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XAVIER UNIVERSITY NEWS

A Weekly Newspaper By Students From The Evanston And Downtown Campuses.

VOLUME XL

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Voting Irregularity Activates Student Council

Let's Look Again

An Editorial

What was admitted, not only by partisans of both sides but also members of the faculty and student body who were not interested in the matter, to be a decision governed neither by sound reasoning nor by justice was handed down last week by Student Council's Judicial Board when it upheld the legality of November's student elections. Because so many feel that a travesty of justice has taken place and that something should be done to remedy this, The News has taken this opportunity to put out this special edition.

We shall try now to show you, our readers, why the opinion of the Judicial Board was neither consistent nor just. And, since public charges against The News were made at the judicial hearing and The News was not permitted to answer these charges, we shall also use the only means left—our publication—to answer these charges. Let us proceed to consider each of the decisions of the Judicial Board.

The first charge The News made was that since the voting place was open only part of the time that tradition has it normally open, students of the freshman and sophomore classes were deprived of their rights to vote. Using seniors and one alumnus to substantiate its contention, The News showed that tradition and custom were violated in this most recent election since the polls were not open the customary hours. Acting as a defendant for the elections, Al Cash answered that a Student Council committee had decided that the Judicial Board had no jurisdiction in matters of what is traditional. For some unexplained reason the Board, whose decisions are constitutionally independent of Student Council, seemed to bow to the wishes of Council and its committee. Cash further argued on this point that it doesn't make any difference how many are deprived of their right to vote (he first of all questioned whether or not the students even had an inherent right to vote) because all candidates were equally jeopardized by the polls not being open. The News reasoned that in a case like this the "lex non-scripta" must be followed, since a literal interpretation of the constitution would mean that the polls don't have to be open at all. Citing authority to uphold the validity of the "lex non-scripta" and further contending that, since Council's constitution has the U.S. Constitution as its basis and much in the federal constitution is implied rather than stated directly, The News closed its first argument.

The Judicial Board's reply was that "lex non-scripta," tradition, custom or what have you has no authority in this case—in other words that the constitution must be interpreted literally rather than broadly. The News, of course, knowing that our national government's constitution has many implied powers which are interpreted for it by the Supreme Court, could not see the validity of this decision, especially in view of the fact that the right of students to vote had been violated.

Recognizing, however, that the Board might decide against a broad interpretation of the constitution, The News countered with a second argument: that the Board of Elections, whose duty it was to run student elections, was illegally constituted. This fact was admitted in testimony by Bill Hocter. Further, The News contended, there is a specific article in the constitution which states that the freshman class members who are up for nomination must first be approved by the Board of Elections. But no such board existed. John Grupenhoff, who was supposed to be acting as law officer (a post which confines itself solely to deciding on objections and court procedures), countered by saying that traditionally freshman class elections were run by a committee of sophomore officers appointed by the president of Student Council. Further, he said, this committee performs by tradition all the functions of the Board of Elections.

Despite the inconsistency displayed by Mr. Grupenhoff and the members of Council who were arguing against the second contention, the Board nevertheless decided that for some reason or other TRADITION applies in this case, and that because the sophomore officers' committee had in the past functioned as the chief power behind the running of freshman elections, this board should be upheld as the one which legally runs the freshman elections. This, needless to say, seemed to The News like an inconsistent decision.

The third contention against the election was that the constitution (all the articles of the constitution here referred to are published elsewhere in this paper) calls for publication of the names of freshman class nominees in the issue of the Xavier University News immediately preceding the election. Such publication was not accomplished, for in the Oct. 28 issue of The News there was an announcement that nominations were still being accepted. However, a week later, in the Nov. 4 issue of The News, freshman elections were more than half over.

