

The **Times-Picayune Publishing** Corporation, Bob Ross and Robert Rhoden v. Harry Lee, Individually and in his capacity as Sheriff for the Parish of Jefferson, Louisiana

Civil Action No. 88-1325

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA

15 Media L. Rep. 1713

April 15, 1988, Decided; April 18, 1988, Filed

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Robert F. Collins, UNITED STATES DISTRICT JUDGE

Findings of Fact

1. *The Times-Picayune Publishing Corporation (The Times-Picayune) is the publisher of The Times-Picayune*, a daily newspaper which is circulated throughout southeastern Louisiana.

2. The Times-Picayune has established news offices which provide coverage of local matters in specific geographic areas. The Times-Picayune has established East and West Jefferson news offices, which report primarily on matters of interest to the residents of the East Bank and West Bank of Jefferson Parish, respectively.

3. The reporters assigned to the East and West Jefferson news offices report on the activities of Sheriff Harry Lee and the Jefferson Parish Sheriff's Office to inform the residents of Jefferson Parish about crime, law enforcement activities, and the conduct of public officials.

4. The plaintiffs, Bob Ross (Ross) and Robert Rhoden (Rhoden), are reporters employed by The Times-Picayune. Rhoden and Ross are assigned to The Times-Picayune's East Jefferson news office. Ross regularly covers the Jefferson Parish Sheriff's Office. Rhoden formerly covered the office on a regular [*2] basis and now does so on a "backup" basis.

5. The defendant, Harry Lee (Lee) is domiciled in the Parish of Jefferson, Louisiana.

6. Lee is the duly elected Sheriff of Jefferson Parish.

7. Lee is also the plaintiff in *Harry Lee v. James Gill and The Times-Picayune Publishing Corporation*, No. 353-935, of the Twenty-Fourth Judicial District Court, Parish of

Jefferson, State of Louisiana, filed on November 12, 1987. In that action, Lee has sued The Times-Picayune and a Times-Picayune columnist in defamation. Lee seeks to recover one million dollars in damages on the basis of allegedly defamatory statements published in a Times-Picayune column on November 8, 1987.

8. After a runoff election, Lee was re-elected to a third four-year term as Sheriff in November, 1987. The Times-Picayune endorsed Lee's opponent in the runoff election. Prior to the 1987 election campaign, The Times-Picayune, in an editorial, had called for Lee's resignation as Sheriff. The editorial criticized, among other things, Lee's handling of a convicted rapist named Brian Busby during his incarceration under Lee's control.

9. Long before December of 1987, Lee had formed the opinion that Times-Picayune news coverage [*3] of Lee and his office was inaccurate and systematically biased against him. Lee maintains that opinion at the present time and has maintained that opinion at all times pertinent to this litigation.

10. Lee's attitude toward The Times-Picayune is illustrated by a December 16, 1987 entry in the desk calendar of his senior public information officer, Lt. Robert Garner. Lt. Garner recorded that, upon reaching the Sheriff on his car telephone to secure information in response to a question from plaintiff Ross, "Sheriff says *screw* press has *no* comment under *any* circumstances." (Emphasis in original.) Garner noted in his calendar that he had "called Ross back and relayed the non-message."

11. On December 22, 1987, The Times-Picayune reported on the robbery of New Orleans Saints football coach Jim Mora and Mrs. Mora at their Metairie, Louisiana home. The story appeared under the by-line of Ross. The news article was accurate in all respects except that it attributed some information about the Mora robbery, which was itself accurate, to Jefferson Parish Sheriff's Office Public Information Officer Sgt. John Fortunato. The information attributed erroneously to Fortunato had, in fact, [*4] been obtained from publicly-available records in the Jefferson Parish Sheriff's Office.

12. The erroneous attribution to Sgt. Fortunato of accurate information obtained from the public record did not tend to embarrass or discredit Fortunato with the public. The article suggested only that a public information officer was doing just that - informing the public about a newsworthy criminal offense.

