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THE CAMPUS PRESS: A DYSFUNCTIONAL ENTITY*

ALBERT N. WHITING**

One of the major unresolved issues in college and university administration today centers on the relationship between the student press and the university. On the one hand, enlightened educators recognize the inextricable relationship between education and freedom of speech. On the other hand, bitter experience in many collegiate settings has led to the view that "freedom of the press" and First Amendment protections for institutionally subsidized publications encourage irresponsible, and often reckless, journalism. Many believe that this situation exists because the limits of legal tolerance permitted under the "free press" protections are so broad that an institution must literally suffer disruption or violence before it can restrain or terminate the journalistic enterprise. In other words, the only surely sustainable action is that after the fact.

In *Quarterman v. Byrd*, the circuit court asserted:

School authorities may, by appropriate regulation, exercise prior restraint upon publications distributed on school premises during school hours in those special circumstances where they can reasonably forecast substantial disruption of or material interference with school activities on account of the distribution of such printed material.¹

To follow this guideline in actuality, however, could place an administrator in a precarious position; his decision is subject to later reversal by the courts. His action must be based on forecasting; if litigation ensues, he must be able to convince the court that *substantial* disruption or *material* interference with university activities would have resulted. In my view, the measure of omniscience required is, to say the least, considerable, particularly since, as I understand it, the forecasting must be accomplished without prior review of the publication to be circulated. In a situation at North Carolina Central University, where as university president I considered the campus newspaper's editorial comment and policies not only abhorrent and contrary to the university's policy but also inconsistent with constitutional and statutory guarantees of equality and racially divisive (thus possibly jeopardizing the

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1. *Quarterman v. Byrd*, 453 F.2d 54, 58 (4th Cir. 1971).

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university's federal funds), the court ruled such conditions insufficient to justify a permanent withdrawal of institutional subsidy for the campus newspaper. The point of law upon which this ruling was based revolved around abridgement of the freedom of the press and the lack of evidence sufficient to persuade the court that there was resultant danger of physical violence or disruption.

Administrator's quandary

I am not questioning the wisdom of the court here, but rather suggesting that in such situations administrators are caught in a real quandary. Either they rely on common sense judgment and hazard punitive action that may later, through litigation, be ruled censorship and therefore reversed, or risk disruption (immediate or eventual), loss of control, or other dire consequences before legally supportable punitive action is possible. In a sense, one outcome is as damaging as the other. Reversal of an administrator's action tends to reduce his authority, create an image of impotency, and encourage needless litigiousness. Disruption of the university, on the other hand, leaves a residue of bitterness detrimental to the education process.

In the North Carolina Central case, the editorial comment was accompanied by clear-cut printed indications of intent to discriminate on the basis of race with regard to staff membership and acceptance of ads.² Yet despite what appeared to be a violation of Fourteenth Amendment provisions, the circuit court, in reversing the federal district court's decision favorable to the termination of funds for the campus paper, said:

As a foundation for its decree, the district court fashioned a unique exception to the well-established body of law dealing with censorship of college newspapers. Describing the *Campus Echo* as a state agency, the court upheld the termination of its funding by the university on the ground that the Fourteenth Amendment and Civil Rights Act of 1964 bar a state agency from spending state funds to discourage racial integration of the university by a program of harassment, discourtesy and indicia of unwelcome.

The circuit court said further that:

Censorship of the paper (i.e., termination of funding) cannot be sustained on the court's theory. The record contains no proof that the editorial policy of the paper incited harassment, violence, or interference. . . . At the most, the editorial comments advocated racial segregation contrary to the Fourteenth Amendment and the Civil Rights

2. The student editor informed the administration that no white student would be allowed to serve on the paper staff; the paper published a statement expressing its intent not to accept any white advertising.

Act of 1964. The court's rationale disregards the distinction between the First Amendment's clause prohibiting the establishment of religion and its clause protecting freedom of the press. Neither federal nor state governments may expend funds to establish a religion. The First Amendment, however, contains no similar bar against speech or press.³

Using this interpretation of the First Amendment, the court reasoned that the campus newspaper, even if it were adjudged a state agency,⁴ could not be prohibited from expressing its hostility to racial integration. The Fourteenth Amendment and the Civil Rights Act, it said, proscribe state action that denies the equal protection of the laws, but do not proscribe state advocacy. In its decision, the circuit court ruled against the paper's staff and enjoined further discrimination with regard to staffing and acceptance of ads but felt that the editorial comment was sufficiently divorced from the acts of discrimination as not to be considered a part of them.