This argument was not answered by Student Council, but was denied by the Judicial Board on two counts. The first

Cash Doubts Right

Al Cash interrupted Tom Kerver's speech to ask if freshmen actually have the right to vote. Kerver replied by reading Art. III, Sec. 2 of Council's Constitution, published on page two.

count was that infrequency of publication does not make The News a weekly paper. In answer to this we can say only two things: 1) The News is recognized by the Associated Collegiate Press, the Ohio Collegiate Newspaper Association, all other affiliated groups of which it is a member, and the U.S. government, as being a weekly publication. And if there is any doubt about this fact, it will be noticed that The News publishes every five day school week during the year. 2) Even if The News were not a weekly paper, there was an issue the week immediately preceding the election. And by law that issue must contain the names of the candidates. The second count was that such a matter was quite unimportant and should not have anything to do with the legality of the election. It thus seems that Student Council is not only considering what its "official organ" does as unimportant, but further it is saying that certain provisions of its constitution are unimportant. Do we seem to be difficult if we can't agree with such "logic?"

Now we wish to answer an argument which Mr. Al Cash raised last week in his "case" defending the elections. This argument, which had no immediate bearing on the question of legal elections, was allowed to stand as legitimate and The News was not allowed to answer it (a decision by Mr. Grupenhoff). Thus we must undertake to answer it now. It seems that Mr. Cash questioned the validity of The News in certain facts which were part of its original editorial on freshman elections. Chief among the questioned points was the fact that The News reported that "not more than 158 of the 510 freshmen cast ballots." Mr. Cash argued that a report of Neil Mooney stated that 173 actually voted (15 were discounted as illegal ballots), and that as of the first of November there were 489 freshmen in the university.

First of all, let us say that this supposed change in actual facts would mean that 35% instead of 30% of the freshman class voted. Also it would not detract from the fact that certain members of the freshman class were deprived of their inherent right to vote, and such was the important contention of The News. But even if this change in figures did mean something, we still contend that our figures were the correct ones. We said that 158 freshmen cast ballots. That is quite correct because 158 votes were legalized, while the other 15 were thrown out as being meaningless. How, we ask, can something which is meaningless be considered to be a vote? Further, we stated that 510 freshmen were eligible. This figure is the one which was obtained by The News from the Admissions Office. (For some strange reason the Registrar's Office, which supplied Council with its figures, could not supply The News with the very same figures.) However, the Admissions Office figure is the correct one. For the list of election eligibility which the Board of Elections (or whatever may be the name of that group which runs freshman elections) uses for elections is not a corrected list but rather the list of enrolled freshmen who entered in September. Consequently, any one of 510 freshmen who were admitted in September could have voted whether he was actually attending classes here or not.

Now, Mr. Cash, do you mean to say by your remarks (as you definitely implied at last week's hearing) that The News is an inaccurate and worthless publication? If your answer is yes, then we suggest that you do something to gain more control over your "official organ." Certainly it does not seem right to us that a publication which is inaccurate and not to be trusted should have the great responsibilities of giving information about such important Council activities as the Mardi Gras, student elections, and the Student Directory. Perhaps it would be better, since you don't seem to trust us, to publish such information only in the minutes of Student Council for all to read.

Such is our case—against the elections and for The News. We have presented it here for all students to see and decide for themselves. We have tried to serve what the editorial staff believes is the primary reader of this newspaper—the students of this university. If we see apathy or carelessness or illegal actions on the part of any segment of this university (particularly on the part of its student government), then we feel that some definite steps must be taken. Should Student Council fail to realize its obligations to the students of Xavier that is no reason why The News should take the same attitude. Our pledge is now, and will be for as long as we may exist, to serve you, the students of this university, in every way possible. TJK

By Bill Poole

Xavier's miniature McCarthy hearing has been concluded and the decision rendered. Certainly the judicial hearing last Wednesday in the Fine Arts Room was not marked by the friction of the McCarthy hearings, but what smoke there was has now cleared, and we can examine in clear light Student Council's activities during the past week—the busiest week yet for our student legislators.

Practically the entire meeting of Monday, Jan. 9, was devoted to a consideration of the charges made by The News.

Al Cash insisted that there was no need for any hearing, since



Cash

the newly-elected officers had already been accepted by Council and had acted in official capacity. Freshman Terry Lautenbach, the most vocal of the new council

members, insisted that the freshmen should be represented in any such hearing. He said that he wanted to serve on the Council Committee to answer the charges. President Bill Hocter explained, however, that he could not, since he was directly implicated.