13. Shortly after the publication of The Times-Picayune's December 22, 1987 news story regarding the robbery of Jim Mora, Lee demanded that The Times-Picayune correct the erroneous attribution to Sgt. Fortunato of information obtained from the public record. The Times-Picayune did not publish the correction demanded by Lee. During the week of December 22, 1987, Lee informed representatives of The Times-Picayune and directed his public information officers that The Times-Picayune would no longer be notified in advance of press conferences to be conducted by the Jefferson Parish Sheriff's Office and that representatives of The Times-Picayune would not be permitted to attend press conferences conducted by the Jefferson Parish Sheriff's Office.

14. During that week, Lee also informed Times-Picayune [*5] reporters and directed his public information officers that the Jefferson Parish Sheriff's Office would not respond to any questions from Times-Picayune reporters, including questions concerning the activities of the Jefferson Parish Sheriff's Office or crimes in Jefferson Parish, unless the questions were submitted in writing to the Jefferson Parish Sheriff's Office Public Information Officers. Lee also directed his Public Information Officers and advised The Times-Picayune that his office would respond to such written requests for information only in writing and only if it chose to do so.

15. During the week of December 22, 1987, Lee also directed his Public Information Officers that they were not to provide The Times-Picayune with notification of newsworthy events (unless specifically authorized by Lee in particular instances), notwithstanding that the officers routinely and systematically notify other news organizations which cover Lee's office of such events without prior authorization from the Sheriff.

16. On January 20, 1988, The Times-Picayune received a written statement from Sheriff Lee relative to the Jefferson Parish Sheriff's Office policies with respect to The Times-Picayune [*6] and its employees. The letter provided by Lee, dated January 11, 1988, stated:

To ensure that I or my information officers will never be misquoted again, I have instructed them to answer questions for The Times-Picayune only when the questions are in writing.

It is not my intention to have my personnel look up public records for your reporters and do their work for them. Most of the information that is of interest to you should be available from the police register.

Your reporters need not address the letters to me, but they should be addressed to Lt. Bob Garner or Sgt. Johnny Fortunato.

As stated in The Times-Picayune recently, it is not my intention to invite The Times-Picayune to news conferences. If we think there is an item that may be newsworthy, we will issue it to The Times-Picayune in a written release.

17. The directives and policies described in paragraphs 13-16 have not be imposed on any news organization other than The Times-Picayune.

18. The directives and policies described in paragraph 13-16 are official directives and policies of Sheriff Lee. These directives and policies have been promulgated and implemented under color of state law.

19. The directives and [*7] policies described in paragraphs 13-16 remain in full force and effect as of the date of trial.

20. The directives and policies described in paragraphs 13-16 were imposed because of Sheriff Lee's general dissatisfaction with the contents of The Times-Picayune's news coverage of the activities of Sheriff Lee and the Jefferson Parish Sheriff's Office, including dissatisfaction with The Times-Picayune's accuracy and fairness. The Times-Picayune's refusal to publish a correction of the erroneous attribution of information to Sgt. Fortunato in the December 22, 1987 Mora robbery story may have precipitated but was by no means the sole or principal reason for the imposition of the directives and policies described in paragraphs 13-16.

21. Press conferences of the Jefferson Parish Sheriff's Office are conducted by public employees, pursuant to the conduct of their official responsibilities, in publicly-owned and operated facilities. Such press conferences are called for the purpose of informing the public about the conduct of government and public officials. Except for The Times-Picayune, news organizations in the Greater New Orleans area that regularly cover the Sheriff's Office are routinely [*8] invited to and admitted to such press conferences.

22. The press conferences conducted by The Jefferson Parish Sheriff's Office generally begin with a prepared statement read by Sheriff Lee or a representative. After the reading of that prepared statement, reporters are invited to ask questions of Lee and his representatives. In their questions, reporters attempt to clarify the information provided by the Jefferson Parish Sheriff's Office, to obtain more in-depth information concerning the subject of the press conference and to question Lee on other topics relating to Jefferson Parish Sheriff's Office activities. Lee and his representatives typically answer many of the questions posed, unless there is a specific reason not to. The press conferences of the Sheriff's Office also often include the visual display of items of contraband or other items of public interest. Press representatives who attend the conferences are typically afforded the opportunity to observe and to photograph or otherwise visually record the press conference participants, items displayed, and other matters of visual interest.

