Day 64

Topic: Confused companion words

Objective: Students will learn the correct meaning of words that are often misused in writing.

Materials needed: words, dictionary, thesaurus.

Outline of activities:

1. Return stories/discuss.
2. Put list of words on board and have students write them on a piece of paper along with what they believe the meaning to be without the aid of a dictionary or thesaurus.
3. Discuss the words—have students state their meanings, then write the correct meaning on the board.
4. Remind students that a dictionary and a thesaurus are resources they should use when writing.

Assignment:

Prepare questions for a review session tomorrow.

Evaluation:

Participation in today's discussion of words will be noted.

Words:

farther—further anxious—eager novice—amateur student—pupil envelop—envelope infer—imply affect—effect breathe—breath through—thorough disinterested—uninterested libel—liable advice—advise compliment—complement common—mutual stationery—stationary desert—dessert accept—except

emigrate—immigrate incompetent—incapable anticipate—expect aggravate—irritate bimonthly—semimonthly comprise—compose weather—whether principal—principle
Day 65

_topic_: Review Day

_objective_: Students will ask questions and answer questions as a form of review for the unit test.

_materials needed_: text

_outline of activities_: 

1. Students will spend the entire class period reviewing for the test. (They will begin by asking any questions they have, then I will ask questions.)

_assignment_: 

Study for the test.

_evaluation_: 

The review session will show me where students are having problems and where greater emphasis needs to be placed.
Day 66

**Topic:** Test Day-The language of newswriting

**Objective:** Students will demonstrate their understanding of the objectives presented in this unit.

**Materials needed:** tests

**Outline of activities:**

1. Students will have the entire class time to take the test.

**Assignment:**

Come prepared to play the current events game—watch and listen to the news. Read the paper and news magazines.

**Evaluation:**

The test will show me if students are able to apply the principles taught during the unit.
Test: The language of newswriting
Name: ____________________________

1. Define news English.

2. List the basic kinds of inaccuracy that can damage a factual news story.

3. Why is impersonality—a reporter's not referring to himself/herself—a valued characteristic of reporting?

4. What is the importance of a style sheet?

5. List pronouns suitable for newspaper writing.

6. Define the following:
   Indirect quotation—
   Stylebook—
7. The text had a checklist for names which should be included in a story. List 7 of the 10 possibilities.

8. What are the 8 principles in making a sentence work for you? List and explain.

9. What elements are included in a style sheet?

10. Distinguish between the 2 in the following:
    farther—further

    advice—advise
compliment-complement

stationary-stationery

aggravate-irritate

comprise-compose

bimonthly-semimonthly

affect-effect

principal-principle
Day 67

**Topic:** Current Events Day

**Objective:** Students will gain greater awareness of current/news events.

**Materials needed:** Current event questions

**Outline of activities:**
1. Class time will be spent playing the current events game. There will be 2 or 3 teams—each team will be able to choose from the following categories: international, national, state/local, sports, and entertainment. Each category will be assigned varying point values for various questions.

**Assignment:**
- Read Chapter 15 on Copyreading.

**Evaluation:**
- None.
Day 68

**Topic:** Copyreading

**Objective:** Students will begin to appreciate the importance of copyreading.

**Materials needed:** text, overhead projector

**Outline of activities:**

1. Return unit test/discuss.
2. Give students spelling list.
3. Put copy of story from 307 on overhead—have students express their opinions about the copy. Would they accept this story? Why—why not? What changes would they make?
4. Discuss the purposes of copyreading.
6. Discuss copyreaders' marks on pg. 313.

**Assignment:**

Do Activity 2 on pg. 310-311 Part 1 and Part 4.

**Evaluation:**

The exercises will show if students are able to use the copyreaders' marks properly.
Spelling List - Week 14

gymnasium
heard
highlight
homemaking
hoping
humorous
illustration
immense
initiated
intramural
judgment
kindergarten
laboratory
led
library
literature
loose
lose
loses
losses
mathematics
necessary
nickel
nineteen
occasional
occurred
occurrence
offense
opponent
Day 69

**Topic:** Copyreading

**Objective:** Students will begin to develop their skills as copyreaders.

**Materials needed:** text, overhead projector

**Outline of activities:**
1. Go over spelling list.
2. Collect assignment.
3. Begin discussing "Copyreading a Story" and the six steps in copyreading.
4. Discuss Act. 3 and 4 in text.
5. Put #2 of lesson 48 from workbook on overhead for discussion.

**Assignment:**

Do Lesson 47 in workbook. Study for spelling quiz. No news quiz tomorrow.

**Evaluation:**

The exercise will allow students to practice copyreading. Practice is necessary to develop a skill.
Chapter 15

Improving Organization and Length

1. In addition to analyzing and improving the lead of each story, copyreaders must look at the story as a whole. One point to consider is whether the story is properly arranged, in most cases in an inverted-pyramid order. Use copyreaders' marks to rearrange the sentences or paragraphs of the following story into good inverted-pyramid order.

Student artists are preparing to exhibit works in two art shows during April.

Art students recently competed in a contest among the four county high schools, February 28 and 29 at the civic auditorium.

The first and more important show will be the Suburban League competition at Southern Springs High School April 6. Winners will be eligible to enter state competition, says Mr. Roderique Francois, art teacher.

"We hope to be able to show winning entries from the Southern Springs show at our own show," Mr. Francois said, "but we can't be sure yet if this will be possible."

Two Central High students, Romona Williams and Teresa Saucke, won second-place certificates at the county show.

The second show will be the Central High School local art show from 7 to 9 p.m. April 17 in the school library. Displays of paintings, craft work, and photography will be arranged.

2. Another task of the copyreader is to "boil down" a story submitted by a reporter, either because the reporter has used too many words or because the space left for the story has been reduced. The story that begins below contains approximately 235 words. Assume that you have been directed to reduce it to approximately 140 words. You will have to consider the relative news value of the various facts. Then, use copyreaders' marks to eliminate words, sentences, and perhaps even paragraphs.

Band members will present their spring concert at 7:30 p.m. April 20 in the auditorium. The band is fresh from several other performances.

Selections the band will play for the concert include "Dawdlin'," "Johnny's Theme," "Fire and Brimstone," "Theme from the Muppet Show," "Theme from Ice Castles," and "Theme from Hill Street Blues."
Director John Murphy said the band played at Columbine Manor April 1. Last Tuesday, band members were in Woodland Park, where they participated with seven other bands in the Suburban League band festival.

In addition to the Central and Woodland Park bands, Mr. Murphy said other schools that participated were Springfield, Midland, South Shore, Woods County, Palmer Johnson, and Western Woods. Results of the competition were unavailable at press time.

Mr. Murphy reported that at Woodland Park each band played one selection at the evening concert. During the afternoon, each band played for an hour as members worked with guest clinicians from Springfield and Lake City.

Selections played by Central at the festival were “Exaltation” and “English Suite.”

In coming events after the spring concert, Mr. Murphy said that the Hollywood State Jazz Band will present a concert at Central High April 21. He said it will be during second period and open to all students.

A week later the State High School Activities Association will sponsor a music contest at the University of Louisburg. Central High will be among the participants.
Chapter 15

Improving Leads by Copyreading

One of the most important tasks of the copyreader is to be sure that each lead is not only accurate as to the facts presented in its story but also appears in correct form. The key thought must be emphasized at the beginning, and other needed five W and one H facts included, while unnecessary details are left for later paragraphs. Using the proper copyreaders' marks, improve each of the following leads.

1. Anyone at Central can sign up to learn karate. Karate lessons will begin in April and will continue indefinitely. They will be given by Mr. Alex Gianakos, a black-belt instructor.

2. A “fun and educational” trip is being planned by the International Relations Club. They are going to visit Santa Fe, New Mexico, and will be leaving next Thursday. They are using funds the club has earned from various money-raising activities.

3. Central High was permitted to enter only 30 works in the annual Suburban League art show. Barbara Dominguez, sophomore, won “Best of Show” in the competition. She will now be eligible to continue into state competition.

4. Tennis team members are looking at a rather short season because not many other schools in the Suburban League have tennis teams. They had their first match of the season at Falls Valley last Friday. They beat Falls Valley in five of seven matches.

5. The rainy season has created several leaks in the roof of the academic building. The school department has arranged with Simpson Consolidated Contractors to repair the roof at a cost of $260,000. The work is to be finished by May 1.

6. Some people spent their summer flipping burgers at local drive-ins and attending social functions. Other teen-agers spent it building fences, clearing trails, and fighting fires at Youth Conservation Camps across the state. YCC is a summer program designed to give young people employment and appreciation of conservation.

7. Eleven players are needed for a field hockey team, but only 13 have turned out for practice. A lack of participation is hurting the team, says Coach Jill Lombardi. The team plays its first game against South River today at 4 p.m.
8. The consumer economics program is designed to give students some practical skills in money management and consumer purchasing, according to Mrs. Elsa Smith, American government teacher. An 18-week pilot program in consumer economics begins today in Mrs. Smith's classes.

9. Ms. Kathy O'Donnell, sponsor of the Future Homemakers of America club, announced today that calendars with notepads are being sold by FHA members. They will be sold during lunch hours in the school lobby and in the activities area. Ms. O'Donnell says, "The calendars are very popular and very attractive."

10. On November 12 and again on January 28, teachers will gather for in-service meetings about "Energy and the Human Environment," Superintendent Clegg Giorno announced today in a letter to all teachers. He added that the purpose of the program is to make all school personnel more energy-conscious.
Day 70

**Topic:** Copyreading

**Objective:** Students will continue to develop their copyreading skills.

**Materials needed:** text

**Outline of activities:**

1. Give spelling quiz/exchange to grade.
2. Put examples on the board from yesterday's assignment.
3. Continue to discuss "Copyreading a Story" p. 316-322.
4. Explain that libel will be discussed in more detail in the law unit.
5. Do Activity 5 and 6 as a class.

**Assignment:**

Do Activity 7 on pg. 322 part 1 and 2.

**Evaluation:**

Again, practice helps students develop their copyreading skills. Participation in class discussion and class exercises will be noted.
Day 71

**Topic:** Copyreading  

**Objective:** Students will continue to develop copyreading skills.  

**Materials needed:** text, overhead projector, exercises  

**Outline of activities:**  
1. Put students' assignments (Act. 7) on the board. Discuss the corrections.  
2. Finish discussing the chapter (Reviewing the chapter checklist).  
3. Have students copy edit-Practice A (turn in at the end of class).  

**Assignment:**  

Story Assignment: Sadie Hawkins Dance-Interview students and/or faculty. Write a 3 page story which focuses on the reactions of individuals toward the idea of the reversal of the traditional procedure of males asking females out. Due Wednesday.  

Remember everything you have learned about constructing a news story.  