The state agency question

The question that remains unanswered relates directly to the "state agency" matter and the issue of whether a state-supported institution can legally support, with mandatorily collected student fees, a sub-unit manifestly guilty of discriminatory practices in violation of the Fourteenth Amendment and Title VI, Section 601, of the Civil Rights Act of 1964. The dissenting opinion in the decision rendered by the circuit court indicated that the paper's practices could be construed as "state action," and that therefore the fear of loss of federal funds was well-founded and an adequate basis for termination of subsidy.

Unquestionably the activities of the *Campus Echo* subsidized as it was by the University constituted "state action" in the area of civil rights, . . . and if its editorial content was violative of Federal Constitutional or statutory proscriptions, the responsibility necessarily would fall on North Carolina Central University. It should be borne in mind that we are not dealing here with a letter to the editor nor a casual newsletter or student poll. What we have before us is the lead editorial in the first issue of the subsidized house organ of North Carolina Central University greeting matriculating students with a clear and violent statement of policy which the district court found to be designed to discourage racial integration of the University by "a program of harassment, discourtesy and indicia of unwelcome. . . ." Conceding that the editorial advocated racial segregation contrary to the Fourteenth Amendment and the Civil Rights Act of 1964, my

3. *Joyner v. Whiting*, 341 F. Supp. 1244 (M.D.N.C. 1972), *rev'd*, F.2d (4th Cir. 1973).

4. This question was sidestepped by the court. "We need not decide whether the *Campus Echo* is a state agency. . . ."

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[colleagues] would countenance it on the ground that it was not proscribed "state action" but was acceptable "state advocacy." I must confess I find the import of this statement somewhat obscure and assuredly, of questionable validity on the issue before us.⁵

The minority opinion, against the background of the majority decision, certainly highlights the campus press dilemma, particularly for the public university administrator. There is no certainty; there are no dependable guidelines. When limits are tested, as they frequently have been during the student protest period, the institution almost invariably suffers because the laws and legal principles in this area favor, it seems, individual interests more definitively than institutional or collective interests.

Universities and campus newspapers have also been involved with increasing frequency in disputes concerning obscenity and libel. The necessity for observing libel laws should be of important concern to universities and campus publications. Violation of libel laws constitutes, according to Annette Gibbs, "the only source of legal action that can be brought against individuals who are responsible for publishing college or university student newspapers."⁶ She indicates further that the type of institutional control (i.e., public or private) may make little difference in the prospects of a libel suit. Although public colleges, she points out, generally have not been subject to suit for torts, there are exceptions to this legal position and a trend toward erosion of this institutional immunity. In this connection, incidentally, a determination of the "state agency" question with regard to subsidized campus publications becomes of more than passing interest.

Regulating obscenity

With regard to obscenity, the administrative problem seems to center on two areas: First, when attempts are made by a public institution to develop measures to regulate obscenity by means of editorial policies, such procedures must avoid involving protected expression in the regulatory process. Second, in addition to the matter of procedural safeguards, the definition of obscenity involves elements of such imprecise quality that one could only advance such a charge with trepidation. This vagueness means that what may actually be obscene could possibly go unchallenged, and good journalism could be perverted simply as a result of the administrator's difficulty in predicting what is legally obscene and his fear of entering a losing battle in a situation where auth-

5. Joyner v. Whiting.

6. Anette Gibbs, "The Student Newspaper: Some Legal Considerations," *Journal of College Student Personnel*, July 1972, p. 302.

ority ought not to be attenuated. According to a 1966 Supreme Court ruling, in order for material to be held obscene:

it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it confronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.⁷

A 1973 decision of the Supreme Court has shifted the definition and determination of what is obscene to the local communities, but current local obscenity laws, where they exist, will probably not be any more precise.

The question remains: Would newspaper content short of meeting the test of the legal definition of obscenity be harmful to university students? Where can this line be drawn and who should draw it? There is, too, the question of what legislatures, governing boards, local community groups, donors, parents, and alumni will tolerate before reacting negatively and perhaps punitively. The groups represent publics that administrators certainly cannot ignore.

