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Constitutional Law - A Constitutional Right of Access to State-Held Information - Sheridan Newspapers, Inc. v. City of Sheridan

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CONSTITUTIONAL LAW—A Constitutional Right of Access to State-Held Information. ***Sheridan Newspapers, Inc. v. City of Sheridan,*** **660 P.2d 785 (Wyo. 1983).**

On July 31, 1981, the Sheridan Chief of Police notified the Sheridan Press and other media sources that he would no longer allow them to inspect certain records maintained by the department.[1] The police chief advised all media representatives that in the future news releases would be prepared and disseminated by the department. Weekly news conferences would be held, and information regarding ongoing investigations would be released only with specific approval.[2] Among those records to which the police chief denied access included[3] the "rolling log"[4] and "case reports."[5]

The method the police chief chose to disseminate information regarding police activity was unacceptable to Sheridan Newspapers, Inc., publisher of the Sheridan Press. Pursuant to the Wyoming Public Records Act (WPRA),[6] the newspaper made a written request to the chief of police for a written statement of his reasons for denying access to department records.[7] The police chief failed to respond to the newspaper's request as required under the WPRA.[8] Subsequently, Sheridan Newspapers, Inc., instituted an action seeking a declaratory judgment that the police logs, jail logs, and the case reports be declared public records under the WPRA.[9]

The judgment of the trial court permitted inspection of the department's jail log, reports of traffic accident investigations, and all citations and complaints.[10] The court determined that the rolling log and the case reports were public records,[11] but that the press did not have a "statutory

1. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 787 (Wyo. 1983).
2. Brief for Appellee at 2, Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785 (Wyo. 1983).
3. *Id.* at 4. The police chief's denial of access to police records included recorded complaints from citizen-victims or citizen-informants.
4. 660 P.2d at 789. The "rolling log" was also referred to by the court as the daily log. It was described by the court as a chronological index of all reports and complaints received by the department. The record includes a case number, the type of case, a brief description of the event, the name of the person reporting the matter, and the officer assigned to the case. *Id.*
5. *Id.* A case report may detail a matter from complaint through investigation to arrest. Case reports may contain, in part, investigative material.
6. WYO. STAT. §§ 16-4-201 to 16-4-205 (1977).
7. WYO. STAT. § 16-4-203 (e) (1977) provides:
   If the custodian denies access to any public record, the applicant may request a written statement of the grounds of denial. The statement shall cite the law or regulation under which access is denied and it shall be issued forthwith to the applicant.
8. 660 P.2d at 789. The chief of police failed to furnish any "factual basis" or reasons for closing the records when responding to the newspaper's request for an explanation of the closure. At trial the police chief indicated a number of reasons for the denial of access. He suggested that the closure of access was motivated in part by the fact that a news report was at variance with a prepared news release, and that he wanted to protect the privacy of certain persons arrested by the department. The chief of police also suggested that the closure was made in order to prevent certain reporters from breaking the rules and procedures developed by the department to disseminate information. *Id.* at 793.
9. Brief for Appellant, Appendix at 3-4, Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785 (Wyo. 1983).
10. 660 P.2d at 790.
11. WYO. STAT. § 16-4-201(a) (v) (1977) defines public records as follows:
    (v) 'public records' when not otherwise specified includes any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the

or constitutional right of access" to inspect those records.[12] Both the City of Sheridan and Sheridan Newspapers, Inc., appealed the judgment of the trial court. The newspaper maintained on appeal that the "blanket closure" of access to the rolling log and case reports was unlawful, and that the press had a statutory[13] and constitutional[14] right to routinely inspect those records, subject to the police chief's right of withdrawal under the WPRA.[15] In addition, the newspaper argued that the WPRA imposes upon the custodian of the public record the burden of showing why a record is not available for inspection.[16] The newspaper contended that the police chief failed to meet this burden.

The City of Sheridan appealed from a portion of the trial court's order which it argued "engrafted" upon the WPRA "additional requirements" beyond those imposed by the WPRA which the custodian of the record must satisfy to effect withdrawal of a record from public inspection.[17] The City objected to the following requirements contained in the trial court's judgment:

(1) any exclusion must be on a "case-by-case" basis, and
(2) "such exclusion shall only be on a very limited basis", and
(3) "only upon extraordinary circumstances", and
(4) "for good cause shown", and,
(5) "then only for such limited time as may be necessary."[18]

In an opinion written by Justice Rose, the Wyoming Supreme Court held that the press has a constitutional and statutory right of access to the rolling log and case reports and that the chief of police cannot justify a blanket withdrawal of access to those records on the basis that they may at times contain exempt material.[19] On the appeal brought by the City, the

State of Wyoming and any ***municipalities *** or received by them in connection with the transaction of public business, except as privileged or confidential by law.

12. 660 P.2d at 790.

13. WYO. STAT. § 16-4-203 (1977) provides, in relevant part:

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency.

14. WYO. CONST. art. 1, § 6 due process provisions, and, WYO. CONST. art. 1 § 20 Freedom-of-Speech and press provisions and U.S. CONST. amend, XIV. In Stromberg v. California, 283 U.S. 359, 368 (1931), the Court held that the first amendment was applicable to the states by reason of the due process clause of the fourteenth amendment to the Federal Constitution.

