it in the pressroom. A reporter then published an article, which included the victim's entire name, which he had gotten from the public report. However, names of rape victims are not supposed to be public record and they are not supposed to be published. B.J.F. sued the *Florida Star* and the judge found the paper to be negligent, disregarding their

constitutional guarantees. B.J.F. also claimed that she suffered from emotional distress because her name had been published. An Appellate Court upheld the verdict and the Florida Supreme Court refused to review the case. Then the newspaper appealed to the U.S. Supreme Court.

The Supreme Court reversed the decision and decided in favor of the newspaper. The court claimed that since the reporter obtained the rape victim's name lawfully from public records he could not be held accountable. Also, the court noted that the law that prohibited the publication of the names of rape victims was not sufficient enough to protect the privacy of those victims. The rule of law is that under the First Amendment, a state may not punish the media for publishing truthful information unless there is a need to further governmental or state interest of the highest order.

In *Time v. Hill,* the Hill family was held hostage inside their home by three escaped convicts in 1952 (385 U.S. 374; 1967). The convicts were later captured and Hill stressed that the convicts had in no way caused them any harm. This event inspired a book and a play to be created in which the family was treated violently. Following these personifications *Life* magazine published an article entitled, "True Crimes Inspires Tense Play". The article had several statements, which depicted the crime to be true. They also included pictures of the play and even pictures of the house where the Hill family was held hostage. Hill sued the magazine claiming that the magazine implied that the play reflected the Hill family's experience, even though they knew it to be false. The defendants claimed that the article was a matter of public interest and it was done without malice. The Hill family was awarded damages and an appeals court upheld the verdict in favor of the plaintiff. *Life* magazine then appealed to the Supreme Court.

The court declared that the First Amendment's rights of free speech and of the press are much more important than the New York statute, which prohibited publishing false reports of matters of public interest. The defendant was not sufficiently proved to have published the article with knowledge of its falsity or in reckless disregard for the truth, i.e., and the defendant did not act in actual malice. The final ruling was that under the First and Fourteenth Amendments, a plaintiff involved in a matter of public interest cannot collect damages for false light invasion of privacy unless he can prove actual malice.

Hustler Magazine v. Falwell occurred in 1983 (485 U.S. 46; 1988). *Hustler* magazine published a parody of an advertisement for Campari Liquer involving Jerry Falwell, a well-known televangelist and commentator on politics and public affairs. The ad was called, "Jerry Falwell talks about his first time". The ad contained statements about Falwell drinking and having an affair with his mother and that Falwell would get drunk before he would preach. On the bottom of the ad in small print it said, "ad parody-not to be taken seriously". Falwell sued for libel, invasion of privacy, and intent to cause emotional distress. A District Court ruled against Falwell on the issue of libel, but did not rule in his favor on the claim of intentional inflection of emotional distress. After the Court of Appeals upheld this decision, *Hustler* appealed to the U.S. Supreme Court.

The court ruled against Falwell claiming that public figures could not receive compensation for the tort of intentional inflection of emotional distress. The reason they stated was that the publication did not make a false statement of fact with actual malice. The rule of law was that, under the First Amendment, public officials and public figures cannot collect damages for intentional infliction of emotional distress unless can prove a false statement or fact

was made with actual malice.

In *Nebraska Press Association v. Stuart*, Erwin Charles Simants was arrested for the murder of the Henry Kellie Family and possible molestation of the family's female members (427 U.S. 539; 1976). Intensive news coverage occurred. The county attorney and Simants attorney requested that there be a restrictive order relating to certain details of the crime because the massive news coverage might cause the selection of an impartial jury to be impossible.

The County Court granted the restriction and prohibited the media to disseminate any information gathered at the trial. The District Court judge modified the order, but found that there was a "clear and present danger" that pre-trial publicity could effect the defendant's right to a fair trial. The U.S. Supreme Court granted certiorari.

The Court declared that it was the judge's responsibility to impose prior restraints when needed to insure the defendant had a due process of law. The Court also claimed that in order to impose prior restraints they must first look at the nature of the coverage, second they must exhaust all other sources, and last be sure the court order will be effective. The rule of law is that, under the First and Fourteenth Amendments, a judge may not impose an injunction against publication of information relating to judicial proceedings unless there is a clear and present danger to the administration of justice.

In *First National Bank of Boston v. Bellotti*, Massachusetts passed a statute that prohibited corporations and associations from making contributions or expenditures to influence or affect voting on any question submitted to voters (435 U.S. 765; 1978). This was the law

unless it was a question that materially affects the property, or business of that corporation. The First National Bank of Boston wanted to publicize its views on a proposed constitutional amendment. The Attorney General of Massachusetts then decided to enforce the statute against them. The bank then claimed the statute to be unconstitutional, because it violated the First Amendment and the Due Process and Equal Protections Clauses of the Fourteenth Amendment. The Supreme Judicial Court upheld the statute claiming that even thought the First Amendment applies to the states through the Fourteenth Amendment, it protects "corporate" speech only when it relates to the corporation's property and business interests. The bank then appealed to the U.S. Supreme Court.