Tom Kerver and Bob Manley, News editors, were questioned by Council. Al Cash again took the floor and questioned Bob Welsh, Chief Justice of the Judicial



Manley

Board. "Is the decision of the Judicial Board to be accepted as final?" he asked. When given an affirmative reply, he said it was unbelievable that Council should be subordinate to a board appointed by Council. He was assured by Chairman Welsh that the committee was supreme in matters of justice. Al Cash asked Ed Sajewski if he, as a member of Council, still wanted to petition a hearing. The answer was yes. Bill Hocter said that the power of Judicial Board would be looked into.

Bill Hocter discontinued the meeting until 1:30 p.m. Wednesday, when Council gathered for another two-hour parley. The chief act of the meeting was to appoint Bill Hocter, Al Cash, Tim Garry, and Neil Mooney as members of the committee to represent Council at the hearing. Bob Welsh was queried as to the procedure of the hearing. Al Cash expressed fears that the hearing might result in a duel between The News and Council. He felt that it was not necessary to be represented at the hearing (Continued on next page)

'Tyranny'—James Madison

The News received many complaints about the story which reported the findings of Student Council regarding the erroneous election. The criticisms consisted largely in that we reported injustice without denouncing it. Instead of the headline "Court Tests Election," The News was told it should have used alternatives such as "Council Exonerates Self," "Council Destroys Justice," or "Council Is Unfair."

Suffice it to say that justice was not done and that the trial was conducted in error; consequently, the decision is not binding. There are two reasons that the trial was conducted in error: (1) It was mistrial, and (2) The News was denied due process of law. We shall discuss these points and then show why this injustice was possible.

The procedure was a mistrial, that is to say the court was improperly constituted. Rules for the establishment of the Judicial Board are very clearly expressed in Student Council's Constitution and By-Laws. All members of the board, except the freshman, should have been appointed in May at the first meeting of the newly elected Council. The freshman member should have been appointed during the third week of the present semester. The Chief Justice was appointed in October; the four other men were appointed two days before the hearing. Every member of the board was appointed in violation of the legal instruments which govern Student Council. The decision of an unlawfully appointed board cannot be binding.

It is a fundamental principle of jurisprudence that a man cannot sit in judgment of a question which he judged as a member of a previous review board or committee. The reason behind this principle should be obvious. On Dec. 12, Council set up a committee to investigate the charge made by The News that the election was erroneously conducted. Bob Welsh, as Chief Justice, was named chairman of this committee by a motion of Al Cash. This committee reported that The News was erroneous and the election had been conducted properly. Last Wednesday night, Al Cash submitted this report made by the Welsh Committee to Chief Justice Welsh for consideration as evidence by the board. Welsh was thereby requested by Cash to uphold an opinion Welsh had already rendered. Such procedure is a serious denial of due process of law. No man can sit on a board that is supposed to judge the correctness of his work as chairman of another committee.

The News anticipated that the trial would be a mistrial, and that due process of law would probably be denied. It sought counsel, and was advised that the provisions of the Constitution and By-Laws of Council left no choice but the submission of our plea to the board. We were advised that a refusal of our plea by an unlawfully constituted court under the condition of a denial of due process would strengthen, not weaken, our original contention that the election was held in error.

Any decision based upon a violation of due process and rendered by an unlawfully constituted Judicial Board holds less water than a sieve. But the politicians in Council were not content to merely make justice impossible. When they realized that The News was going to present an iron-tight case, they made public efforts to intimidate the illegal Judicial Board. They set up a committee which drafted instructions to the Judicial Board on how it should conduct its affairs and how it should interpret the constitution.

Finally, the previously unknown post of "law officer" was created to tell the board how to interpret the law. This post, calling for an impartial servant of justice, was filled by a political hack who had previously declared his prejudice against The News in meetings of Council. As all who were present Wednesday night can attest, "lawyer" John Grupenhoff used his position as "impartial law officer" to interject his prejudiced viewpoints at every opportunity.