**Evaluation:**  

The story will give students the opportunity to write. It also will provide students with the first opportunity to edit their peers work. I will take into consideration all objectives covered when grading the story.
Editing Practice

Practice A

Edit the following story, smoothing and tightening sentences and eliminating spelling, grammatical, word-usage, style, and any other obvious errors. For style, use your publication's style book or Appendix E. When you finish, compare your edited story with those of others.

Three juniors and three sophomores will campaign next week for four seats on the Student council. The winners will serve the rest of the year and until new elections next October.

The three juniors are Merilee O'Toole, Lyle Van Dyke, and Gregory Hof stadter. The sophomores are Angela Black, Luigi Farnini, and Renata Wolseley.

The election will be held from 3 to 5 p.m. next Friday, October 12 in room 112. Each voter must show an identification card. Ballots will be counted as soon as the poles close and it is expected the results will be available by six P.M.

Campaining is limited to the five days before election. No posters may be posted in the school but leaflets are allowed.

The elections for student council usually brings out about 50 percent of the student body.

Permission to copy this page is hereby granted.

Practice B

Edit the following story, smoothing and tightening sentences and eliminating spelling, grammatical, word-usage, style, and any other obvious errors. For style, use your publication's style book or Appendix E. When you finish, compare your edited story with those of others.

The school board was undecided whether to elect members of the student body, but reached a decision two weeks ago.

Student decision was reached the week before last.

Joanna Rodriguez, president of the student council, said students are very excited about the election and that they can afford to buy potato chips, pretzels, and chips, pretzels.

But Gerald (SUJF) said that they are "grossly overpriced."

The board discussed the matter and said they were overpriced, and stores are grossly overpriced.

Glenn Le said they were "grossly overpriced."

But Gerald (SUJF) said they are grossly overpriced. The board reached a decision and stores are grossly overpriced.

The rest are grossly overpriced until members of the student council meet next meeting.

Permission to copy this page is hereby granted.
Day 72

**Topic:** Copyreading

**Objective:** Students will practice their editing skills.

**Materials needed:** text, exercises, overhead projector

**Outline of activities:**

1. Put Practice A on the overhead projector/ discuss (Use student examples without names).
2. Have students do Practice B.
3. Put Practice B on the overhead-copy edit as a class.

**Assignment:**

Have stories ready tomorrow. Class time will be devoted to typing them. Due at the end of class.

**Evaluation:**

Participation in class discussion will be noted.
Practice 3

Edit the following story, smoothing and tightening sentences and eliminating spelling, grammatical, word-usage, style, and any other obvious errors. For style, use your publication's style book or Appendix B. When you finish, compare your edited story with those of others.

The school board Tuesday night debated for forty-five minutes whether to eliminate "junk food" vending machines in the school, but reached no decision.

Student delegations argued on both sides of the issue.

Joanna Hildreth, representing Thank God for Junk Food (TGFF) said students should be allowed "to eat what they want and what they can afford" and that machines should have potato chips, corn chips, pretzels, candy and other sweet and caloric foods.

But Gerald Grunwald, speaking for Save Us from Junk Food (SUJF) said the board is partly responsible for the health and safety of students and should eliminate foods that are not wholesome.

The board split about the same way. Mrs. Desdemona Fraser said she was concerned about smoking, air pollution, water pollution, and stomach pollution. "We would be horrified if tiny bits of arsenic appeared in cafeteria food. She said, yet we have been selling food that has the effect of poisoning students."

Glenn Lenz, another board member said the perils of junk food are "grossly exaggerated." "I've eaten probably a hundred pounds of potato chips, a thousand candy bars, and maybe 50 pounds of pretzels and I must be as healthy as anyone my age." He is 52.

The rest of the board spoke for or against ousting the machines until member Martha Hillegas motioned to defer the issue until the next meeting and the motion was approved.
Day 73

**Topic:** Copyreading/preparing a story

**Objective:** Students will type their stories in preparation of a copy editing exercise.

**Materials needed:** text, typewriters

**Outline of activities:**

1. Students will have the class time to type their stories about the Sadie Hawkins Dance.
2. Give assignment.
3. Collect stories.

**Assignment:**

Copy edit Practice C- be prepared to discuss.

**Evaluation:**

I will observe the students typing and their seriousness in completing the assignment. (Students must turn in the assignment at the end of class.)
Practice C

Edit the following story, smoothing and tightening sentences and eliminating spelling, grammatical, word-usage, style, and any other obvious errors. For style, use your publication's style book or Appendix B. When you finish, compare your edited story with those of others.

The Sophomore class will hold a glass and scrap paper drive Saturday. It will be held on the school parking lot from 9 to 4.

The committee in charge, heading by Barbra Knopf, will have a dump truck for the glass collection and a large trailer for paper.

An elevator device will be used to lift the glass to the top of the truck. As the glass falls into the truck students will smash bottles with hammers.

The committee asks that plain and colored glass will be separated and that all glass be clean. Plain glass is only being collected.

If the truck is filled the contents will weigh six tons. The glass will bring $70 a ton. Expenses will be about $125, Barb declared.

The paper will bring $9 a ton. Barb reported that the committee will brake even if they collect fifteen tons.

She said paper donors should tie the paper into about 25 lbs. bundles.

Permission to copy this page is hereby granted.
Day 74

Topic: Copyreading

Objective: Students will copy edit their peers' work.

Materials needed: text, copies of stories, overhead projector

Outline of activities:
1. Put Practice C on the overhead projector/ discuss.
2. Give students a copy of one of their peer's work to copy edit. (They will place their name on the story they edit- a coded # will reveal to me whose paper it is.)
3. Collect edited papers.

Assignment:
Prepare for current events game. There will be a news quiz.

Evaluation:
The exercise will show me how students react to editing peers' work. I'll observe the students as they copy edit and will note how serious they take the assignment in attitude and actual markings.
Day 75

Topic: Current Events Day

Objective: Students will increase their awareness of current events.

Materials needed: quiz questions, game questions

Cutline of activities:

1. Give news quiz/exchange to grade.

2. Students will play the current events game (same categories as before).

Assignment:

Prepare questions for a review day.

Evaluation:

Quiz score will be recorded.
Day 76

Topic: Review Day

Objective: Students will review for unit test.

Materials needed: stories, text

Outline of activities:
1. Return stories and those peer graded (names of grader will not appear).
2. Discuss papers—How did you feel grading your friends' papers? What problems did you have? How did you feel when you saw the marks your friend made on your paper? Do you understand why they made these marks—the importance—your benefit?
3. Review for the test.

Assignment:
Study for unit test (application of concepts major portion).

Evaluation:
Participation in discussion will be noted. Students will be able to properly express their feelings and will hopefully appreciate the importance of copy editing by experiencing both sides, the copyreader and writer.
Day 77

**Topic:** Test Day

**Objective:** Students will demonstrate their understanding of the concepts taught in this unit.

**Materials needed:** text, tests

**Outline of activities:**

1. Students will have the entire class time to take the test.

**Assignment:**

Read Chapter 3-pg. 48-65.

**Evaluation:**

Another test score will be recorded. The test will demonstrate whether greater emphasis needs to be placed on copyreading.
1. Define the following:
copyreading-
clean copy-

2. What are the six steps of copyreading?

3. Which of the six steps would be most difficult to carry out? Why?

4. What are the main purposes of copyreading?

5. What skills are needed to be a good copyreader? What kind of knowledge should a copyreader have?

6. What do you feel is the most important duty of a copyreader and why?
Laura Peterson and Debbie Lascovic will take on the leading rolls in "Arsonic and Old Lace" when the Senior Class play opens in McGregory Auditorium at 8 P.M. Friday.

Laura and Debbie play the parts of two elderly spinstors who befriend lonely old men and proceed to remedy their loneliness in a highly unusual way.

The part of the sister's brother, who thinks he is Theodore Roosevelt, will be played by Charles Addams, no relation to the cartoonist of the same name. The lines of the play often provide hilarious dialogue between he and his sisters.

The play will have a 7-day run, running Friday and Saturday this week and Wednesday through Saturday next week. The play has been produced twice before at the high school. It played 10 years ago and twenty years ago.

Miss Elayne Kim, the director, said "The play is old but it still has a lot of laughs. Beside, the present generation hasn't seen it."

The assistant student directors are Terry Kober and Lila Wild.

The supporting cast includes: Larry Ryder, Jaclyn Hart, Raymond Ober, Dan Fortieri, and Frank Silvers.
1. Read the following story. Then, use the copyreaders' marks on page 127 to turn the reporter's manuscript that follows the story into copy that matches the story itself.

Enrollment in foreign languages is increasing for the first time in years, announced Ms. Paula Lucas, vice-principal, last week at the all-school assembly.

Spanish is by far the most popular language, with a total of 142 students enrolled this year.

"Of all the languages," said Ms. Lucas, "Spanish is the one that has always had the highest enrollment."

The enrollment had, however, dropped to a low of 76 students three years ago.

Ms. Lucas attributes the interest in Spanish to three factors. Being near the Mexican border is important. So is the number of Spanish-speaking students in the school. Equally important is the general feeling among students that it is easier to pronounce than French and easier to learn than German.

In spite of the difficult pronunciation, French classes have 112 students this year. German classes trail with 45 students.

"Hopes are," said Ms. Lucas, "that the students now taking foreign languages will encourage others to enroll. This is one trend we hope to see continue."

Enrollment in foreign languages is increasing for the first time in years, announced Ms. Paula Lucas, Vice-Principal, last week at the all-school assembly.

Spanish is by far the most popular language, with a total of 142 students enrolled this year.

"Of all the languages," said Lucas, "Spanish is the one that has always had the highest enrollment."

The enrollment had, however, dropped to a low of 76 students three years ago.

Lucas attributes the interest in Spanish to three factors. Being near the Mexican border is important. So is the number of Spanish-speaking students in the school.

Equally important is the general feeling among students that it is easier to pronounce than French and easier to learn than German.

In spite of the difficult pronunciation, French classes have 112 students this year. German classes trail with 45 students.

"Hopes are," said Lucas, "that the students now taking foreign languages will encourage others to enroll. This is one trend we hope to see continue."
Day 78

**Topic:** Power and responsibility of the press

**Objective:** Students will begin to understand the meaning of and the limitations on freedom of the press.

**Materials needed:** text

**Outline of activities:**
1. Return tests/discuss.
2. Give spelling list to students.
3. Discuss pg. 49-54-"The right to publish and criticize."
4. Discuss handout after students complete it.
5. Give assignment.

**Assignment:**

Read the handout from the AP Stylebook on libel, defenses, etc.

