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CSA 543: Legal and Ethical Issues in College Student Affairs

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***Students and the First Amendment.*** The student newspaper at a public university has published a controversial article about a sophomore cheerleader in its annual humor issue. The newspaper is funded with student activity fees. The article purports to chronicle the cheerleader's intimate thoughts while leading cheers at a basketball game. The article is vulgar and probably offensive to many readers, and the student who is the object of the story is humiliated. The cheerleader and her parents are threatening to sue unless the institution punishes the student authors and editors and forces them to print a retraction in the student newspaper. If you were the Dean of Students, what information would you seek? What questions would you ask your attorney and what advice would you request? Analyze the situation from (1) a legal perspective and (2) a student development perspective. Develop a plan of action for addressing this problem, both in the short term and the long term.

**Information I would seek:**

As the Dean of Students, I would want to know the following information:

- What regulations had the student newspaper been given in terms of what they could/could not publish?
- Who wrote the article?
- What actions are the cheerleader and her parents currently taking?
- Has anyone from the school's administration talked with the student and her parents? What was said by both parties?
- What were the "intimate" thoughts of the cheerleader that were published? Are they accurate according to the cheerleader?
- How has the article affected the cheerleader since its publication?
- What steps have people at the institution already taken to appease the cheerleader and her parents?
- Has anyone talked with the students who wrote/edited the article? What was said?

**Questions I would ask the attorney and advice I would request:**

The questions and advice that I would ask the attorney include:

- What is the school responsible to do in response to this situation?
- How can we manage the situation and not allow it to grow bigger and more out of hand?
- How does the free speech amendment fit into this case? Were the authors exercising their right of free speech, or were they being libelous in their article?
- If the article was obscene (sexual in content), do we have the authority as an institution to punish student writers and editors for publishing the article? Based on prior cases (*Miller v. California*, 1973), could this article be deemed obscene?
- Is the article libelous in what it contains? It seems that it is, which would then lead me to think that we could punish the students involved. Is this correct?
- Do we hold the writers and editors of the student newspaper equally responsible? Who ultimately should have caught this article before it was published?
- What would be the best way for me to respond as the Dean of Students? What are things that I should avoid saying or discussing with the parents and student?
- Should I refuse to talk with the student and her parents if they are serious about pursuing a lawsuit? Or, should I talk to them and do everything in my power to help convince them not to pursue a lawsuit?
- Are there other university authorities that I should involve in the situation?

**Analysis of the situation from a legal perspective:**

From a legal perspective, there are several things that need to be considered in this situation. The first questions that should be considered focus on if the publication of this article was within the first amendment's description of freedom of speech and

expression. Did the students have a right to publish this article? The Legal Information Institute states, “The most basic component of freedom of expression is the right of freedom of speech. The right to freedom of speech allows individuals to express themselves without interference or constraint by the government. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech” (Legal Information Institute-[http://www.law.cornell.edu/topics/first\\_amendment.html](http://www.law.cornell.edu/topics/first_amendment.html)). Students are allowed to speak freely, which extends into student press. Freedom of speech gives people the freedom to express differing viewpoints, viewpoints not accepted by the majority, etc.

Though freedom of speech is protected by the first amendment, there are several things that can be, at least in some sense, controlled by an institution. For example, students can be held accountable if they publish information that is obscene, threatening, or untruthful in nature (Bird, 2003). Obscenity is seen in direct depiction of some type of sexual conduct (Sheridan, 2004). Another area that students can be held accountable in their publications is if they use slanderous material about an individual. In order for a publication to be deemed libelous, it needs to be false, identify a particular person, cause some type of injury to the noted person’s reputation, and the “falsehood be attributable to some fault on the part of the person or organization publishing it” (Sheridan, 2004).

When considering this situation in terms of legal issues, it appears from the information given that the students who published/edited this piece in the student newspaper can be held accountable for their actions. The article on the cheerleader’s intimate thoughts appears to have been libelous to one cheerleader in particular. Because

the article was published, the cheerleader may now have a hard time facing her peers. Her reputation may be different based on the content of the article. Although students have a right to legally publish differing views and opinions, this article most likely crossed the line of freedom of expression because it was slanderous (and possibly obscene in nature). The request of the cheerleader and her parent's to have the student newspaper print a retraction should be honored.

**Analysis of the situation from a student development perspective:**

When considering a student development perspective, I believe it is important to make sure that the students who published and edited this piece learn as a result of the discipline process. I also think it is crucial to help the cheerleader who was hurt understand how to deal with her emotions and feelings based on the situation. From the developmental perspective, this situation should be used as a learning tool for all parties involved. It can also be used as a learning lesson to the student body regarding appropriate ways to interact with and represent their peers.

First, when thinking about the students who published this article, I would hope to sit down with them and help them understand the lack of appropriateness of the article. From a developmental perspective, it is crucial to try and learn the reasons behind why the students wrote and published this article. What were their motives? Once these are known, a dialogue can happen both among the students and the students and administrators in terms of what can be learned from the situation. I would most likely require these students to write apologies to the cheerleader and the student body for their lack of judgment in the situation. There is also the possibility that the students may lose their positions as writers for the student newspaper.

Second, when considering the cheerleader and her parents, it is necessary to really listen to their feelings and hurts regarding the publication. An open conversation should be held to help the cheerleader and her parents understand what is being done as a response by the university as well as what the cheerleader can do to maintain a healthy perspective of herself and the institution. It is important to help the cheerleader deal with her emotions and not just pretend that she was not affected by the situation. It may be helpful to refer the cheerleader to a counselor or a mentor who can talk through things with her.

Third, in respect to the student body, if dealt with well, the situation could set an example of appropriate and non-appropriate behaviors regarding students at the institution. Conversations, programs, etc. can be held to set straight behavioral expectations and dialogue about how to treat people with respect. Also, if the students who wrote and published the article are required to make a public apology in the next newspaper publication, the message will be sent that behaviors like theirs are not tolerated by the university.

#### **Action plan to deal with the situation: short and long term**

My short term plan to deal with the situation is in many ways outlined in the above section. First, I would have an administrator (maybe myself as the Dean) talk with the cheerleader and her parents. I would seek to understand their thoughts and opinions regarding the matter. I would want to know their expectations of the university in dealing with the situation. I would also encourage and challenge the cheerleader to find someone whom she trusts to talk through the situation and her feelings. Then, I would have an administrator sit down with the students who wrote and published the article. In this

conversation, it would be necessary to understand the students' motives, express the university's stance on such behaviors, and create action steps that can be taken to help these students take positive steps forward to deal with the situation (apology in next addition of student newspaper; sanctions for their behavior such as reflections on their actions, meeting with mentors, etc.). After this, I would sit down with the school attorney and other administrators to develop an action plan that the university would take to deal with the situation, based on the conversation with the cheerleader, those who were involved in publishing the article, as well as the school's policies.

My long term action plan to deal with the situation would include a detailed examination of school policy regarding what student organizations are allowed to publish. I would make sure that policies clearly explain behaviors that are both appropriate and not appropriate by student organizations. I would also create protocols to make sure that student organizations are accountable to a staff member for anything that would be published; it is so important for someone who truly understands school policy to look at anything published prior to publication to check that it is within guidelines set by the institution.

**Sources Used:**

Bird, L. E. *A student affairs perspective of campus free speech issues: Meeting the challenges*

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Sheridan, D. "Session One: An Overview of Postsecondary Law." California, [Class].