For some time, it has been the accepted theory by the politicians in Council that they need not abide by Council's constitution and by-laws on the grounds that a good end justifies unlawful means. Officers of a corporation of any state who disregard constitution and by-laws as do our councilmen would find themselves in a state penitentiary. It is fortunate that the decision and opinion rendered last week is not binding, because that decision and that opinion would serve to recognize and accept the theory that unlawful acts are valid.

This time the politicians in Council have been caught with their pants down when their illegal means backfired and disfranchised the freshmen and sophomore electorates.

The gross inefficiency and disregard for the requirements of Council's constitution and by-laws is a result of a complete overthrow of the tripartite nature of the student governing association that those documents were intended to create. Those documents were modeled after the Federal Constitution, and provide for an effective executive, a representative legislature, and an independent judiciary. However, current practice has made the executive and judiciary non-entities. The executive is practically nothing more than a gavel-pounder, owing to attempts by the legislature to exercise executive powers. The repeated failure to appoint a Judicial Board, resulting in the recent mistrial, has made the judiciary a non-entity. The legislature of council has followed policies aimed at making itself all things to all members of the student body—law maker, law executor, and judge.

James Madison, in the 46th Federalist Paper, stated: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The injustice of the election on Nov. 3 and 4, coupled with last week's denial of justice, were possible only because of the complete decay of the tripartite student government. This decay has made the legislative arm of Council capable of tyranny in those few spheres of activity reserved for control by the student government.

—Manus Haec Inimica Tyrannis REM

Council Keeps Busy; Holds Special Sessions

(Continued from Page 1)

by the most experienced men, since "all the Judicial Board will want is the facts."

However, when John Grupenhoff, pointing at a copy of The News' Statement of Plea, assured Council that Mr. Manley of The News was an eloquent speaker, members of Council took turn convincing Mr. Cash that only the most experienced should represent them. At length, Cash consented to the will of the majority.

A motion was presented to permit John Grupenhoff, parliamentarian, to participate in some capacity in the hearing. Council voted to install him as "law officer," an innovation in judicial personnel. It was evident at this meeting that neither Council nor its parliamentarian were quite sure of which foot to put forward first.

At 8:15 p.m. that evening the participants gathered to present their cases, while many interested students looked on at the second such meeting of the Judicial Board in Xavier's history.

For nearly three hours, the hearing proceeded as charges and counter-charges were exchanged in comparatively moderate language. Bob Manley presented News exhibits and questioned five witnesses who testified to the irregularities of the contested election. In questioning Neil Mooney, chairman of the Freshman Elections Committee, Bob Manley showed that Mooney alone carried the burden of attending the polling place.

The News charged that the polling place was open for an inadequate period of time in violation of the customary practice of student elections as well as provisions of the By-Laws which govern Council, that there was no Board of Elec-



Hocter

'Do Nothing Policy' Causes Delay

There has been some question raised as to why The News did not attack the legality of an election held during the first part of November until its issue of Dec. 9. The reason is quite simple, and it has to do with what we referred to as "a do nothing policy" on the part of Student Council. The fact of the matter is that immediately following the election certain key members of Council and others who are closely connected with Council knew that the election was extremely questionable. Despite this fact no one was man enough to do anything about it.

Such a situation existed until just before Thanksgiving when, by an innocent slip of the tongue of one of Council's members, the information became known to a key member of The News staff. Seeing that Council had itself done nothing about the election, The News resolved that the only course left was for itself to bring the facts to light, which it did Dec. 9, the first issue which came out after The News became informed of the facts of the case.

tions lawfully appointed to fulfill duties specified in the By-Laws, and that the list of approved nominees was not published in accordance with the By-Laws of Student Council.

Al Cash addressed the Judicial Board after Bob Manley. Launching vigorously into a defense of the conduct of the election, he admitted that the polls were not open as long as has been the custom, but he said that the constitution does not regulate the hours that the polling place should be open. Further he contended that the custom (lex non scripta) placed no restrictions upon Council.

Too Late?

Cash said that any charges of fraud should have been made long ago. "Under Ohio statutes a charge of fraud must be made within five days," he argued. He reasoned that "all candidates were equally jeopardized by the polls not being open."