**Evaluation:**

Participation in discussion will be noted.
Spelling List-Week 16
organization
pantomime
paragraphing
parliamentarian
pastime
personalities
phase
privilege
quiet
quite
received
recommend
registrar
relieve
schedule
scholarship
scored
secretary
separate
similar
sophomore
sponsor
superintendent
tournament
treasurer
unanimous
CENSORSHIP

Assume you are editor of your student newspaper. The left column below lists a variety of stories submitted to you. Assume they are all well written and reasonably interesting. In the middle column, write YES or NO depending upon whether or not you think you should be allowed to print the story, as is. In the right-hand column, write YES or NO depending upon whether or not you would be permitted to print the story, based on federal, state, and local laws, and/or school policy. Be prepared to discuss your answers with the class.

<table>
<thead>
<tr>
<th>STORY</th>
<th>SHOULD YOU BE ALLOWED TO PRINT STORY?</th>
<th>WOULD YOU BE PERMITTED TO RUN STORY?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Editorial critical of school’s attendance regulations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Photograph of trash in hallways.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Story about student assaulted in rest room.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4) Editorial on abortion laws.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5) Article claiming student body funds are being spent illegally.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6) Endorsement of candidate for state senator.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7) Article containing several “profane” words.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8) Sports editorial claiming football coach is incompetent and should be fired.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9) Editorial calling for one-day boycott of classes.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10) Article claiming all teachers are bad at your school.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12) Ad for liquor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13) Opinion article claiming there are not enough counselors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14) Editorial critical of recent action of Board of Education.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Chapter 1

INTRODUCTION

Associate Justice John Marshall Harlan remarked that "the law of libel has changed substantially since the early days of the Republic."

And it has changed substantially since he made that observation more than a decade ago. Recent years have seen the Supreme Court of the United States decide several cases that made headlines and truly can be called landmarks.

But the working journalist remembers: The news stories which generate the most claims of injury to reputation—the basis of libel—are run-of-the-mill. Perhaps 95 of 100 libel suits are in that category and result from publication of charges of crime, immorality, incompetence or inefficiency.

A Harvard Nieman report makes the point: "The gee-whiz, slam-bang stories usually aren't the ones that generate libel, but the innocent-appearing, potentially treacherous minor yarns from police courts and traffic cases, from routine meetings and from business reports."

Most of these suits based on relatively minor stories result from factual error or inexact language—for example, getting the plea wrong or making it appear that all defendants in a case face identical charges.

Libel even lurks in such innocent-appearing stories as birth notices and engagements. The fact that some New York newspapers had to defend suits recently for such announcements illustrates the care and concern required in every editorial department.

Turner Catledge, retired managing editor of The New York Times, says in his book, "My Life and the Times," that he learned over the years that newspapers must be extremely careful in checking engagement announcements. He noted that "sometimes people will call in the engagement of two people who hate each other, as a practical joke."

In short, there is no substitute for accuracy. But, of course, this does not mean that accurately reporting libelous assertions automatically absolves the journalist of culpability.

Accurate reporting will not prevent libel if there is no privilege, either the constitutional privilege or the fair report privilege.

A fair and impartial report of judicial, legislative and other public and official proceedings is privileged—that is, not actionable for libel. But it is important to know, for instance, what constitutes judicial action. In many states there is no privilege to report the filing of the summons and complaint in a civil suit until there has been some judicial action.

Many libel suits occur in the handling of court and police news, especially criminal courts. Problems can arise in stories about crime and in identifying a suspect where there has been no arrest or where no charge has been made.

Don't be deterred into thinking a safe approach is to eliminate the subject's
name. If the description—physical or otherwise—readily identifies him to those in his immediate area, the story has, in effect, named him.

When accusations are made against a person, it is always well to try for balancing comment. The reply must have some relation to the original charges. Irrelevant countercharges can lead to problems with the person who made the first accusation.

The chief causes of libel suits are carelessness, misunderstanding of the law of libel, limitations of the defense of privilege (including the First Amendment privilege) and the extent to which developments may be reported in arrests. These are discussed in detail in this manual, which is “must” reading for every Associated Press staff member. It should be reviewed periodically.
Chapter 2

LIBEL, DEFENSES and PRIVILEGE

Libel is injury to reputation. Words, pictures or cartoons that expose a person to public hatred, shame, disgrace or ridicule, or induce an ill opinion of a person are libelous.

Actions for civil libel result mainly from news stories that allege crime, fraud, dishonesty, immoral or dishonorable conduct, or stories that defame the subject professionally, causing financial loss either personally or to a business.

There is only one complete and unconditional defense to a civil action for libel: that the facts stated are PROVABLY TRUE. (Note well that word, PROBABLY.) Quoting someone correctly is not enough. The important thing is to be able to satisfy a jury that the libelous statement is substantially correct.

A second important defense is PRIVILEGE. Privilege is one of two kinds—absolute and qualified.

Absolute privilege means that certain people in some circumstances can state, without fear of being sued for libel, material which may be false, malicious and damaging. These circumstances include judicial, legislative, public and official proceedings and the contents of most public records.

The doctrine of absolute privilege is founded on the fact that on certain occasions the public interest requires that some individuals be exempted from legal liability for what they say.

Remarks by a member of a legislative body in the discharge of official duties are not actionable. Similarly, libelous statements made in the course of legal proceedings by participants are also absolutely privileged, if they are relevant to the issue. Statements containing defamatory matter may be absolutely privileged if publication is required by law.

The interests of society require that judicial, legislative and similar official proceedings be subject to public discussion. To that extent, the rights of the individual about whom damaging statements may be made are subordinated to what are deemed to be the interests of the community.

We have been talking about absolute privilege as it applies to participants in the types of proceedings described here.

As applied to the press, the courts generally have held that privilege is not absolute, but rather is qualified. That means that it can be lost or diluted by how the journalist handles the material.

Privilege can be lost if there are errors in the report of the hearing, or if the plaintiff can show malice on the part of the publication or broadcast outlet.

An exception: Broadcasters have absolute privilege to carry the broadcast statements of political candidates who are given air time under the "equal oppor-
tunity" rules.
The two key points are:
1—Does the material at issue come from a privileged circumstance or proceeding?
2—Is the report a fair and accurate summation?

Again, the absolute privilege legislators enjoy—they cannot be sued, for example, for anything said on the floor of the legislature—affords total protection.

The journalist's protection is not as tight. But it is important and substantial and enables the press to report freely on many items of public interest which otherwise would have to go unreported.

The press has a qualified privilege to report that John Doe has been arrested for bank robbery. If the report is fair and accurate, there is no problem.

Statements made outside the court by police or a prosecutor or an attorney may not be privileged unless the circumstances indicate it is an official proceeding. However, some states do extend privilege to these statements if made by specified top officials.

Newspapers and broadcasters often carry accounts going beyond the narrow confines of what is stated in the official charges, taking the risk without malice because they feel the importance of the case and the public interest warrant doing so.

The source of such statements should be specified.

Sometimes there are traps.

In New York and some other states, court rules provide that the papers filed in matrimonial actions are sealed and thus not open to inspection by the general public.

But sometimes litigants or their lawyers may slip a copy of the papers to reporters. Publication of the material is dangerous because often the litigants come to terms outside of court and the case never goes to trial. So privilege may never attach to the accusations made in the court papers.

In one such case, the vice president of a company filed suit alleging that he was fired because the newspaper published his wife's charges of infidelity. The newspaper responded that its report was a true and fair account of court proceedings. The New York Court of Appeals rejected that argument on grounds that the law makes details of marital cases secret because sparring spouses frequently make unfounded charges. The newspaper appealed to the Supreme Court of the United States. But it lost.

Unless some other privilege applies, there is danger in carrying a report of court papers that are not available for public inspection by reason of a law, court rule or court order directing that such papers be sealed.

As stated earlier, a fair and accurate report of public and official proceedings is privileged.

There has never been an exact legal definition of what constitutes an official proceeding. Some cases are obvious—trials, legislative sessions and hearings, etc.

Strictly speaking, conventions of private organizations are not "public and
official proceedings” even though they may be forums for discussions of public questions. Hence, statements made on the floor of convention sessions or from speakers’ platforms may not be privileged.

Statements made by the president of the United States or a governor in the course of executive proceedings have absolute privilege for the speaker, even if false or defamatory. However, this absolute privilege may not apply to statements having no relation to executive proceedings.

President Kennedy once was asked at a news conference what he was going to do about “two well-known security risks” in the State Department. The reporter gave names when the president asked for them. This was not privileged and many newspapers and radio stations did not carry them. The Associated Press did because it seemed in the public interest to report the incident fully. No suits resulted.

After a civil rights march, George Wallace, then governor of Alabama, appeared on a television show and said some of the marchers were members of Communist and Communist-front organizations. He gave some names, which newspapers carried. Some libel suits resulted.

The courts have ruled that publishing that a person is a Communist is libelous on its face if he is not a Communist.

"The claimed charge that the plaintiff is a Nazi and a Communist is in the same category... The current effect of these statements is the decisive test. Whatever doubt there may have been in the past as to the opprobrious effect on the ordinary mind of such a change...recent events and legislation make it manifest that to label an attorney a Communist or a Nazi is to taint him with disrepute.” (Levy vs. Gelber, 175 Misc. 746)

The fact that news comes from official sources does not eliminate the concern. To say that a high police official said means that you are making the accusation. A statement that a crime has been committed and that the police are holding someone for questioning is reasonably safe, because it is provably true. However, there are times when the nature of the crime or the prominence of those involved requires broader treatment. Under those circumstances, the safest guide is whatever past experience has shown as to the responsibility of the source. The source must be trustworthy and certain to stand behind the information given.

Repetition of Libel

In reporting the filing of a libel suit, can we report the content of the charge? By so doing, do we compound the libel, even though we quote from the legal complaint?

Ordinarily, a fair and impartial report of the contents of legal papers in a libel action filed in the office of the clerk of the court is privileged. However, many states do not extend privilege to the filing of court actions; in such a case there is no privilege until the case comes to trial or until some other judicial action takes place.

But we have found that it is safe, generally speaking, to repeat the libel in a
story based on the filing of a suit.

**Fair Comment and Criticism**

The publication of defamatory matter that consists of comment and opinion, as distinguished from fact, with reference to matters of public interest or importance, is covered by the defense of fair comment.

Of course, whatever facts are stated must be true.

The right of fair comment has been summarized as follows:

"Everyone has a right to comment on matters of public interest and concern, provided they do so fairly and with an honest purpose. Such comments or criticism are not libelous, however severe in their terms, unless they are written maliciously. Thus it has been held that books, prints, pictures and statuary publicly exhibited, and the architecture of public buildings, and actors and exhibitors are all the legitimate subjects of newspapers' criticism, and such criticism fairly and honestly made is not libelous, however strong the terms of censure may be." (Hoeppner *vs.* Dunkirk Pr. Co., 254 N.Y. 95)

**Criminal Libel**

The publication of a libel may result in what is considered a breach of the peace. For that reason, it may constitute a criminal offense. It is unnecessary to review that phase of the law here because the fundamental elements of the crime do not differ substantially from those that give rise to a civil action for damages.
In a series of decisions commencing in 1964, the Supreme Court established important First Amendment protections for the press in the libel area.

