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VF (Ref. Office)

Harris Wofford  
Old Westbury College,  
Oyster Bay, New York .

Dear Harris:

I am deeply disturbed and disappointed by your action regarding ABARAXIS. I think that your motivation was political, your action philosophically and legally indefensible, and your defense rather transparent rationalization.

There are several issues involved in this case, including the right of a printer to censor his work, the question of a State's right to recall its products, the question of the State (or any organization) ~~RIGHT~~ right to confiscate materials in the mail, and the question of any college officials' right to tamper with inter-office message distribution. Let me try to deal with them in turn.

**DOES A PRINTER HAVE THE RIGHT TO CENSOR MATERIALS HE DISAGREES WITH BY REFUSING TO PRINT THEM?**

Suppose that, after having received prior permission to use our printer and facilities, I asked our printer to print an article by Marx. Supposing, further, that he felt "...obliged to run off, on the college machines, materials he considered deeply offensive and immoral...." and he complained to you. Would you respond to this by confiscating the materials? Would you have felt that his objections, while made in good faith and in seriousness, were binding on you? It may be that he would want to quit rather than print any more essays - but that would be his choice (a la civil disobedience). In any event, society and the Law, do not place the role of censor of either ~~political or sexual materials~~ political or sexual materials on the shoulders of printers.

**HOW LONG AFTER PRODUCTION CAN A STATE CLAIM CONTROL OVER ITS PRODUCTS ?**  
(NOTE: Note: this is not to say claim responsibility for its products)

Do the materials printed on a college press, with college paper, cease to be college property the moment they are surrendered by the printer to the person requesting such materials? This is a question of when the surrender of materials into another's ownership occurs. (Note that this surrender is different in kind from a surrender of materials into another's hands for servicing, such as occurs with a T.V. repairman or a mailman). The key here is ownership. As the college did not request or attempt to repossess those issues of ABARAXIS in Michael's personal possession, it would seem that the state recognized his ~~ownership~~ ownership. From this, we see that the college in fact recognized the shift of ownership which occurred with the delivery of ABARAXIS by the printer, to Michael. Thereafter, the next issue is:

**CAN OLD WESTBURY CONFISCATE MATERIALS PASSING THROUGH THE INTER-OFFICE MESSAGE DISTRIBUTION WHICH ARRIVED ON CAMPUS VIA THE U.S. MAILS.**

No one here would consider confiscating from the U.S. Mails materials arriving on campus from outside. This is clearly against Federal Law.

Setting aside, then, the question of confiscation of Federal Mails, we are left with two other issues:

- a) Materials emanating from outside the college, but placed in the college hands for servicing (delivery).
- b) Materials emanating from within the college, to be distributed within the college.

CAN MATERIALS WHICH ORIGINATED OUTSIDE THE CAMPUS, HAVING BEEN PLACED IN THE HANDS OF OUR MAILROOM, BE CONFISCATED BY THE ADMINISTRATION OF THE INSTITUTION FROM WHICH THE MATERIALS ORIGINATED?

If a Stonybrook, Hofstra, or San Francisco State had ~~be~~ delivered a publication which originated from his respective institution, which his institution (administration) felt was...."Offensive to the Public Morals", could ~~he~~ they invade our mail room and retrieve said materials? Of course not! No administrator in his right mind would consider seriously the notion of entering our mailroom to retrieve any materials. Due to the property transfer, location, ect, it would be clearly "to late".

CAN MATERIALS WHICH ORIGINATED FROM WITHIN THE CAMPUS, HAVING BEEN PLACED IN THE HANDS OF THE MAILROOM, BE CONFISCATED BY THE ADMINISTRATION OF THE INSTITUTION FROM WHICH THE MATERIALS ORIGINATED?

ASSUME I sent a "dirty " letter from me to anyone on campus through the mail room. Could you confiscate it in the mailroom? Could you confiscate it if it were legitimate if you disagreed with it? How would ~~ix~~ you treat a faculty evaluation of a student you knew, when you disagreed with his statements? Would you confiscate it? In any case the legal principle is the same: my property was placed in the hands of the servicing agent (the mail Distribution system) for servicing. I did not surrender ownership to the mailroom. In fact, I surrendered ownership to the recipient upon depositing it.

I don't know who delivered ABARAXIS to the mail room for distribution, but I assume it was Michael. Suppose he ~~we~~ had methodically put them in envelopes, and placed them in your 'out'box . It would go to the mail room, be sorted, and be delivered. No one should interfere with such a process, or else no one could have confidence in the sanctity of such message delivery systems, This could have vast implications for a system which now carries contracts, financial aid applications, student folders, faculty resumes, and other confidential data through out the college. If Michael helped the mail room out by carrying the materials to the sorting point , such materials should legally be considered "in the mail" and inviolate

From what I understand, The publication placed in the mail room was intended for two different destinations: the on campus students; and the college Council, which involved the use of the U.S.Mails. Legally they are different cases. As far as the actual mailing of ABARAXIS outside the college is concerned, (and I think that is the heart of the matter) I feel you seriously erred by refusing to ..... "release the copies we have". It would have been a much more responsible course to give them to their owner , Michael, and let him mail them, thus freeing yourself from legal responsibility in the eyes of the postal authorities, and keeping your integrity as a believer in the role of the state educational institutions in innovation and change.

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I submit, then, that ABARAXIS was not the colleges property to be held- that it may have been its responsibility, but responsibility does not imply ownership. To illustrate: suppose that a church pastor begged a new car from Ford Co. , which was made on their machines, by their worker, ect. The car , due to mechanical fault, is in an accident which injures the pastor. Can the Ford Co. disclaim responsibility? No. It was their fault the car was mechanically unsafe. Can they claim ownership, and recall the car to their possession? No, clearly it is the Pastors. The responsibility of the Fault belongs to Ford, not the auto. in a like manner, you were wrong to seize the issues of Abraxis . What is even worse, you kept it. Had you simply decided not to let the college assume responsibility of mailing, you could have given the issues over to Michael for mailing.

I am quite willing to grant that the intimacy of our college may have made the absurdity of taking anothers property from the mailroom less obvious. I feel sure that you would not have asked Steadybrook to allow you to enter their mailroom. But, this does not really excuse the injustice.... it simply mitigates it a little.

What is most troubling to me about this incident is that it seems clear that in light of political considerations you compromised legal and moral positions which you as a ~~SH~~ lawyer should know better than most.

The Issue of Co-ed dorms is upon us. Many of the surrounding community, many of our staff, and perhaps some of our concel are opposed to allowing co-ed dorms or permitting open visiting hours. In fact, they may "feel free to protest... the colleges participation..." or feel that to permit such an action would " offend the moral views of the majority of the people who support this college". They may even feel that this would "... unduly involve the college.." All of the above may be true. If it is, I hope your future actions reflect to a greater degree than your past the moral, philosophical, and legal standards of universitys regarding freedom, responsibility, and privacy.

Respectfully,

Fran Koster