The court declared that there is nothing that says that corporations lose their protection of speech under the First Amendment. Shareholders of corporations should be given the chance to choose whether or not they would like to get involved in public issues. The state statute did not present a compelling governmental interest to prohibit the bank from speaking. Therefore, the court invalidated it and reversed the Supreme Judicial Court's decision. The rule of law is that under the First and Fourteenth Amendments, speech does not lose its protection because its source is a corporation.

Obscenity and indecent language is another very controversial topic while dealing with the content of the media. Two cases. *Roth v. U.S.* and *Alberts v. California*, help to define what the courts have decided on the subject of obscene material. Neither one deal with the media directly, however the decision helps to bridge the gap of what kind of material the media can publish.

In *Roth v. U.S.*, Roth mailed obscene advertisements of obscene books, photographs, and

magazines (354 U.S. 476; 1957). Roth was convicted of violating a federal obscenity statute. The U.S. Supreme Court granted certiorari after Court of Appeals affirmed the decision.

In the similar case, *Alberts v. California*, Alberts also sold obscene books through mail order. He was charged with violating the California penal code (354 U.S. 476; 1957). A municipal court judge convicted him and after the decision was confirmed by the Court of Appeals he appealed to the U.S. Supreme Court.

The court decided in both cases that since obscenity has no social value it is not protected by the First Amendment. The court established the standards to determine whether or not something is obscene. They include: whether to the average person, applying contemporary standards, the dominant them of the material as a whole appear to the prurient interest. The court decided that obscenity is a form of speech not protected by the First Amendment.

The next case dealing with obscenity is *Miller v. California* (413 U.S. 15; 1973). Miller advertised the selling of "adult" books containing illustrations. The publications included descriptive material as well as pictures of people having sex. Miller was convicted of violating the California penal code. After a restaurant in Newport Beach, California, received on of Miller's brochures, the manager called the police. Miller appealed to the Court of Appeals, but his conviction was affirmed. Then he appealed to U.S. Supreme Court.

The Court ruled that obscene material is not protected by the First Amendment. They also created new standards to determine whether or not something is obscene: (1) Does the average person find the material appealing to the prurient interest? (2) Does the material offensively portray sexual material as defined by the state law? and, (3) Does the material lack literary, artistic, political, or scientific value?"

Another case helped to define the difference between material that is obscene and that, which is indecent. *Federal Communications Commission v. Pacifica Foundation* occurred in 1973 (438 U.S. 726; 1978). A radio station aired a program entitled, "Filthy Words". When a man and his son overheard the monologue in their car, they filed a complaint against the radio station to the FCC. The FCC declared that the monologue was "patently offensive", but not "obscene". The FCC then noticed the connection between children listeners and indecency that is broadcast. The FCC established an order that prohibited the station from airing indecent material at times of day that would be more likely for children to overhear it. The U.S. Court of Appeals for the District of Columbia reversed the decision because the FCC's order was censorship and the order would be narrowly tailored to only obscene language that is unprotected by the First Amendment. The U.S. Supreme Court granted certiorari.

The court said that an individual's right to be left alone outweighs the First Amendment right to air the monologue. Also, indecent or obscene material that is broadcast is often easily accessible to children. The court's final ruling was that under the Communications Act, the FCC has the authority to regulate content that is indecent but not obscene and such regulation does not violate the First Amendment.

CHAPTER 4

SUMMARY AND CONCLUSIONS

There are many opinions about what the primary function of the college student press should be. Many feel that the main goal of a student newspaper should be train young reporter. While others feel that the primary function should be to keep college students well informed about the campus community and the rest of the world.

In American Newspapers in the 1980's, Ernest C. Hynds suggests that the campus press is an influential element in America's journalistic society (Hynds, 1980). He claims that just like professional publications, college newspapers carry out their own functions and serve their own particular communities. "College newspapers form a divergent, sometimes controversial, but nonetheless significant segment of the United States press. Like black and other specialized newspapers they serve a need that is not met by general newspapers, dailies or non dailies (Hynds, 1980)."

The administrative paternalism that was once present regarding campus matters of first amendment consideration has in many ways disappeared because of strong criticism. Professor Goldman in his article published in the Kentucky Law Journal said, "It is in the area of student expression and association that the university's disciplinary power poses its greatest potential threat to society, to the university itself, and possibly to the individual student (Goldman, 1968)."

A past president of the College Media Advisors, Herman Estrin, spent several months reading issues of 200 college newspapers. Estrin was an advisor of college publications at Newark College of Engineering in New Jersey. He concluded that "the collegiate press in the

1970s was producing a forthright, candid approach to the real problems, concerns, and interest of its readers – the student body. College editors – responsible, sophisticated, knowledgeable, provocative, and at times, irreverent and daring – offered their readers an informative, stimulating, timely press."