But in more recent decisions, the tide in libel has been running against the press, particularly in the unrelenting narrowing of the definition of a public figure. This was the single most active area of libel law in the decade of the '70s.

While the full impact of the later decisions is not yet clear, a review of the rulings since the mid-1960s shows the trend.

Three basic cases established important precedents. They did so in a logical progression. The cases were:


In the *New York Times* case, the Supreme Court ruled in March 1964 that public officials cannot recover damages for a report related to official duties unless they prove actual malice.

To establish actual malice, the official was required to prove that at the time of publication, those responsible for the story knew it was false or published it with reckless disregard of whether it was true or false.

The decision reversed a $500,000 libel verdict returned in Alabama against the *New York Times* and four black ministers. The court said:

"The constitutional guarantees (the First and 14th Amendments) require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

This does not give newspapers absolute immunity against libel suits by officials who are criticized. But it does mean that when a newspaper publishes information about a public official and publishes it without actual malice, it should be spared a damage suit even though some of the information may be wrong.

The court said it considered the case "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials."

The ruling in *The New York Times* case with respect to public officials was extended by the Supreme Court in June 1967 to apply also to public figures.
In so holding, the court reversed a $500,000 libel judgment won by former Maj. Gen. Edwin A. Walker in a Texas state court against The Associated Press. The AP reported that Walker had "assumed command" of rioters at the University of Mississippi and "led a charge of students against federal marshals" when James H. Meredith was admitted to the university in September 1962. Walker alleged those statements to be false.

The court said: "Under any reasoning, Gen. Walker was a public man in whose public conduct society and the press had a legitimate and substantial interest."

The rulings in The New York Times and The Associated Press cases were constitutional landmark decisions for freedom of the press and speech. They offered safeguards not previously defined. But they did not confer license for defamatory statements or for reckless disregard of the truth.

The AP decision made an additional important distinction.

In the same opinion, the court upheld an award granted Wallace Butts, former athletic director of the University of Georgia, against Curtis Publishing Co. The suit was based on an article in the Saturday Evening Post accusing Butts of giving his football team's strategy secrets to an opposing coach prior to a game between the two schools.

The court found that Butts was a public figure, but said there was a substantial difference between the two cases. Justice Harlan said: "The evidence showed that the Butts story was in no sense 'hot news' and the editors of the magazine recognized the need for a thorough investigation of the serious charges. Elementary precautions were, nevertheless, ignored."

Chief Justice Warren, in a concurring opinion, referred to "slipshod and sketchy investigatory techniques employed to check the veracity of the source." He said the evidence disclosed "reckless disregard for the truth."

The differing rulings in The Associated Press and the Saturday Evening Post cases should be noted carefully. The AP-Walker case was "hot news"; the Post-Butts story was investigative reporting of which journalists are doing more and more.

Extension of the Times rule in one case was based on a column by Drew Pearson which characterized a candidate for the United States Senate as "a former small-time bootlegger." The jury held that the accusation related to the private sector of the candidate's life. Reversing this judgment, the Supreme Court said:

"We therefore hold as a matter of constitutional law that a charge of criminal conduct, no matter how remote in time or place, can never be irrelevant to an official's or a candidate's fitness for public office for purposes of application of the 'knowing falsehood or reckless disregard' rule of New York Times vs. Sullivan."

Another case was brought by a Chicago captain of detectives against Time magazine, which had quoted from a report of the U.S. Civil Rights Commission without making clear that the charges of police brutality were those of the complainant whose home was raided and not the independent findings of the commission. The court described the commission's documents as "bristling with ambiguities" and said Time did not engage in a "falsification" sufficient to sus-
tain a finding of actual malice.

The progression of the New York Times, AP and Metromedia cases was interrupted in June 1974 with the Supreme Court's decision in the case of Gertz vs. Robert Welch Inc.

Gertz, a lawyer of prominence in Chicago, had been attacked in a John Birch Society publication as a Communist. There were additional accusations as well. Gertz sued and the Supreme Court upheld him, ruling that he was neither a public official nor a public figure.

The decision opened the door to giving courts somewhat wider leeway in determining whether someone was a public person.

This case also opened the way to giving state courts the right to assess what standard of liability should be used in testing whether a publication about a private individual is actionable. It insisted, however, that some degree of fault, at least negligence, be shown.

For instance, some state courts have established a negligence standard (whether a reasonable person would have done the same thing as the publisher under the circumstances). The New York courts follow a gross negligence test. Others still observe the actual malice test in suits by private individuals against the press.

Bear in mind that the significance of the Gertz decision still is being developed. As new cases arise and are adjudicated. But at a minimum it opened the way to judgments the three earlier cases would seem to have barred.

More recently, in the case of Time vs. Firestone, the Supreme Court again appears to have restricted the public figure and public issue standards.

The case stemmed from Time magazine's account of the divorce of Russell and Mary Alice Firestone. The magazine said she had been divorced on grounds of "extreme cruelty and adultery." The court made no finding of adultery. She sued.

She was a prominent social figure in Palm Beach, Fla., and held press conferences in the course of the divorce proceedings. Yet the Supreme Court said she was not a public figure because "she did not assume any role of special prominence in the affairs of society, other than perhaps Palm Beach society, and she did not thrust herself to the forefront of any particular public controversy in order to influence resolution of the issues involved in it."

As in the Gertz case, the decision opened the way to findings within the states involving negligence, a standard less severe than the actual malice standard that was at the base of three earlier landmark cases.

Supreme Court decisions, starting with Gertz and extending through Firestone and more recent cases, have consistently narrowed the class of persons to be treated as public figures under the Times-Sullivan and AP-Walker standards.

Two 1979 rulings by the Supreme Court illustrate the narrowing of the protections that seemed so wide only a few years earlier:

Sen. William Proxmire of Wisconsin was sued for $8 million by Ronald Hutchinson, a research scientist who had received several public grants, including one for $50,000. Proxmire gave Hutchinson a "Golden Fleece" award, saying Hutchinson "has made a fortune from his monkeys and in the process made a
monkey of the American taxpayer." Hutchinson sued. The Supreme Court found that, despite the receipt of substantial public funds, Hutchinson was not a public figure. The court also ruled that Proxmire's news release was not protected by congressional immunity.

Ilya Wolston pleaded guilty in 1957 to criminal contempt for failing to appear before a grand jury investigating espionage. A book published in 1974 referred to these events. Wolston alleged that he had been libeled. In ruling on Wolston vs. Reader's Digest, the Supreme Court said that he was not a public figure. The court ruled that people convicted of crimes do not automatically become public figures. Wolston, the court said, was thrust into the public spotlight unwillingly.

In effect, the court extended the Firestone concept of unwilling notoriety to criminal as well as civil cases.

Thus the pattern through Gertz, Firestone, Proxmire and Reader's Digest is clear. The Times rule has been left standing but it is tougher and tougher to get in under it.

The court is rejecting the notion that a person can be a public figure simply because of the events that led to the story at issue. The courts are saying that public figure means people who seek the limelight, who inject themselves into public debate, etc. The courts are saying that involvement in a crime, even a newsworthy one, does not make one a public figure.

This means that the broad "public official" and "public figure" protections that came out of the Times and AP cases remain, but for shrinking numbers of people that are written about.

At the same time, the "reckless disregard of the truth" and "knowing falsity" standards of the Times decision also slip away, becoming applicable to fewer people as the public figure definition narrows.

And those standards are being replaced in state after state with simple negligence standards. In other words, the plaintiff, now adjudged to be a private citizen because of the recent rulings, must now prove only that the press was negligent, not reckless.

The difference is more than semantic. This development suggests that press lawyers will be relying more on some of the old standbys as defenses—plaintiff's inability to prove falsity, privilege, fair comment—and this puts the ball right back with editors and reporters.

The Supreme Court in 1986 held, however, in Philadelphia Newspapers vs. Herps, that, at least where a newspaper has published statements on a matter of public concern, a private figure plaintiff cannot prevail without showing the statements at issue are false. This case provides that the common law rule requiring a defendant to prove truth is supplanted by a constitutional requirement that the plaintiff demonstrate falsity when the statements involved are of public concern.

Another recent Supreme Court decision which provoked wide press controversy came in the case of Herbert vs. Lando.

The court ruled in 1979 that retired Army Lt. Col. Anthony Herbert, a Vietnam veteran, had the right to inquire into the editing process of a CBS "30
Minutes" segment, produced by Barry Lando, which provoked his suit. Herbert had claimed the right to do this so that he could establish actual malice.

The decision formalizes and calls attention to something that was at least implicit in the Times case, namely, that a plaintiff had the right to try to prove the press was reckless or even knew that what it was printing was a lie. How else could this be done except through inquiry about a reporter's or editor's state of mind?

So the ruling reminds plaintiffs' lawyers that they can do this and will, no doubt, be responsible for far more of this kind of inquiry than the press has had to face before.

A crucial test will be how far judges will let plaintiffs' lawyers range in their discovery efforts. Will they let the plaintiff widen the embrace of inquiry into stories other than the one at issue? Will they let the plaintiff rummage about the newsroom, probing unrelated news judgments, examining the handling of other unrelated stories, demanding to know why this investigative piece survived while that one died quietly on the kill hook?

That the questions are being prompted by the Herbert-Lando ruling is the best response to those who say that the decision didn't really mean much.

The preliminary answer to these questions appears to be that there has been some widening of this sort of inquiry by plaintiffs newly alerted to this area by the Lando ruling.

The press should be certain that files include contemporaneous memorandums that will testify later to the care taken with the story and the conviction that it was true and fair.

There was a footnote in the Proxmire case which has had a marked effect on the way libel cases are litigated. Footnote 9 questioned the practice of dismissing libel actions early in the course of litigation. The lower courts have paid serious attention to this footnote, with the result that more and more libel actions are being tried before a jury.

In a 1966 decision, Anderson vs. Liberty Lobby, however, the Supreme Court held that summary judgment should be granted in libel actions against public officials and public figures unless the plaintiff can prove actual malice with "convincing clarity" or by "clear and convincing evidence." This rule should facilitate the early dismissal of unmeritorious claims without the expense and burdens of proceeding to trial.

The huge jury verdicts which often result have caused much concern among legal commentators and the press. A number of remedies have been proposed, but it remains unclear at this point whether the Supreme Court will take any action to stem the tide of runaway million-dollar jury verdicts of recent years.

An indication that the Supreme Court is facing this problem appeared in its 1984 opinion in Bose vs. Consumers Union. Bose Corp. sued Consumer Reports over its publication of disparaging comments concerning Bose's loudspeaker systems and obtained a damage judgment of about $211,000. The Court of Appeals, after a careful review of the record, reversed. The Supreme Court endorsed this process, underscoring the need for appellate courts in libel cases to make an independent review of the record—a standard of scrutiny that does not apply in
most other appeals. For the foreseeable future, the press will continue to rely on the willingness of the appeals courts to overturn excessive jury verdicts.