23. On the morning of December 28, 1987, Ross discussed Lee's policy imposing restrictions [*9] on The Times-Picayune with Jefferson Parish Sheriff's Office Public Information Office, Lt. Bob Garner.

24. Lt. Garner informed Ross that under Sheriff Lee's policy, The Times-Picayune would not receive prior notice of and would be excluded from press conferences conducted by the Jefferson Parish Sheriff's Office. Garner informed Ross that the Jefferson Parish Sheriff's Office planned to conduct a press conference concerning a drug arrest sometime during that day, December 28, 1987. Garner told Ross that he was prohibited by Sheriff's Lee policy from telling Ross when the press conference would take place.

25. On December 28, 1987, the Jefferson Parish Sheriff's Office scheduled a press conference to take place at the Jefferson Parish Sheriff's Office East Bank Headquarters located at 3300 Metairie Road, Metairie, Louisiana, at 1:00 p.m. The purpose of the press conference was to release information concerning a drug arrest and one million dollar drug seizure at New Orleans International Airport.

26. Lt. Robert Garner contacted the news organizations, except for The Times-Picayune, which regularly cover the Sheriff's Office and frequently attend its press conferences to notify those [*10] organizations of the press conference scheduled on December 28, 1987.

27. The Jefferson Parish Sheriff's Office did not notify The Times-Picayune in advance of the time and place of the December 28, 1987 press conference, as it did the other media organizations described in paragraph 26.

28. Ross did not learn that the press conference had been scheduled for 1:00 p.m. until approximately 1:10 p.m. By the time Ross arrived at the Jefferson Parish Sheriff's Office, the press conference had ended. Ross was given a written press release by the Jefferson Parish Sheriff's Office.

29. Because of Sheriff Lee's policy of refusing to notify The Times-Picayune of press conferences to be conducted by Jefferson Parish Sheriff's Office (and excluding the Times-Picayune from such conferences, in any event), Ross was effectively prevented from attending the December 28, 1987 conference. He was therefore unable to observe first-hand what was said and done at the conference; unable to ask and receive answers to questions posed of the Sheriff's Office personnel who attended the conference; unable to consider whether the drug paraphernalia and the police dog "Chief" displayed at the conference warranted [*11] photographic treatment in The Times-Picayune; and unable to have any photographs taken by Times-Picayune personnel.

30. On March 2, 1988, the Jefferson Parish Sheriff's Office scheduled another press conference. This press conference was to be held at the Jefferson Parish Sheriff's Office in Gretna, Louisiana, a publicly-owned facility at all times controlled by the Jefferson Parish Sheriff's Office.

31. On about the morning of March 2, 1988, Sgt. John Fortunato contacted the news organizations, except for The Times-Picayune, that regularly cover the Sheriff's Office and frequently cover its press conferences to notify those organizations of the press conference scheduled for that day.

32. The Jefferson Parish Sheriff's Office did not notify The Times-Picayune in advance of the scheduling of the March 2, 1988 press conference, as it did the other media organizations described in paragraph 21.

33. The Times-Picayune learned from other sources that the Jefferson Parish Sheriff's Office had scheduled a press conference for March 2, 1988. Plaintiff Rhoden went to the Jefferson Parish Sheriff's Office in Gretna at the scheduled time and attempted to attend the press conference with other [*12] representatives of the media.

34. Officials of the Jefferson Parish Sheriff's Office, acting under Sheriff Lee's specific direction, refused to allow Rhoden to attend the press conference. Rhoden was therefore

unable to observe first-hand what was said and done at the conference; unable to ask and receive answers to questions posed of Lee and other Sheriff's Office personnel who attended the conference; unable to consider whether any aspects of the news conference warranted photographic treatment in The Times-Picayune and unable to have any photographs taken by Times-Picayune personnel. Rhoden was later provided with a written news release. Fortunato informed Rhoden that he had distributed mug shots to the reporters present at the news conference but had run out and had none for Rhoden.

35. After reading the written news release, Rhoden had numerous questions concerning the crimes at issue. For example, the press release failed to state how many of the fifty-three burglaries described in the press release had been cleared by the arrest, and the news release did not state when the arrests had been made. Moreover, the release stated, without explanation, that many of the guns stolen [*13] in the burglaries were used by the burglars to play Rambo in a woods near the subdivision. Rhoden concluded that the minimal information provided in the press release was not sufficient to support a news story about these matters.