Estrin found that the college press, like the commercial press, was able to publish any form of story. He found a wide range of concerns that were covered in the papers. If censorship had been widely practiced on the campus press the topics published could not have been covered by the student press (Estrin, 1973). They are as follows:

(1) Commitment to service activities designed to improve the community and help needy persons in the off-campus community.

(2) Sex was treated casually, frankly, and relevantly with articles about centers for human sexuality, sex forums, birth control, abortion, homosexuality, marriage, family planning, venereal disease, cohabitation, and rape.

(3) In the advertisement sections, students included such ads as abortion information and assistance, male contraceptives, Alcoholics Anonymous, narcotic addicts rehabilitation, GROPE (Gay Rights of People Everywhere), Tampax tampons, term papers researched and professionally typed, draft counseling, and pregnancy counseling.

(4) The college press was definitely concerned about the thefts, assaults, vandalism, and murders on campus.

(5) Evaluation of faculty effectiveness by students.

(6) Jobs.

(7) Student editors spoke out against the war in Vietnam and deplored its continuance.

(8) Revision of the curriculum to include timely and relevant courses.

(9) Campus newspapers championed students' rights and the rights of others.

(10) Some papers presented an entire supplement, "The Arts." However, most papers had a single page devoted to the arts. Students wrote reviews expressing reactions to the latest records, provocative motion pictures, operas, ballets, books, concerts, television, radio attractions, and even belly dancing.

(11) Many papers offered counseling services, which included personal, vocational, alcoholic, medical, drug, academic, sexual, draft, and term paper counseling.

(12) Students advanced their ideas concerning the economy and discussed noise and water pollution, recycling, food facts, food fraud, herbicides, and soil and beach erosion.

(13) Women's liberation.

(14) The use of obscenities in campus newspapers declined. Most upset by their use was the faculty, not the students. Many editors admitted that the obscenities had lost their shock value. Others claimed that the use of obscenities in the collegiate press indicated immaturity in the writer.

(15) In addition to these popular concerns of the collegiate press, college newspapers wrote about more effective teaching, tenure of professors, salaries of staff and professors, parking problems, pass-fail grades, the "new religion" and students' participation in curriculum planning and in-college governance.

Prior restraint of publications for the campus press is not the standard procedure practiced in most American public and private universities. College administrators should

understand the importance of a free and uncensored student press. Administrators should understand the impact of both the First and Fourteenth Amendment.

The campus press exists for many of the same reasons daily commercial newspapers exist. It exists in order to inform and entertain the immediate community and it provides a print medium for advertisers who wish to target a specific audience.

One viewpoint of student media is that their main function is education and not to make a profit. This suggests that student publications have different legal and social standards than professional publications. Chapter 2's discussion of the legal issues of student media revealed that student reporters are not entirely free of all liability.

Student journalists can be held liable just like professional journalists for printing libelous or defamatory material in the college newspaper. However, there are a few situations that have no protection from the media.

The first group is public people. The law basically strips away all of the rights of a public person. In some instances what a public person does should not be published. For example, if a politician has sex with many different women then he should be allowed to have some privacy rights over this and it should not be divulged in the media. However, if the politician was sued for sexual harassment of several women then this would be a valid reason to intrude into his privacy and make public his actions. Ethics needs to applied to cases dealing with public persons because the law takes away their privacy rights.

Also, the media is practically given the ultimate right to decide what is newsworthy. Almost anything that is published by the media is newsworthy under the law. However, in some instances respect for others and harm to others needs to be considered when deciding whether or

not to publish. Ethics must be used to decide what is really newsworthy or a lot of innocent, non-newsworthy people could be harmed.

Newsgathering is another factor that doesn't have many restraints under the law. If something happens in the public then journalists are allowed to use it, however even if someone is newsworthy the journalists should consider ethical values, such as harm and respect to others.

If something is in the public record, journalists are usually able to use it because it is considered to be open to the public. However, because it is open to the public does not mean that everyone would know unless it was published. Names of rape victims and juvenile offenders are examples that should be considered ethically, that are not protected by the law.

In summary, the student media should adhere to the law that has been set out by the courts for the student press and the professional journalists. In addition to abiding by the law, student journalists should also consider certain values such as respect for persons, social utility, and justice.

Student journalists should try to minimize the harm to parties involved in stories. Even though the law may not protect these people, they do deserve some level of respect. Before making an ethical decision about what to or not to include in a story student journalists should keep this in mind.

Another value to consider is justice. The student journalist should ask himself: Does this person really deserve to put in this context in this story? Deservedness is something that they should consider while making such a decision.

The final value is social utility. The story should have some important social value. It should be relevant to the public interest or in some way be useful to the public. If it isn't then

there probably isn't a compelling reason to publish something that will bring harm to others, even if it is a public figure or in the public record.

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