**SUMMARY OF FIRST AMENDMENT RULES**

The gist of the principles established in the cases discussed above may be summarized as follows:

A. The Public Official Rule: the press enjoys a great protection when it covers the affairs of public officials. In order to successfully sue for libel, a public official must prove actual malice. This means the public official must prove that the editor or reporter had knowledge that the facts were false or acted with reckless disregard of the truth.

B. The Public Figure Rule: the rule is the same for public figures and public officials. That is, a public figure must prove actual malice. The problem is that it is very difficult in many cases to predict who will be classified as a public figure.

In general, there are two types of public figures:

1. General Purpose Public Figures: this is an individual who has assumed the role of special prominence in the affairs of society and occupies a position of persuasive power and influence. An example is the entertainer Johnny Carson.

2. Limited Purpose Public Figures: this is a person who has thrust himself or herself into the vortex of a public controversy in an attempt to influence the resolution of the controversy. An example would be a vocal scientist who has lectured and published articles in an attempt to influence a state legislature to ban fluoridation of water.

C. The Private Figure Rule: a private figure is defined in the negative. It is someone who is not a public figure. The rule of law for libel suits brought by private figures varies from state to state. The variations fall into three general categories:

1. A number of states follow the same rule for private figures and public figures. They require private figures to prove actual malice. These states include Alaska, Colorado, Indiana and Michigan.

2. One state, New York, requires private figures to prove that the publisher acted in a "grossly irresponsible manner." To date, no other state has adopted this rule.

3. Most states require private figures to prove only negligence. Negligence is a term of art which is difficult to define. As a rule of thumb, a careless error on the part of the journalist will often be found to constitute negligence.

These distinctions become important after the story has moved on our wires when there is a challenge and we are preparing our legal defenses. These distinctions do not apply in our preparations of stories. We do not have a standard that lets us go easier with ourselves if the story concerns a public official figure and be tougher on ourselves if it concerns a private figure.
The right of privacy is a doctrine that has been developing in the past century. It is recognized by statute in only a few states, including New York, but courts increasingly are taking cognizance of it. It is clearly an area to be watched.

The doctrine is based on the idea that a person has the right to be let alone, to live a private life free from publicity.

In 1890, two Boston lawyers wrote in the Harvard Law Review:

"The press is overstepping in every direction the obvious bounds of propriety and decency."

It is of interest that one of those lawyers, who later became Justice Brandeis, said years later in one of his dissents:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." (Olmstead vs. United States, 277 U.S. 438, 478)

When a person becomes involved in a news event, voluntarily or involuntarily, he forfeits the right to privacy. Similarly, a person somehow involved in a matter of legitimate public interest, even if not a bona fide spot news event, normally can be written about with safety.

However, this is different from publication of a story or picture that dredges up the sordid details of a person's past and has no current newsworthiness.

Paul P. Ashley, then president of the Washington State Bar Association, said in a talk on this subject at a meeting of The Associated Press Managing Editors Association:

"The essence of the wrong will be found in crudity, in ruthless exploitation of the woes or other personal affairs of private individuals who have done nothing noteworthy and have not by design or misadventure been involved in an event which tosses them into an arena subject to public gaze."

Here are details of a few cases brought in the name of right of privacy:

—A leading case centering on publication of details of a person's past concerned a man who as a child prodigy in 1910 had attracted national attention. In 1937, The New Yorker magazine published a biographical sketch of the plaintiff. He alleged invasion of privacy.

The court said "he had cloaked himself in obscurity but his subsequent history, containing as it did the answer to the question of whether or not he had
fulfilled his early promise, was still a matter of public concern. The article ... sketched the life of an unusual personality, and it possessed considerable popular news interest.”

The court said further:

"We express no comment on whether or not the newsworthiness of the matter printed will always constitute a complete defense. Revelations may be so intimate and so unwarranted in view of the victim’s position as to outrage the community’s notions of decency. But when focused upon public characters, truthful comments upon dress, speech, habits, and the ordinary aspects of personality will usually not transgress this line. Regrettably or not, the misfortunes and frailties of neighbors and 'public figures' are subjects of considerable interest and discussion to the rest of the population. And when such are the mores of the community, it would be unwise for a court to bar their expression in the newspapers, books, and magazines of the day.”

—The unsavory incidents of the past of a former prostitute, who had been tried for murder, acquitted, married and lived a respectable life, were featured in a motion picture. The court ruled that the use of her name in the picture and the statement in advertisements that the story was taken from true incidents in her life violated her right to pursue and obtain happiness.

Some courts have ruled that a person who is recognizable in a picture of a crowd in a public place is not entitled to the right of privacy. But if a camera singled him out for no news-connected reason, then his privacy is invaded, some courts have ruled.

Another example of spot news interest: A child was injured in an auto accident in Alabama. A newspaper took a picture of the scene before the child was removed and ran it. That was spot news. Twenty months later a magazine used the picture to illustrate an article. The magazine was sued and lost the case, the court ruling that 20 months after the accident the child was no longer "in the news.”

In another case, a newspaper photographer in search of a picture to illustrate a hot weather story took a picture of a woman sitting on her front porch. She wore a housedress, her hair in curlers, her feet in thong sandals. The picture was taken from a car parked across the street from the woman’s home. She sued, charging invasion of privacy. A court, denying the newspaper’s motion for dismissal of the suit, said the scene photographed “was not a particularly newsworthy incident” and the limits of decency were exceeded by "surreptitious” taking and publishing of pictures “in an embarrassing pose.”

A woman took her two children to the county fair and went with them into the funhouse. A newspaper photographer took her picture just as a jet of air blew up her dress. She sued, and the Supreme Court of Alabama upheld the damages.

The rules in New York state on the right of privacy that are applicable to unauthorized publication of photographs in a single issue of a newspaper may be summarized generally as follows:

1. The plaintiff may recover damages if the photograph is published in or as part of an advertisement, or for advertising purposes.

2. There is liability if the photograph is used in connection with an article of
fiction in any part of a newspaper.

3. There may be no recovery under the statute for publication of a photograph in connection with an article of current news or immediate public interest.

4. Newspapers publish articles that are neither strictly news items nor strictly fictional in character. They are not the responses to an event of peculiarly immediate interest, but though based on fact, are used to satisfy an ever-present educational need. Such articles include, among others, travel stories, stories of distant places, tales of history personages and events, the reproduction of items of past news and surveys of social conditions. These are articles educational and informative in character. As a general rule, such cases are not within the purview of the statute. (Lahiri vs. Daily Mirror Inc., Misc. Reports, N.Y. 162, p780).

The Supreme Court of the United States ruled in January 1967 that the constitutional guarantees of freedom of the press are applicable to invasion-of-privacy cases involving reports of newsworthy matters.

The ruling arose out of a reversal by the Supreme Court of a decision of a New York court that an article with photos in Life magazine reviewing a play, "The Desperate Hours," violated the privacy of a couple who had been held hostage in a real-life incident. In illustrating the article, Life posed the actors in the house where the real family had been held captive.

The family alleged violation of privacy, saying the article gave readers the impression that the play was a true account of their experiences. Life said the article was "basically truthful."

The court said:

"The line between the informing and the entertaining is too elusive for the protection of (freedom of the press). Erroneous statement is no less inevitable in such cases than in the case of comment upon public affairs, and in both, if innocent or merely negligent, it must be protected if the freedoms of expression are to have the breathing space that they need to survive."

"We create grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in a news article with a person's name, picture or portrait, particularly as related to non-defamatory matter."

The court added, however, that these constitutional guarantees do not extend to "knowing or reckless falsehood." A newspaper still may be liable for invasion of privacy if the facts of a story are changed deliberately or recklessly, or "fictionalized." As with The New York Time and The Associated Press decisions in the field of libel, the "Desperate Hours" case does not confer a license for defamatory statements or for reckless disregard of the truth.
Chapter 5

APPLYING THE RULES

We already have defined libel and explained the defenses available to the press. Let's now look at some applications.

In a society in which standards of right living are recognized by most people, any accusation that a member of society has violated such standards must be injurious. Members of a community establish in the minds of others an estimate of what they are believed to be. Injury to that reputation may mean business, professional or social ruin.

One court decision put the matter this way:

"The law of defamation is concerned only with injuries to one's reputation...
"Embarrassment and discomfort no doubt came to her from the publication, as they would to any decent woman under like circumstances. Her own reaction, however, has no bearing upon her reputation. That rests entirely upon the reactions of others. We are unable to find anything in this article which could appreciably injure plaintiff's reputation."

(Kimmerle vs. New York Evening Journal Inc., 262 N.Y. 99)

The traditional rule was that defamation was concerned only with injuries to one's reputation. That rule was altered in 1974 by the Gertz case, which held that emotional distress is also an element of damages in libel.

In order to be libelous, it is not necessary that a publication impute criminal activity. The following was held to be libelous:

"Pauper's Grave For Poor Child"

"Unless financial aid is forthcoming immediately, the body of a 4-year-old boy who was run over Tuesday will be interred in Potter's Field, burying ground of the homeless, friendless and penniless, who die or are killed in New York City. The parents of this youngster are in dire financial straits, and at this writing have no alternative but to let their son go to his final rest in a pauper's grave."

The court said:

"It is reasonably clear, therefore, that in some cases it may be a libel if the plaintiff has been written up as an object of pity... The reason is that in libel the matter is defamatory not only if it brings a party into hatred, ridicule or contempt by asserting some moral discredit upon his part, but also if it tends to make him be shunned or avoided, although it imputes no moral turpitude to him."

(Katapodis vs. Brooklyn Spectator Inc., 287 N.Y. 17)

A publication that does not discredit a person as an individual may nonetheless damage a person's professional status.

A story stated that after a man's body had been taken from the water in which
he had been swimming, he was pronounced dead by a doctor. Later, the youth was revived. The doctor sued because of the implication that he had been unable to determine whether a person was living or dead.

Similarly, a publication may affect a business. Companies are naturally sensitive to news stories that reflect on their business prospects and practices. There have been many such news stories in the field of environmental and consumer protection. The issues are complicated, and the legal aspects not always clear. Formal charges and allegations should be reported precisely and fairly.

Likewise, there is no alternative to precision in reporting any criminal charge. Not only what is written, but the instruments used in transmitting it, must be considered in handling news. It is safer to say acquitted or innocent, rather than not guilty because of the danger that the negative may be dropped in transmission.

An essential element of an action for libel is that the complainant be identifiable to a third party. Nevertheless, the omission of names will not, in itself, provide a shield against a claim for libel. As was pointed out earlier, there may be enough details for the person to be recognizable.