36. Since the week of December 22, 1987, when Sheriff Lee implemented his various official policies, The Times-Picayune has received "proactive" (i.e., Sheriffs' Office initiated) notification of newsworthy events on only a few occasions, specifically authorized by Sheriff Lee, including one occasion on March 31, 1988, after the commencement of this litigation. For all other newsworthy events, The Times-Picayune has been required to determine from other sources, other than the Sheriff's Public Information Officers, that an event has occurred, while other news organizations that cover the Sheriff's Office routinely are systematically afforded "proactive" notification.

37. For example, on February 25, 1988, a woman was allegedly shot by her estranged husband in Metairie, while riding as a passenger in a car on a major highway. The Jefferson Parish Sheriff's Office's records show that the following news organizations were "proactively" notified about the shooting: [*14]

	Time
AP Roan	7:15 a.m.
WWL-TV Slaughter	7:20 a.m.
WDSU-TV Hill	7:22 a.m.
WVUE-TV B.J. Austin	7:23 a.m.
WTIX Wise	7:25 a.m.
WWL Radio Cooper	7:27 a.m.

Neither Ross nor The Times-Picayune, however, received notification of the shooting although numerous other news organizations had been notified. Ross heard about the incident through a radio account and quickly submitted a request, in writing, for information concerning the shooting. According to Jefferson Parish Sheriff's Office

records, Ross was informed that he could pick up a written response at approximately 10:40 a.m., some three and one-half hours after all other interested news organizations had been notified systematically of the details of the incident.

38. Similarly, on March 1, 1988, a PIO informed the following news organizations of a traffic fatality in Jefferson Parish:

	Time
WWL-TV ANN	1:40 a.m.
AP Roan	1:50 a.m.
WVUE-TV B.J. Austin	1:50 a.m. at 6:40 a.m.
WDSU-TV Dave	1:55 a.m. at 6:30 a.m.

[*15] The Times-Picayune's early morning reporter, Valerie Faciane, who begins work at 5:45 a.m. each morning, learned about the traffic fatality and contacted Ross. Ross then submitted a written request for information concerning the accident and received a written response to the request at approximately 12:20 p.m. that afternoon, hours after Sheriff Lee's officers had initiated steps to provide other news organizations with the information.

39. Since the week of December 22, 1987, Times-Picayune reporters have been forced to obtain even the most routine information about the Jefferson Parish Sheriff's Office and crime in Jefferson Parish by the time-consuming process of written requests for information. These written requests must then be delivered to a Jefferson Parish Sheriff's Office Public Information Officer. The Times-Picayune must then await a written response. The interval between written request and written response varies from minutes to hours to days, in the sole discretion of the Sheriff and his public information officers.

40. When, and if the Jefferson Parish Sheriff's Office responds to a written request for information, The Times-Picayune must make arrangements to have [*16] the response picked up from Lee's Metairie office. West Bank reporters often must make special arrangements to obtain replies issued out of the Jefferson Parish Sheriff's Office in Metairie.

41.

No other media organization is required to engage in this procedure to obtain information from the Jefferson Parish Sheriff's Office. All other news organizations can routinely obtain information over the telephone in response to oral questions, when they desire.

42.

Despite this cumbersome and time-consuming process, The Times-Picayune's reporters have made numerous written requests for information concerning the Jefferson Parish

Sheriff's Office and crimes in Jefferson Parish ranging from information concerning the number of DWI arrests and traffic accidents during the Christmas and New Year's Eve holidays to whether murders have occurred. Several of the requests have never been answered; others have been answered after delays ranging up to several days. Such written answers as are provided are typically summary in nature and frequently non-responsive to the written request.

43.

For example, on December 29, 1987, Ross and Victoria Dawson, a reporter assigned to the police beat in the West [*17] Jefferson news office, submitted a written request for information for a story to be published on Wednesday, December 30, 1987, concerning the number of DWI citations issued during the Christmas holidays in 1987 and the previous year, 1986; the number of traffic accidents involving DWI citations; any "special tactics" planned to deter drunken drivers during the New Year's holidays; and any "general comments on the DWI problem during the holidays."