Because of the wide latitude in legal determinations related to First Amendment considerations and the consequent administrative "traps" and legal conflicts involved in control efforts, I think institutions would be well advised to separate the newspaper operation from the university. I recommend the creation of a private and independent corporation to publish the campus newspaper. In this way, the institution would have neither the authority nor the responsibility to exercise any control over the publication.

An independent student press

In 1967 a joint statement on rights and freedoms of students was prepared by a committee representing the American Association of University Professors, United States National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and National Association of Women Deans and Counselors. This document recommended that, whenever possible, the student press should be an independent corporation financially and legally separate from the university.⁸

Those who fear that the life and quality of the student press would be jeopardized by independence can take heart in the fact that this ar-

7. A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts, 383 U.S. 413, 418 (1966).

8. "Joint Statement on Rights and Freedoms of Students," *AAUP Bulletin*, Winter 1967, pp. 365-68.

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agement has nurtured some of the greatest college papers, for example, the *Harvard Crimson*, *Michigan Daily*, *Cornell Daily Sun*, *Daily Texan*, *Daily Illini*, and *Rutgers Daily Targam*.⁹ The argument for independent status was recently advanced in a study of campus presses conducted under the auspices of the American Association of State Colleges and Universities.¹⁰ The authors, although acknowledging the difficulties associated with transition from subsidized to independent status, attempt through case studies to set up models for the change-over, and conclude that "independence makes for more responsible journalism."¹¹ As far as the training aspects of a student newspaper are concerned, the study concludes that an independent paper will be a better place to gain journalism experience because it will be more professional.

The mandatory fee issue

Finally, it should be noted that the sociological patterns of interaction within collegial institutions have changed rather radically since the courts struck down the in loco parentis role of universities and affirmed legal positions in support of individual rights for students. While at the core of university activities these changes have generally been adjusted to, the need for peripheral adjustments is just beginning to receive critical attention. It is my opinion that subsidizing the campus press, particularly when mandatorily collected fees are used for such subsidy, represents an area that has lagged in the adjustment process. Such an arrangement was quite satisfactory under the old control patterns but is decidedly inconsonant with the wider campus freedom and reduced social control of the contemporary higher education institution.

As a matter of fact, mandatory fee collection for purposes of subsidizing the campus press without guarantee of fair representation of all student views and ideological positions might be unconstitutional. This point may soon be tested in litigation in a case involving the *Daily Tarheel* at the University of North Carolina, Chapel Hill, where the North Carolina Board of Governors has, rather unwisely in my opinion, encouraged the mandatorily collected fee subsidy. If the court rules in favor of the students arguing against the mandatorily collected fee, the already significant trend (evident in about 25 percent of colleges and universities) toward the independent student press will become, from the point of view of an administrator, a welcomed imperative.

9. John J. Marshall and B. C. Kinnick, "The College Press: Freedom and Control," *Journal of College Student Personnel*, November 1969, p. 384.

10. Julius Duschka and Thomas C. Fischer, *The Campus Press: Freedom and Responsibility* (Washington: American Association of State Colleges and Universities, 1973).

11. *Ibid.*, p. 37

The rights of readers

Robert C. Gremmels has said that the underlying purpose behind freedom of the press, which is too little understood and discussed, is not to protect the publishers but to safeguard the right of people to read whatever they please.¹²

Another has indicated that while the individual student has the freedom not to read, he should also be free not to support any publication that does not meet his standards of editorial content or good taste, or any other criterion he may choose to use.¹³ The problem with the student press, he continues, is that it has a captive audience that has nowhere else to turn and no way to strike back. This lack of accountability is a real concern when the paper ignores facts or represents opinions that have no roots in the majority of student thinking. Students, automatic subscribers, have no choice about what is printed. The student reader should have the right to reject inaccurate reporting or bad editing. He should be given the opportunity both to refuse to read the publication and to decline to pay for it. The accountability required by reliance upon voluntary student support undoubtedly would engender a keener sense of responsibility and a more sensitive type of journalism.

12. Robert C. Gremmels, "Freedom and Responsibility of the College Press: The Other Side of the Fence," in *Freedom and Censorship of the College Press*, ed. Herman A. Estrin and Arthur M. Sanderson (Dubuque, Iowa: Wm. C. Brown, 1966), pp. 105-8.

13. George H. Holsten, Jr., "Student Publications—Freedom or Control? Thoughts of a Director," *NASPA Journal*, July 1964, pp. 7-9.