A story may, by the use of a general description or name, make a libelous charge against an organized group. It is possible that any member of the group could bring an action on the story.

If the material is libelous and not privileged, then the question turns to proof.

Can the substance be established by documents, by testimony from trustworthy persons or by material from privileged sources? Hearsay evidence is not enough. It is not enough to show that somebody gave you the unprivileged information. The issue turns on proof.

Another libel pitfall is the mistaken identity case. There is no complete defense when a newspaper confuses a famous individual with a person bearing a similar name who gets into a scrape. Petty thieves running afoul of the law may give the names of famous people—often old-time athletes—in the hope of getting leniency from a judge.

A few years ago a man charged with a minor crime appeared in Magistrate’s Court in New York and gave as his name that of a once-great baseball pitcher. The magistrate gave the prisoner a suspended sentence. The real baseball player was a prosperous auto salesman, who threatened multiple suits when he read the story in the newspapers.
CLOSED COURTROOMS

In 1980, in Richmond Newspapers vs. Virginia, the Supreme Court ruled that under the First Amendment, criminal trials are presumptively open to the public and the media and may be closed only when it is necessary to protect some interest which outweighs the interest in access. A trial judge must articulate findings, on the record, to support any closure. This decision marked the first time in the nation's history that the right to find out what a branch of government is doing had been afforded direct and specific constitutional protection.

In 1982, in Globe Newspapers vs. Superior Court, the Supreme Court recognized that the constitutional right of access to criminal trials applies even with respect to a sex-offense trial involving a minor victim. The Court struck down a statute mandating closure in such cases. While it said that the states have a significant interest in protecting minor victims of sexual assault from the trauma of testifying in open court, the Supreme Court held that trial judges must determine on a case-by-case basis whether this interest outweighs the presumption of openness and stated that any closure order must be "narrowly tailored to protect that interest "without unduly infringing on First Amendment rights.

The Supreme Court further held in 1984 in Press-Enterprise vs. Superior Court that the constitutional right of access to criminal trials encompasses the right to attend jury selection.

In 1986, in a second case called Press-Enterprise vs. Superior Court, the Supreme Court ruled that the First Amendment right to access attaches to preliminary hearings in a criminal case unless specific findings are made on the record to demonstrate that closure is essential to preserve higher values and is narrowly tailored to serve that interest. If the interest asserted is the defendant's right to a fair trial, the preliminary hearing may not be closed unless there is a "substantial probability" that the right to a fair trial will be prejudiced by publicity that closure would prevent and that reasonable alternatives to closure cannot adequately protect the right to a fair trial.

The Associated Press has distributed the following statement to be read in court by its reporters when confronted with an attempt to close a criminal proceeding.

The statement allows the reporter, when permitted to address the court, to state the basic press position and to seek time for counsel to appear to make the legal argument.

The following statement can be read verbatim, although if any parts are not applicable to a specific case they can be changed or omitted.

May it please the Court, I am (name) of The Associated Press (or newspaper). I respectfully request the opportunity to register on the record an objection to the motion to close this proceeding to the public and to representatives of the news media. The Associated Press (or newspaper) requests a hearing at which its counsel may present to the court legal authority and arguments that closure in this case is improper.
The United States Supreme Court has now firmly held that the press and the public have a constitutional right to attend criminal trials and pretrial proceedings and may not be excluded unless the court makes findings on the record that closure is required to preserve higher values and is narrowly tailored to serve that interest. There is, therefore, a presumption of openness which is firmly rooted in the Constitution and essential to proper functioning of the criminal justice system.

The Associated Press (or newspaper) takes the position that the defendant should be required to make the following showing in order to prevail on a motion to close this proceeding:

— First, the defendant must demonstrate that by conducting this proceeding in public the defendant’s right to a fair trial will be prejudiced by publicity which closure would prevent. The defendant must demonstrate therefore that disclosures made in this hearing will prejudice the case and that these disclosures would not otherwise be brought to the attention of potential jurors.

— Second, the defendant must demonstrate that none of the alternatives to an order closing this proceeding would effectively protect the right to a fair trial. Among the alternatives available to protect the defendant’s rights are: a careful and searching voir dire, continuance, severance, change of venue, peremptory challenges, sequestration and admonition of the jury.

— Third, the defendant must demonstrate that closure will be effective in protecting the right to a fair trial. In the present case there has already been substantial publicity concerning the facts. The defendant must demonstrate that any prejudice to the right of a fair trial would result from publicity given to disclosures made in this proceeding, and not to previously published facts or allegations.

— Finally, the defendant must establish that reasonable alternatives to closure cannot adequately protect the defendant’s free trial rights.

The Associated Press (or newspaper) believes that there has been substantial public interest generated by this case. The public has a right to be informed of future developments, and the court should avoid any impression that justice is being carried on in secrecy. The public has a right to know how the court system is handling criminal matters, what kind of deals may be struck by prosecutors and defense lawyers, what kind of evidence may be kept from the jury, and what sort of police or prosecutorial acts or omissions have occurred. For these reasons, The Associated Press (or newspaper) objects to the motion for closure and respectfully requests a hearing in which it can present full legal arguments and authority.

The Supreme Court has never addressed the question of whether there is a First Amendment right of access to civil trials and pretrial proceedings. Several federal appeals courts, employing the reasoning of the Supreme Court’s criminal trial access decisions, have ruled that both civil trials and pretrial proceedings are presumptively open to the press and public.
Day 79

**Topic:** Legal restrictions on the press

**Objective:** Students will learn about restrictions placed upon the press.

**Materials needed:** text, libel handouts

**Outline of activities:**
1. Go over spelling list.
2. Discuss pg. 54-57 in text.
3. Discuss libel manual.

**Assignment:**
- Do the Libel-Part 2 handout. Be prepared to discuss.
- Study for spelling quiz.

**Evaluation:**
- Participation in class discussion will be noted. The exercise will give students the opportunity to play lawyer/editor.
- It'll give students the opportunity to apply the knowledge they've acquired. It'll show me if they understand libel.
LIBEL—Part Two

Based on your results from "LIBEL—Part One" and on your intuition as an amateur attorney, determine whether each of the statements below (a) should not be printed in its present form because it is possibly libelous; (b) should not be printed, even though it is probably not libelous, but because it is either in bad taste or corny or is poor journalism; or (c) should be printed. After classifying each sentence, tell why you made your choice.

Note that when you deal with decisions involving such things as libel and bad taste, there are bound to be borderline cases. Therefore, a few of the examples below might spark classroom debate because their classification is not cut-and-dried. In dealing with borderline cases, many editors employ the old rule: “If in doubt, leave it out!”

EXAMPLE ONE: Our campus security man witnessed a bicycle theft, but did not report it.
Classification: a Reason: exposes security man to loss of reputation

EXAMPLE TWO: (ending of sports story) Go get 'em, Tigers!
Classification: b Reason: corny; an example of immature journalism

1) Cafeteria worker Jane Smith, we are told, rarely washes her hands.
Classification: ______ Reason: 

2) Our principal, John Jones, is incompetent.
Classification: ______ Reason: 

3) Student Body President Mary Carlson was wrong when she voted to discontinue the “Homecoming Queen” contest.
Classification: ______ Reason: 

4) Carlos Hanks' graduation speech was delayed, as he got nervous and threw up.
Classification: ______ Reason: 

5) Senior Henry Franks stood there with a bloody nose, the school nurse ignored him and continued her coffee break.
Classification: ______ Reason: 

6) Harry Thomas’ acting in the school play was very poor.
Classification: ______ Reason: 

7) According to records on file at City Hall, a car dealer Will King was once convicted of false advertising.
Classification: ______ Reason: 

8) The latest Rock Rogers movie, Under Blue Skies, proves he's a lousy actor.
Classification: ______ Reason: 

9) Governor Hendricks' veto of the recent Aid-To-Education Bill marks him as a mean, old penny pincher who hates kids.
Classification: ______ Reason: 

0) Our rooms are cleaned only once a week, a result of the policy of our lazy head custodian, John Jones.
Classification: ______ Reason: 

1) Looking a little typsy, student Ken Griffith was sent to the vice principal yesterday.
Classification: ______ Reason: 

2) The mayor's trip to Italy at taxpayers' expense strikes us as an unnecessary and illegal use of our public funds.
Classification: ______ Reason: 

3) A survey of 50 seniors reveals that Deana Jenkins is considered the best teacher in the school and Marvin Barnhall is considered the worst.
Classification: ______ Reason: 

4) Having fallen from a second story window, sophomore Maria Hart was covered with blood and screaming hysterically as she was carried to a waiting ambulance.
Classification: ______ Reason: 

J. Weston Wach, Publisher
Box 658
Portland, Maine 04104

01-1938
Day 80

**Topic:** Libel

**Objective:** Students will continue to discuss libel and will support their decisions on statements.

**Materials needed:** handouts

**Outline of activities:**

1. Give spelling quiz/exchange to grade.
2. Discuss handout - Libel 2. Encourage debate.

**Assignment:**

None.

**Evaluation:**

Participation in discussion/debate will be noted. This discussion will illustrate students' understanding of libel.
Day 81

**Topic:** Libel/Nonfactual Content

**Objective:** Students will continue to discuss libel and will explore fact versus opinion.

**Materials needed:** text, handouts

**Outline of activities:**
1. Continue to discuss/debate libel-part 2.
2. Discuss the remaining pages of the chapter.
3. Do Act. 3 part 1 as a class.

**Assignment:**
None.

**Evaluation:**
The discussion/debate will demonstrate their understanding of libel. The exercise will help students distinguish between facts and opinion.
Day 82

**Topic:** Power and responsibility

**Objective:** Students will examine slanted news and propaganda. They also will begin project work.

**Materials needed:** text, handouts

**Outline of materials:**

1. Discussion of the final pages of the chapter will continue.
2. I'll explain the activities of the next few days.
3. Students can meet with their groups and begin making plans for their presentation.

**Assignment:**

The students will spend the next 3 days working on a research project. The class will be divided into 3 groups, and each group will take a case—Tinker, Fraser, Hazelwood. The students will be responsible for teaching the class about their cases. They may lecture, act out the case, show visuals, provide handouts, etc. I'll get the materials for them. Each student needs to submit a 3 page news story about the case. This story will be written from printed sources—they may interview a journalism instructor from another school or a principal or student, if they wish. Their presentation will provide information for test questions.

**Evaluation:**

This project will give students the opportunity to work as a team. I will grade their presentation and their written work (story). I'll monitor the group work and observe the students' participation.
Day 83

**Topic:** Project work

**Objective:** Students will work on their projects.

**Materials needed:** books, articles, files on cases

**Outline of activities:**

1. Students will use the class time to plan and to review the files I have concerning the cases.

**Assignment:**

Continue work on project and stories.