44.

On January 4, 1988, after having received no responses by Lee, Ross and Dawson each wrote a second request to Lee. This time, Ross and Dawson requested similar information for a story to be published January 5, 1988, regarding the statistics covering the New Year's holiday, Ross reiterated in his letter that he had not yet received a response to this letter, dated December 29, 1988. On January 8, 1988, Fortunato provided Ross and Dawson with information from the Christmas and New Year's holiday for DWI arrests during 1987, but no information regarding DWI arrests in 1986. Fortunato failed to respond to Ross request for information regarding the number of traffic *accidents* that occurred in which DWI citations were issued (confirming [*18] his response to arrests), nor did Fortunato provide any information with respect to whether any special measures had been used to stop drunken drivers.

45.

In the same vein, on January 12, 1988, Victoria Dawson submitted a request for information concerning the arrest of Pierre A. Moosebroker and the murder of Ernest Morris. On January 15, 1988, Fortunato provided brief details concerning the crime in writing to Ms. Dawson and informed Dawson that "all other details were given to the A.P.I. and U.P.I. wire services should you require additional information, please do not hesitate to write."

46.

Similarly on January 7, 1988, Dawson, who had taken over the police beat only a few weeks before in approximately December, 1987, submitted a written request for information concerning the arrest of Kenneth McCullough. On January 8, 1988, Fortunato provided a written response which stated only that McCullough had been

arrested by the FBI and that Dawson should contact the local FBI office for information. Dawson did not know that Lt. Garner had written a note on the Jefferson Parish Sheriff's Office's copy of her request to Sgt. Fortunato informing Fortunato that:

The arrest was made by the [*19] FBI, not us, and they have all the necessary information in the files already, relative to the case of 5/6/84 at 453 Sugarpine Drive, Gretna.

His accomplice is *Thomas Medford* w/m convicted and sentenced to Angola.

McCullough escaped custody on 10-17-87 in Bedford County, Tenn. The Times-Picayune *already has all of this info. Do not* give it to them or confirm the address again. They got it again on 10/20/87.

See Jefferson Parish Sheriff's Office copy of written request by Dawson to Lee, dated January 7, 1988, doc. no. 200048; (emphasis in original). Although both PIOs knew that Dawson did not cover the police beat during October, 1987 and was newly assigned to the Sheriff's Office beat, the PIOs went to great lengths to omit information from their response which was at hand and to document, through research, that some representative of The Times-Picayune had been provided with information relative to the crime two and one half months earlier.

47.

Sheriff Lee's policies applicable to The Times-Picayune alone, as described above, materially and adversely impair the newspaper's ability to gather and report the news in a timely, comprehensive and informative manner. [*20] Sheriff Lee's policies applicable to The Times-Picayune also materially and adversely curtail the flow of information to the public about such vital subjects as crime, law enforcement and the conduct of government and public officials.

48.

Sheriff Lee's policy of refusing to notify the plaintiffs of press conferences and excluding the plaintiffs therefrom, while providing the plaintiffs with written news releases distributed at the conferences, furthers the accuracy of reporting on Lee and his office, if at all, only at the expense of depriving the plaintiffs and the public of important governmental information that would be gathered and reported if the plaintiffs attended press conferences as do other news organizations which cover Lee's office. Moreover, any positive impact on accuracy that may result from limiting The Times-Picayune to news releases distributed at the conferences is more than offset by losses in accuracy that are the probable consequence of denying the plaintiffs the opportunity to clarify, confirm, and understand the written releases by asking questions and receiving answers, and by examining and observing visual displays and personnel.

49.

Likewise, the Sheriff's [*21] policy of restricting The Times-Picayune to written questions and written responses does not reasonably tend to promote accuracy in news reporting. Even if it did foster accuracy in reporting, any gain in accuracy is offset by a direct loss in the quantity and quality of information that the plaintiffs gather and report to the public.

50.

Sheriff Lee's policy of refusing to notify The Times-Picayune "proactively" of newsworthy events, while so notifying other organizations routinely and systematically, has no bearing whatever on the accuracy of the plaintiffs' reporting. This policy serves no constructive or legitimate governmental interest and has the obvious purpose and inescapable effect of disadvantaging the plaintiff in their gathering and reporting of the news.