Tom Kerver attempted to establish the errors upon which the

election was contested. Considering the first irregularity, he mentioned that the polls were open on Thursday, November 3 for only an hour and a half, instead of the usual five to six hours. "If only one person," he continued, "was deprived of the opportunity to vote, it would be unjust." The News Editor-in-Chief pointed out that the student election of 1950 was declared illegal because one person had violated the constitution.

No Board

"The second error is that the Board of Elections is supposed to consist of five students, including two seniors, one junior, one sophomore, and one freshman," Kerver continued. "The appointment of one sophomore does not fulfill the requirement that five men, representing all classes, be appointed. There was no evidence that the Board of Elections was ever appointed."

At this point Al Cash again interrupted the already much-interrupted Mr. Kerver with the objection that Council could not fulfill this requirement, since the By-Laws concerning the Board of Elections was "full of loop-holes." There could be no freshman on this Board since no freshman was yet elected to Council.

Kerver continued. "The third error was that in the issue of the Xavier University News immediately preceding the election, the name of no candidate for office was published in accordance with the By-Laws which govern Student Council." This charge was never refuted, but in their opinion, the Judicial Board felt it was not serious enough to invalidate the election.

News Silenced

During Kerver's summary, he was frequently interrupted, though no objections were raised. However, when Kerver attempted to answer a charge made by Al Cash in his summary that the News was inaccurate, John Grupenhoff, "law officer," said that Kerver's statement was "out of place at this time." Grupenhoff advised the court frequently during the course of the hearing.

At the conclusion of the hearing signs of relief could be heard, and some of the participants shook hands. It was not announced when the decision would be made. But the next morning the Judicial Board posted its decision denying The News a writ declaring the elections illegal. Their opinion was posted later.

Provisions of Law Violated by Council

Here are the parts of the Constitution of Student Council which have come into focus as a result of The News' recent charges against the legality of the November elections:

Article III, Section 2: The authority of the Student Council is derived immediately from the student body and ultimately from the President of the University. The right of self-government, which the President grants to the student body, is vested by the student body in the Council it selects to represent it.

By-Law 1 (Nominations Committee), Section 2: Par. A—The President of Student Council, shall, during the second week of the fall semester, appoint six freshmen, two of whom must reside on campus and one of whom shall be designated chairman pro tem, to preside over a meeting of the Freshman class held during that week. **Par. B—**This committee shall have the power to call a meeting of the Freshman class during the third week of the fall semester at which any freshman may nominate another for class office, provided he can submit ten (10) written seconds to the nomination. Such a nomination shall then be subject to approval by the Student Council Board of Elections and the Dean of the University.

By-Law 1, Section 4: Publications of Nominations. The chairman of the Board of Elections of Student Council shall see that the names of any candidate for election to class office are published on the proper University bulletin board and the issue of the Xavier University News immediately preceding each election.

By-Law II (The Board of Elections), Section 1: One month prior to the general elections the President of the Student Council shall appoint a Board of Elections, consisting of two members of the Senior Class and one each of the other classes, which shall supervise elections as follows: (Here are enumerated the duties of the Board of Elections, which include running the polls, getting ballots, keeping candidates from within 10 feet of the polls, and other such duties.)

The News has, and continues to, maintain that these provisions of the Constitution of Student Council were violated in the recent freshman election.

It maintains that By-Law 1, Section 2 was violated because Neil Mooney himself admitted in testimony before the Judicial Board that he, a sophomore, was chairman of the Freshman Nominations Committee. Further, this committee consisted of three sophomores, not six freshmen as the constitution states. Also, freshman nominations must be approved by the Board of Elections; but SC President Hocter admitted in testimony that there was no Board of Elections.

It maintains that By-Law I, Section 4 was violated because the issue of The News immediately preceding the freshman election did not contain the names of the freshmen candidates for election.

Further, it maintains that By-Law II was violated not only because there was no legally constituted Board of Elections to fulfill the duties of running the election, but also because the group which ran the election did not keep the polls open a sufficient length of time to allow the freshmen their right to vote, and thus interfered with their freedom of choice.



Grupenhoff



Kerver