**Evaluation:**

I will monitor and observe group work.
Day 84

**Topic:** Project work

**Objective:** Students will work on their projects in the library.

**Materials needed:** library

**Outline of activities:**

1. Students will use the class time to plan and to work on their projects. They will go to the library for research today.

**Assignment:**

Continue to work on project and stories.

**Evaluation:**

I will monitor and observe group work.
Day 85

**Topic:** Project work

**Objective:** Students will work on their projects in the library or the classroom.

**Materials needed:** library and files in classroom

**Outline of activities:**

1. Students will use the class time to plan and to work on their projects. They may work in the library and/or the classroom today.

**Assignment:**

Group 1 should be prepared to present their material on Monday.

**Evaluation:**

I will monitor and observe group work.
Day 86

**Topic:** Project Day-Group 1

**Objective:** Students will teach the class about the Tinker Case.

**Materials needed:** Whatever the students need

**Outline of activities:**

1. Group will have entire class time; if needed, to teach and portray the Tinker case.

2. Remaining time will be spent answering questions from the class and clarifying points which may require additional comment.

**Assignment:**

None.

**Evaluation:**

The project will give students the opportunity to work together and research a topic. A presentation grade and a written work grade will be recorded.
Day 87

**Topic:** Project Day-Group 2

**Objective:** Students will teach the class about the Fraser case.

**Materials needed:** whatever the students need

**Outline of activities:**

1. Group will have entire class time, if needed, to teach and portray the Fraser case.

2. Remaining time will be spent answering questions from the class and clarifying points which may require additional comment.

**Assignment:**

None.

**Evaluation:**

The project will give students the opportunity to work together and research a topic. A presentation grade and a written work grade will be recorded.
Day 86

**Topic**: Project Day-Group 3

**Objective**: Students will teach the class about the Hazelwood Case.

**Materials needed**: whatever the students need

**Outline of activities**:
1. Group will have entire class time, if needed, to teach and portray the Hazelwood case.
2. Remaining time will be spent answering questions from the class and clarifying points which may require additional comment.

**Assignment**:

Prepare questions for the review session.

**Evaluation**:

Again, the project will give students the opportunity to work together and research a topic. A presentation grade and a grade for their written work will be recorded.
Day 89

**Topic:** Review Day

**Objective:** Students will review for the unit test.

**Materials needed:** text

**Outline of activities:**

1. The period will be devoted to reviewing for the test.
2. I'll elaborate on points from the chapter or projects, if needed.
3. I'll return project grades to the students.

**Assignment:**

Study for the unit test.

**Evaluation:**

Participation in the review session will be noted.
Day 90

**Topic:** Test Day

**Objective:** Students will demonstrate their understanding of concepts discussed in the unit.

**Materials needed:** tests

**Outline of activities:**
1. Students will have the entire class period to complete the test.

**Assignment:**

  None.

**Evaluation:**

  A test score will be recorded. This will show me if students understand concepts discussed in the law unit.
1. Define libel and differentiate it from slander.

2. Define "retraction" and explain how this affects a possible libel action.

3. Explain what "damages" are and how they relate to libel cases.

4. Define the following:
   censorship-
   half-truth-
   shield law-
   copyright-
   slanted news-
   propaganda-

5. What are the 3 basic defenses against a libel suit—Explain.
6. What are qualifying words? Give an example.

7. What is fair comment?

8. What is a public figure and how does this concept relate to libel?

9. What are examples of nonfactual material that appear in print?

10. What is the "substantial disruption" standard?

11. Tell me about the 3 cases presented in class. Briefly state what each case involved and how it has affected journalism today.
Court's uphold, expand *Tinker* standard

1969 when the Supreme Court issued its decision in *Tinker v. Des Moines Independent Community School District*, schools around the country were in an accelerating state of unrest. The growing disillusionment with United States involvement in Vietnam had found a forum for angry debate on high school and college campuses. In a matter of months this debate would reach the flashpoint at Kent State University leaving four students dead.

So when a group of Des Moines, Iowa, high school students wore protest armbands to school in violation of regulations, the Supreme Court took what some thought was an unwise and unnecessary step by upholding their action. In 1969 for the first time, the nation's high court held that students as well as adults were protected by the First Amendment. No longer were public school authorities to be given unquestioned control over their students when the fundamental constitutional right of free speech was at issue.

As big a step as this was, the Court in *Tinker* also recognized the "special circumstances of the school environment" and the duty and interest of school officials to protect the public school system. The key was to be in balancing the interests of the school officials with those of the students and teachers.

Thus was developed the *Tinker* "substantial disruption" standard. In the words of the Court, speech that "materially disrupts classwork or involves substantial" continued on p.36
disorder or invasion of the rights of others is...not immunized by the constitutional guarantee of freedom of speech."  

Since that decision in 1969 the burden has been on the schools to reasonably forecast a substantial disruption or material interference with school activities before a court would uphold their acts of censorship. Substantial disruption must have seemed an ever-present threat in those restless years after 1969. But even today as students have mellowed their way into the 1980s, high schools and colleges are claiming they have met the standard and are justified in suppressing student speech.

The courts since Tinker have agreed that a school need not show that an actual disruption has occurred. Neither does the Tinker standard require complete certainty on the part of school officials that a disruption will occur. All that is needed is a reasonable forecast that the disruption is imminent. The difficulty arises in the schools’ attempts to justify their reasonable forecasts. Their action cannot be based on “undifferentiated fear” or “a mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint.” An administrator’s “intuition” will not suffice, nor will his opinion that a disruption “could” or “might” result.

Although the Tinker standard is applied to the individual facts of each case, it is helpful to note some examples of where the courts said the standard was met and where they said it was not.

In one Arizona high school students planned a walk-out in support of a teacher whose contract had not been renewed. An awards assembly had already been cancelled cause of a threatened confrontation among students over an earlier walkout plan. When television cameras arrived and students began walking out of their classes, some attempting to set off fire alarms, one student was stopped from distributing signs in the teacher’s support. In the student’s suit for denial of his free speech rights, the court held. The difficulty arises in the schools’ attempts to reasonably forecast a substantial disruption of the school. 6

In New York a high school newspaper sought to print both a letter to the editor signed as from the school’s lacrosse team criticizing the paper’s sports coverage and an editorial response referring to the letter-writers as “hot headed, egotistical, ‘Pissed Off’ jocks.” Although the paper was to be distributed on the last day of school, the court agreed that the school officials had reasonably forecast a material disruption of the school. 4

In another case a teacher expressed his personal belief in communism in the classroom. It caused little concern until the media publicized the matter. The court held that the “subsequent public reaction is not the kind of disruption that can be balanced against a teacher's right to free expression.” 16

So how much difference does it make where the
LEGAL ANALYSIS

cause significant emotional harm to some students, the court determined that the substantial disruption standard had been met. "While the passing out of several questionnaires might not provoke a breach of the peace, a blow to the psyche may do more permanent damage than a blow to the chin." 20

No other court has been able to apply this holding to a similar set of circumstances. Thus far it is the only case where a purely emotional or psychological disruption was found to meet the Tinker standard. But in future cases, at least where four experts can attest to it, censorship might be allowed even though no observable disruption ever occurs.

The general consensus today seems to be that high schools and colleges are no longer the hotbed of controversy they once were. But school officials suggest that such is not always the case. They say there are still times when student speech must be controlled. Like it did first in 1969, the Tinker standard is providing the balance between the schools' interests in creating a proper educational environment and the students' First Amendment right to express their views.

FOOTNOTES

2 Id. at 513.
3 Id. at 508-09.
6 Sarp v. Becken. 477 F.2d (9th Cir. 1973).
8 Papish v. Board of Curators of University of Missouri. 410 U.S. 667, 670 n.6 (1973).
10 Thomas v. Board of Education. 607 F.2d 1043, 1053 n.18 (2d Cir. 1979).
12 Burnside v. Byars. 363 F.2d 744 (5th Cir. 1966).
13 Blackwell v. Issaquena County Board of Education. 363 F.2d 749 (5th Cir. 1966).
14 Frasca. 463 F. Supp. at 1050.
15 Mabey v. Reagan. 537 F.2d 1036 (9th Cir. 1976).
19 Id.
20 Trachtman v. Anker. 563 F.2d 512 (2d Cir. 1977).
The Changing Shape of Students' Rights

In 1969, the Supreme Court of the United States ruled in the case of *Tinker v. Des Moines Independent School District*¹ that students in public schools retain their constitutional right to freedom of expression. The Court went on to say that school authorities could restrict such expression only when it would "substantially interfere with the work of the school or impinge upon the rights of other students."² In subsequent years, this decision was applied by lower courts as the Supreme Court’s basic statement in the area of student rights. Three recent Supreme Court decisions seem to restrict the applications of *Tinker* and to change the relationship between students and school personnel. The purpose of this *Memorandum* is to analyze those decisions, describe the current status of the law, and summarize the implications for those involved with the public schools.

In the most recent case, *Hazelwood School District v. Kuhlmeier*,³ the Supreme Court held that school authorities may exercise "editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."⁴ The decision has been supported and applauded by those who place emphasis on the need to maintain discipline and order in the schools. It has been sharply criticized by those who place relatively greater emphasis on the protection of civil liberties and constitutional rights. Because of the nature of the subject, the debate has gone beyond the ranks of those directly involved in the operation of the public schools to spill onto the editorial pages of the nation's newspapers and magazines. Here, too, it has produced sharply divided opinion.

One purpose of this *Memorandum* is to analyze the *Kuhlmeier* decision and the implications it has for the operation of public schools. The specific implications will, of course, center on student expression or, as the court phrased it, "student speech in school-sponsored expressive activities...."⁵

However, this *Memorandum* will go beyond those implications to link this case to two earlier ones in which the Supreme Court has balanced the rights of students against what it considers to be the "countervailing interest of society" in maintaining order in its public schools. This linkage is suggested by Justice Byron White, in the majority opinion in *Kuhlmeier*, when he refers to *New Jersey v. T.L.O.*³ and *Bethel School District #402 v. Fraser*⁴ as providing the "context within which respondents' First Amendment claims must be considered."

The *New York Times* recognized the importance of this linkage when it noted, "The case was the Court's third decision in the past two years limiting students' constitutional rights in public schools."⁵

What is certain is that the Supreme Court has, in its three recent decisions dealing with student rights, fixed new boundaries within which those rights are to be considered.

Those who support the schools' right to control the expressive speech of students in school-sponsored activities may find it difficult to understand why the *Kuhlmeier* decision has evoked such controversy. The *Spectrum*, the newspaper that was "censored," was published under school sponsorship by an advanced journalism class as a part of the curriculum and as a classroom activity. Students received credit for the class, and the journalism teacher supervised the class and the publication as a part of his teaching load. It would not seem unreasonable, under these circumstances, to expect that the school would exercise considerable control of the activity. However, the fact that the dispute involved the constitutionally protected right of free speech guaranteed that the decision would generate great controversy.