51.

Sheriff Lee's policies which apply to The Times-Picayune do not promote a compelling governmental interest. There is no compelling governmental interest in insuring that the information reported about Sheriff Lee or any other public official conforms to Sheriff Lee's own conception of accuracy. Even if there were a compelling governmental interest in press accuracy thus defined, as previously noted there has been [*22] no showing that Sheriff Lee's policies promote rather than detract from accurate news coverage of his office.

52.

Nor are Sheriff Lee's policies narrowly tailored to carry out their stated objective of insuring press accuracy, but instead interfere with the plaintiffs' activities in ways that cannot conceivably involve a threat of inaccuracy. For example, Lee's press conference ban prohibits The Times-Picayune from taking and publishing photographs of items and personnel at Lee's news conference - surely not a prohibition necessitated by "inaccurate" photographs. The policy of not notifying The Times-Picayune in advance of press conferences affects the timeliness with which the newspaper learns of the important subjects to be announced at press conferences but bears no relation to accuracy; if anything, early notification would be conducive to research, preparation, and enhanced accuracy.

53.

The written communications and "reactive" notification of newsworthy events offered by Sheriff Lee to the plaintiffs in lieu of the rights enjoyed by other news organizations do not eliminate the material and adverse impairment of the plaintiffs' newsgathering and reporting activities that results [*23] from the policies applicable only to the plaintiffs among news organizations that regularly cover the Sheriff's office.

PROPOSED CONCLUSIONS OF LAW

1.

To obtain preliminary injunctive relief plaintiffs must show (a) a substantial likelihood of success on the merits; (b) that plaintiffs will suffer irreparable injury unless the injunction is sued; (c) that the threatened injury to plaintiffs outweighs the damage which the injunction may cause defendant; and (d) that the injunction is not adverse to the public interest. *Fed. R. Civ. P. Rule 65*; *University of Texas v. Camenisch*, 451 U.S. 390, 68 L.Ed. 2d 175, 101 S.Ct. 1830 (1981); *Canal Authority of Florida v. Callaway*, 489 F.2d 567 (5th Cir. 1974); *Dallas Cowboys Cheerleaders v. Score Board Posters*, 600 F.2d 1184 (5th Cir. 1979).

2.

Plaintiffs have met the standard for obtaining preliminary injunctive relief.

3.

Discriminatory governmental action aimed at the communicative impact of expression is presumptively at odds with the First Amendment. Above all else, the First Amendment means that the government cannot restrict freedom of expression on the basis of its ideas, message or content. *Cohen v. Cox*, 403 U.S. [24] 75, 24, 29 L.Ed.2d 284, 293, 91 S.Ct. 1780 (1971); *NAACP v. Button*, 371 U.S. 415, 445, 9 L.Ed.2d 405, 425, 83 S.Ct. 328 (1963); *Terminiello v. Chicago*, 337 U.S. 1, 4, 93 L.Ed. 1131, 1134, 69 S.Ct. 894 (1949).

4.

Official discrimination against a news media organization in retaliation for the content of its news stories violates 42 U.S.C. § 1983. *North Mississippi Communications, Inc. v. Jones*, 792 F.2d 1330, 1337 (5th Cir. 1986), *on remand*, 1988 U.S. Dist. Lexis 2143 (March 8, 1988).

5.

Sheriff Lee's policy of singling out The Times-Picayune's reporters for exclusion from places and sources of information made available routinely to other news organizations are actions taken under color of state law. *Borreca v. Fasi*, 369 F. Supp. 906 (D. Hawaii 1974).

6.

The First Amendment guarantees a limited right of access to news regarding activities and operations of government. This right includes, at a minimum, a right of access to

information made available to the public or made available generally to the press. *Borreca v. Fasi*, 369 F. Supp. 906 (D. Hawaii 1974); *Lewis v. Baxley*, 368 F. Supp. 768 (N.D. Ala. 1973)(3 judge court); *Quad-City Community News Service, [*25] Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971); *Southwestern Newspapers v. Curtis*, 584 S.W.2d 362 (Tex. Civ. Appeals 1979); *Cable News Network, Inc. v. A.B.C.*, 518 F. Supp. 1238 (N.D. Ga. 1981); *Sherrill v. Knight*, 569 F. Supp. 124 (D.C. Cir. 1974); *Stevens v. New York Racing Association*, 665 F. Supp. 164 (E.D.N.Y. 1987).

