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MEMORANDUM

I. INTRODUCTION

In 2008, there was an incident involving two students at Rio Largo School¹. Two students, a brother and sister, were subjected to actions by school and state officials. There are various constitutional questions presented by these events, as well as the question of whether the school's zero tolerance policy is in need of revision.

II. BRIEF STATEMENT OF MATERIAL FACTS

CiCi and J.J Vigil moved to Rio Largo with their mother. CiCi competed in the Spaceport Flight Competition on behalf of the Rio Largo Science Club a year after her move. Her entry won first place and earned her a substantial scholarship. J.J Vigil apparently did not fit in as well. He was in the habit of reading *the Anarchist Cookbook*, a family heirloom of his mother's. The book gives explicit details about bombs and various other illegal items. One day, following a mysterious bomb threat, the school security guard, Mr. Martin confiscated the book. After looking through it, he came to the conclusion that CiCi had used potentially dangerous materials to build her rocket and that the brother and sister could be plotting some

¹ Note that the opinions expressed here are based on the assumption that Rio Largo is a public and not private school.

crime. He called Sheriff Munson who arrested CiCi. Due to her arrest, she was stripped of her scholarship.

A. J.J.'S FIRST AMENDMENT RIGHT WERE VIOLATED, BECAUSE HIS READING OF *THE ANARCHIST'S COOKBOOK* DID NOT MATERIALLY OR SUBSTANTIALLY "INTERFERE WITH THE REQUIREMENTS OF APPROPRIATE DISCIPLINE IN THE OPERATION OF THE SCHOOL".

The First Amendment states that no law shall be made that abridges the freedom of speech or press. Additionally, echoing the case law on the First Amendment, the Rio Largo School handbook states that students shall have the right to encounter diverse points of view². However, the School does have a "compelling interest" to provide a safe learning environment for its students. *Tinker v. Des Moines Independent Community School District*. So Students may exercise their First Amendment rights provided that they do not disrupt the educational process or allow dangerous situations to occur. *Id.*

To balance the interests of the Students and the School, as representative of the State, the Supreme Court, in *Tinker v. Des Moines Independent Community School District*, stated that "Where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school the prohibition cannot be sustained." *Id.* Thus the question becomes, whether J.J.'s "engaging in the forbidden

² In *Minarcini v. Strongsville*, the 6th Circuit Court of Appeals upheld the students' rights to receive information and rejected the withdrawal of certain contentious books from a school library.

conduct" of reading *the Anarchist Cookbook* was interfering "with the requirements of appropriate discipline in the operation of the school". *Id.*

Reading a book is not, in and of itself, contrary to the learning environment, or indicative of intent to commit a crime. Even if a book has content that is deemed "dangerous" by some, this does not mean that the reader will act on what he is reading. For example, one could read about how the Atom Bomb was created, but that does not mean that the reader will build one himself. The School's Handbook also recognizes this fact, which is why it states that there must be reasonable suspicion of disruption before action will be taken upon a student.

All evidence seems to show that J.J.'s reading of the book in the cafeteria was peaceful, and the seizure of J.J.'s book showed a distinct rudeness and intrusiveness on the part of the school. There seems to be no evidence that J.J. was disrupting the learning process or environment.

Even officials "suspicion" that J.J. had called in a bomb threat at some point does not constitute reasonable grounds to suspect him of criminal intent. There was no indication that J.J. had any intention to act upon what he read in *the Anarchist Cookbook*. Suspicion is not evidence.

It could perhaps be said that he was disturbing his own educational process by skipping class to read this book.

However, it was the skipping of the class, not the content of the book that constituted the disturbance. J.J. could have been reading *Huckleberry Finn*, and his education would have been just as interrupted. The proper avenue of discipline in cases such as J.J.'s is that the Principal should have asked J.J. not to bring it to school anymore, and lay out punitive consequences if J.J. skips class.

If the School is truly concerned about J.J.'s emotional wellbeing, the school might also suggest counseling for J.J. to discuss his behavioral problems so that they do not escalate. In the meantime, they might also wish to keep an eye on him just to insure that he does not act on what he has read. This, however, should be the extent of the school's actions, so that J.J.'s freedoms remain protected.

B. THE SEIZURE OF CICI'S ROCKET AND HER ARREST BY SHERIFF MUNSON WAS A VIOLATION OF THE FOURTH AMENDMENT.

The Fourth Amendment explicitly states that people have the right to be secure in their person, houses, papers, and effects, against all unreasonable searches and seizures. The arrest of Ms. Vigil and the confiscation of her rocket were unreasonable due to the absence of evidence against her. This shows an infringement of her rights and of the law. The school handbook defines a weapon as "any type of gun, knife, explosive,... or other item intended to cause death." CiCi's rocket was built for

a competition and for the advancement of science not as a weapon. Also half of the other competitors built rockets and were therefore just as "culpable." In addition the school obviously condoned the building of rockets because they held the competition inside their school.

In *New Jersey v. T.L.O.*, the Court ruled that those conducting a search must have "reasonable grounds for suspecting that the search will turn up evidence that the student has violated the law or the rules of the school." There were no "reasonable grounds" because CiCi had not violated the school's rules on weapons and weapon possession. The only evidence against Ms. Vigil came from a book in the possession of her brother and her relation to him. In first place, the school wrongfully assumed that J.J. was responsible for the bomb threat. From there they made another assumption: that his sister must be involved as well. Then, because the materials in her rocket matched the bomb ingredients in a book from the 70's, the school assumed again that she must be about to commit a crime.

C. THE ZERO TOLERANCE POLICY IS A GOOD POLICY, BUT ONLY IF IT IS FOLLOWED CORRECTLY, AND ONLY IF THERE IS THE EVIDENCE TO SUPPORT APPLICATION OF THE ZERO TOLERANCE POLICY.

The Rio Largo handbook is based on a zero tolerance policy that provides severe penalties for any breach of the school rules. The policy, however, should not apply in the case of CiCi

Vigil. In order for a zero tolerance policy to be fair and effective it must always take into consideration the amount of evidence. It is always beholden on those who administer justice to make sure that punishment is dealt out fairly and correctly whatever the crime. It is even more beholden on them when such weighty penalties as those of a zero tolerance policy are in play.

The problem with applying the policy to CiCi is that there is simply no evidence to substantiate the charges that were laid so presumptuously at her door. The only evidence against her consists of her relationship to her brother and a book in his possession. The policy itself states that the suspicion must be reasonable and individualized. The suspicion of Ms. Vigil has since been shown to be neither. In the instance of CiCi's rocket, since it was suspected to be a weapon, the school should have locked it up and kept it under surveillance when it was on display. This could have been done tactfully by enlisting the willing support of Ms. Vigil and explaining the potential danger that her project posed.

Zero tolerance can be a good policy provided that there is enough evidence to substantiate it. A zero tolerance policy can provide a very safe and healthy environment for students. However, it should apply cases where it can be clearly shown that a violation of the rules has been committed. If school

officials can not be trusted to determine the merits based on the evidence, then the policy needs to be revised to have more specific evidentiary requirements. Additionally, there should be an internal an appeals process for students who feel they were unjustly treated. This leaves less room for human error, and would help to prevent future injustices from happening.

III. CONCLUSION

J.J. Vigil was within his Constitutional rights to read the Anarchist Cookbook. Also, the seizure of Ms. Vigil's rocket and her subsequent arrest were unconstitutional. Finally, the school's zero tolerance policy should be revised to take into account the amount of evidence in ambiguous cases.