The response to the decision has followed generally expected lines. Those directly concerned with the operation of schools have expressed satisfaction. The superintendent of the school district in which the case originated...
A Legal Memorandum

affirms our position that the board of education has authority to establish curricula. The authority of boards of education would have been threatened if this case had been lost.

The president of the National School Boards Association said:

The ruling says to districts that you're no longer between the rock and the hard place, that you, as any other publisher, have the right to decide what will and will not be published.

The current journalism teacher at Hazelwood East, where the Spectrum is published, expressed no concern about the decision. She commented, "I'm glad there's somebody I could turn to if I have a question."

Others have viewed the decision with alarm and apprehension. Paul McMasters, chairman of the Freedom of Information Committee of Sigma Delta Chi, the Society of Professional Journalists, stated, "This decision cuts the First Amendment legs off the student press."

Mark Goodman of the Student Press Law Center, a Washington-based group that helped finance the case, commented:

The fact is you can't teach students quality journalism without allowing them press freedoms. ... I'd expect that many more students will be subtly intimidated to no longer cover topics like pregnancy, divorce, AIDS, or others of vital importance to them.

The decision has also moved onto the pages of the nation's newspapers. Here, too, opinion is divided. The Miami Herald, in an editorial headed, "High Court Flunks," offered the following:

How sad that the Supreme Court used an ax, not a scalpel, in dissecting the issue of adult censorship of school newspapers. Often the Court carves precisely into the gristle of individual cases. This time it chose 5-3 to lop off chunks of rights that many assumed were constitutional.

On the other side, columnist James Kilpatrick, in his January 20 column, noted:

With its decision last week in the case of a high school newspaper in Missouri, the U.S. Supreme Court restored a degree of sanity to an area of the law that had been threatened by lower court lunacy. It was a welcome decision. Heaven knows it has been a long time coming.

Views expressed by those troubled by the Court's decision spring from a number of different rationales. One of the original student editors, now a college senior, expressed the view that "this decision will turn kids off to journalism." The editor of the Bloomington (Indiana) Herald Telephone, while recognizing that the decision "has merit," expressed uneasiness over the possibility that "the decision will result in less creative, less bold, less thoughtful journalism in our high schools."

The Christian Science Monitor, in an editorial on January 15, acknowledged the authority of school boards and school officials but expressed the view that there should have been local review procedures that would have prevented the case from ever going to court. The editorial went on to say that the subjects suppressed in the Hazelwood Case—pregnancy and divorce—are family issues that are important to high school students.

... the fact that the dispute involved the constitutionally protected right of free speech guaranteed that the decision would generate great controversy.

It will take time and subsequent court decisions to determine the impact of the Kuhlmeier decision. Since there is no evidence to suggest that the status of student newspapers is a major issue in most high schools across the country, it may be that the initial reactions are more spirited than is justified. What is certain is that the Supreme Court has, in its three recent decisions dealing with student rights, fixed new boundaries within which those rights are to be considered. The remainder of this Memorandum will be given over to a summary and analysis of those cases and the implications they have for those who administer and teach in public schools.


The facts in New Jersey v. T.L.O. describe a situation that could occur in almost any high school on any day. A teacher in a New Jersey high school discovered two students smoking in a lavatory in violation of a school rule. She took them to the principal's office where they met with the assistant vice-principal. One, a 14-year-old freshman girl, denied that she had been smoking and stated that she did not smoke at all. The assistant vice-principal then asked to see her purse. On opening it, and looking in, he saw a package of cigarettes and rolling papers of the kind associated with the use of marijuana. Emptying the purse, he then found plastic bags containing what proved to be marijuana, a pipe, a fairly substantial amount of money, and two letters, the contents of which connected T.L.O. with marijuana dealing.
The principal then called both the mother and the police. Under police questioning, the girl confessed that she had been selling marijuana in school. On the basis of the evidence taken from the purse and the confession, the state brought delinquency charges against the girl. She contended that the search was illegal and that the confession could not be used because it was “tainted” by the illegal search. The juvenile court denied this contention on the grounds that there “was reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies.” The girl was found to be delinquent and sentenced to a year on probation.

After several appeals, the state supreme court agreed with the lower courts that school officials did not need a warrant and that the school officials must simply have “reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order.” However, it held that the specific search involved had been illegal, reasoning that the contents of the purse had no bearing on the charges against T.L.O. There was no school rule against having cigarettes in one’s possession; the rule was against smoking in school. The court found that the principal had no information to lead him to suspect that the cigarettes were in the purse, and that there was, therefore, no reasonable basis on which to order the search. Finally, the court held that finding the cigarettes and not justify “rummaging” further through the purse to find other evidence. The school district appealed.

The Supreme Court of the United States originally granted certiorari to decide whether the exclusionary rule should operate against the use of evidence seized in an illegal search. However, on hearing the case, the Court decided to review the circumstances surrounding the original search. After a rehearing, the Court decided that, although constitutional protections were applicable, the original search had been legal. The Court reasoned:

1. The Fourth Amendment prevents unreasonable searches and seizures by state officers, and school officials, in carrying out searches and other disciplinary functions, act as representatives of the state.

2. Students have a legitimate right to privacy which must be balanced against the school’s equally legitimate need to “maintain an environment in which learning can take place.”

3. School officials are not required to obtain a warrant before searching a student under their authority.

4. In the school setting the proper standard for justifying a search must be different from that in other settings. The legality of a student search should be based, not on “probable cause,” but simply “on the reasonableness, under all the circumstances, of the search.”

Within this legal framework, the Court found that there were two separate searches with the first, the search for cigarettes, providing the basis for the second, the search for marijuana. It found further that the search for cigarettes was reasonable on the ground that discovering cigarettes “would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking.” The fact that her purse “was the obvious place to find them [cigarettes]” gave the assistant principal the reasonable suspicion needed to justify the search. Finally, the Court held that the discovery of “rolling papers” during the first search “gave rise to a reasonable suspicion that T.L.O. was carrying marijuana in her purse.” This justified the further search in which items implicating T.L.O. in drug dealing were found. Having found both searches reasonable, the United States Supreme Court reversed the decision of the New Jersey Supreme Court.

It should be noted, in analyzing this case, that the U.S. Supreme Court did not, in any way, abrogate student constitutional rights. It found, in fact, that students enjoy the protection of the Fourth Amendment to the Constitution of the United States. What the Court did say was that this protection must be balanced against the duty of administrators and teachers to maintain order in the schools. The Court established “reasonable suspicion” as the standard that school officials must meet in search and seizure cases. This is undoubtedly a less stringent standard than the more familiar “probable cause.” However, it is still a standard that must be met. The search must be reasonable, given its objectives, and must go no further than those objectives require.

**Bethel School District #403 v. Fraser (1986)**

This case involved a student in a high school outside Tacoma, Washington. The student, Matthew Fraser, delivered a speech nominating another student for elective office. The nominating speech was given at a voluntary assembly held during school hours as part of a school-sponsored program in self-government. There were approximately 600 students in attendance, many of whom were 14 years old. During the speech, Fraser referred to his candidate “in terms of an elaborate, graphic, and explicit sexual metaphor.” Fraser had discussed the speech with several teachers prior to delivering it and at least two had advised him
against giving it. There was also testimony that the assembly had "hooted and yelled" during the speech, that "some mimicked the sexual activities alluded to in the speech," and that others appeared to be "bewildered and embarrassed."

The day following the presentation, and after receiving teacher complaints about it, the principal notified Fraser that he had violated the school's "disruptive conduct rule." Fraser was provided copies of the reports describing his conduct and given the opportunity to respond. After admitting having used "sexual innuendo" in the speech, he was suspended for three days and his name was removed from the list of candidates for graduation speaker. The penalties were upheld in the school district's grievance procedure; however, he was allowed to return to school after two days.

Through his father, Fraser brought suit in Federal District Court. That court held that the school's actions had violated Fraser's First Amendment rights, that the disruptive conduct rule was "unconstitutionally vague and overbroad," and that the removal of his name from the list of graduation speakers violated Fraser's Fourteenth Amendment rights. The court voided the punishments and awarded Fraser $270 as damages and $12,750 in costs and attorney's fees. The U. S. Court of Appeals of the Ninth Circuit, by a vote of 2-1, affirmed the decision of the lower court.

The Supreme Court of the United States granted certiorari and after hearing argument, it reversed the court of appeals. In so doing, it reasoned as follows:

1. While the fundamental values of "habits and manners of civility" require "tolerance of divergent political and religious views," this interest must be balanced against "society's countervailing interest" in helping students to develop socially appropriate behavior. The Court noted that both houses of Congress have rules "prohibiting the use of expressions offensive to other participants in the debate."

2. The First Amendment guarantees wide freedom in adult public discussion and would protect an adult using offensive language to make a point in a political speech. However, it does not follow that "the same latitude must be permitted to children in a public school."

3. It is an appropriate function of the public schools "to prohibit the use of vulgar and offensive terms in public discourse."

4. Parents and school authorities have an obvious interest in protecting children, especially in a captive audience, from "sexually explicit, indecent, or lewd speech."

5. It is necessary for school officials to be able to impose sanctions for a wide range of unanticipated activities that might interrupt the school program. It is, therefore, not necessary for school disciplinary codes to be as detailed as the criminal code.

6. A high school assembly or classroom is not the place for a "sexually explicit monologue directed toward an unsuspecting audience of teenage students." The school can, when this happens, disassociate itself from such a speech.

7. The school rules necessary to support punishment "need not be as detailed as the criminal code." Neither does a penalty of two days' suspension constitute the serious kind of sanction that might bring into play "the full panoply of procedural due process protections applicable to a criminal prosecution."

8. The decision as to what manner of speech is inappropriate in the classroom or school assembly "properly rests with the school board."

The implications of this case are many. The Supreme Court clearly recognized that schools have the authority and the responsibility to prevent and/or punish the use of "lewd" and/or "obscene" speech. The decision also reinforces the need to have clearly stated rules and to have these rules communicated to students. The decision makes a clear distinction between speech that has a political purpose (a la Tinker) and speech that is nonpolitical in nature. The two most important parts of the decision are the clear recognition that the constitutional rights of students in school are not the same as those enjoyed by adults and the indication that the school board is the proper authority for deciding what speech is "lewd" and/or "obscene."

As in the T.L.O. case, the Court did not alter its basic position that students have constitutional rights that must be respected in the schools. But, as in the search and seizure case, the Court again indicated that these rights must be balanced against the duty of public school officials to maintain an environment free of inappropriate speech and behavior. The approach of the court in the Bender and T.L.O. cases set the stage for a still broader review of the issue of the scope of student constitutional rights, and the Hazelwood case became the vehicle for that consideration.