7.

A policy that discriminates against particular reporters or news organizations by public officials who are dissatisfied with the contents of news coverage is unconstitutional unless the policy furthers a compelling state interest and is the least restrictive means available to achieve the asserted governmental purpose. *Borreca v. Fasi, supra*; *Quad-City Community News Service, Inc. v. Jebens, supra*, *Southwestern Newspapers v. Curtis, supra*. A discrimination against a news organization based upon the perceived inaccuracy or bias of its news coverage is a content-based discrimination.

8.

Promoting the accuracy or objectivity of news reporting is not a compelling governmental interest that justifies content-based discrimination against a news organization. *Borreca v. Fasi, supra*, *Lewis v. Baxley, supra*. Especially is [*26] this so when the governmental official enforcing the discrimination is himself the subject of the news reporting which he purportedly wishes to purify of inaccuracy. In such circumstances, the official's discriminatory actions seek to promote an interest with which the government may not concern itself at all - control by an official of what is said and written about him. See *Lewis v. Baxley, supra*, 368 F. Supp. at 779. This is the essence of censorship forbidden by the First Amendment and so abhorred by the founding fathers.

9.

Content-based restrictions on the exercise of First Amendment rights cannot be justified by showing that there exist alternative means of expression. *Consolidated Edison v. Public Service Comm'n*, 447 U.S. 530, 65 L.Ed.2d 319, 100 S.Ct. 2326, n. 10 (1980); *Spense v. Washington*, 418 U.S. 405, 411 n. 4, 41 L.Ed.2d 842, 94 S.Ct. 2727 (1974); and cases cited.

10.

The selective denial of access to a governmental forum based on content is unconstitutional regardless of whether a public forum is involved unless the government can show a compelling state interest and is the least restrictive means available to achieve the asserted governmental purpose. [*27] *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983); *Gay Students*

Services v. Texas A & M University, 737 F.2d 1317 (5th Cir. 1984).

11.

Defendant's policy of discriminatory treatment against The Times-Picayune does not further a compelling state interest nor is it the least restrictive means of achieving a legitimate state purpose.

12.

Governmental restrictions that regulate speech based on its content cannot be viewed as time, place and manner restrictions. Such restrictions can only be justified, if ever, upon the showing of a compelling state interest and that the restriction is the least restrictive means available to achieve the asserted governmental purpose. *Consolidated Edison v. Public Service Comm'n*, 447 U.S. 530, 65 L.Ed.2d 319, 100 S.Ct. 2326 (1980).

13.

There is substantial likelihood that plaintiffs will succeed on the merits of this action.

14.

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373, 49 L.Ed.2d 547, 565, 96 S.Ct. 2673 (1976) (plurality opinion); *A Quaker Action Group v. Hickel* [*28] , 421 F.2d 1111, 1116 (D.C. Cir. 1969); *see also Deerfield Medical Center v. Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981); *Borreca v. Fasi, supra*; *Southwestern Newspapers v. Curtis, supra*; *Westinghouse Broadcasting Co., Inc. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976); *Murphree v. Winter*, 589 F. Supp. 374, 381 (S.D. Miss. 1984); *Henry v. Greenville Airport Commission*, 284 F.2d 631 (4th Cir. 1960).

15.

The serious deprivation of First and Fourteenth Amendment rights suffered by plaintiffs as a result of Sheriff Lee's discriminatory policy constitutes irreparable injury.

16.

The threatened injury to plaintiffs' First and Fourteenth Amendment rights outweighs any damage which the injunction might cause defendant Sheriff Lee.

17.

Speech concerning public affairs is the essence of self government. *Garrison v. Louisiana*, 379 U.S. 611, 13 L.Ed.2d 125, 133-134, 85 S.Ct. 208 (1964).

18.

The issuance of a preliminary injunction in this [*29] action will not be adverse to the public interest.

New Orleans, Louisiana, this *15th* of April, 1988.