15. WYO. STAT. §§ 16-4-201 to -205 (1977).

16. 660 P.2d at 790.

17. *Id.*

18. *Id.*

19. *Id.* at 796.

court held that the trial court's order did not specify requirements for withdrawal of a record from public access that were not contemplated by the WPRA.[20]

I. THE COURT'S OPINION

A. The Constitutional Right of Access

In *Sheridan Newspapers,* the court recognized a constitutional "right of access" to records maintained by the police department.[21] The court found this constitutional right to be embodied in the first and fourteenth amendments to the United States Constitution,[22] and parallel Wyoming constitutional provisions.[23] The court acknowledged the importance of according constitutional protection to a free press. Quoting from *Branzburg v. Hayes*[24] the court explained: "The press has a preferred position in our constitutional scheme, not to enable it to make money, not to set newsmen apart as a favored class, but to bring fulfillment to the people's right to know. The right to know is crucial to the governing powers of the people. . . ."[25] The court in *Sheridan Newspapers* suggested that the "constitutional guarantee of a free press 'assures the maintenance of our political system and open society' "[26] and "secures 'the paramount public interest in a free flow of information to the public concerning public officials'."[27] The court also recognized a right of the public to receive information.[28] Implicitly, the court reasoned that the free flow of information protected by the first and fourteenth amendments necessarily includes the right of access to certain public records.[29]

The *Sheridan Newspapers* court made it clear that the constitutional right of access recognized is not absolute. The court cited with authority[30] the proposition that the first amendment does not grant the press a constitutional right of access not available to the public generally.[31] The court

20. *Id.* at 800.
21. *Id.* at 794.
22. *Id.* U.S. CONST. amend. I provides in relevant part:
"Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."
U.S. CONST. amend. XIV provides in relevant part:
"[nor] shall any State deprive any person of life, liberty, or property without due process of law."
23. *Id.* WYO. CONST. art. 1, § 20 provides:
"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. . . ."
WYO. CONST. art. 1, § 6 states:
"No person shall be deprived of life, liberty, or property, without due process of law."
24. 408 U.S. 665, 721 (1972).
25. 660 P.2d at 794 (quoting Branzburg v. Hayes, 408 U.S. at 721 (1972)).
26. *Id.* (quoting Time Inc. v. Hill, 385 U.S. 374, 389 (1967)).
27. *Id.* (quoting Garrison v. Louisiana, 379 U.S. 64, 67 (1964)).
28. Kleindienst v. Mandel, 408 U.S. 753, 762-763 (1972); Stanley v. Georgia, 394 U.S. 557, 564 (1969).
29. The court never directly addressed the issue of access; rather the court simply implies a right of access from the noted protections afforded the press in the first amendment.
30. Pell v. Procunier, 417 U.S. 817, 833 (1974); Saxbe v. Washington Post Co., 417 U.S. 843, 850 (1974); Williams v. Stafford, 589 P.2d 322, 325 (Wyo. 1979).
31. 660 P.2d at 790, n.10.

added that the constitutional right of access is to be balanced with relevant competing-interest considerations,[32] and is subject to "statutory restrictions" promulgated by the legislature in the public interest.[33]

The court in *Sheridan Newspapers* cited with approval the decision in *Houston Chronicle Pub. Co. v. City of Houston*[34] in determining the nature and reach of the constitutional right of access.[35] In *Houston Chronicle,* the Texas court, supporting the Chronicle's right of access to certain police records,[36] said: "In determining the reach of this constitutional right of access it is necessary to weigh and evaluate legitimate competing interests."[37] Legitimate interests may include the public's right to know, concerning crime in the community,[38] as well as the state interest in denying access to materials if it would unduly interfere with law enforcement efforts or jeopardize due process considerations in a criminal prosecution.[39]

In *Sheridan Newspapers* the Wyoming Supreme Court acknowledged the authority of the legislature to enact laws, in the public interest, inhibiting public access to public records in certain situations.[40] The court cautioned that such legislation may not "deny the people's right to be informed."[41] The *Sheridan Newspapers* court did not, however, attempt to further define the parameters within which the legislature could deny access to public records and essentially failed to articulate any standards governing permissible state restrictions.

In summary, the court in *Sheridan Newspapers* determined that: 1) a constitutional right of access exists;[42] 2) the nature of the right is to be determined by balancing the competing interests involved;[43] and 3) that the legislature may enact laws restricting access to public records in the public interest[44]—although the court failed to set forth any specific standards to govern such legislative action.

B. Statutory Construction of the Wyoming Public Records Act

In *Sheridan Newspapers* the court cited a number of cases to illustrate what the court has termed its "historical disclosure position."[45] In *Laramie River Conservation Council v. Dirgen* the court stated that with regard to the WPRA, the policy of the state is disclosure—not secrecy.[46] Other

32. *Id.* at 795.
33. *Id.*
34. 531 S.W.2d 177 (Tex. Civ. App. 1975).
35. 660 P.2d at 795.
36. 531 S.W.2d at 179-180. The Texas court upheld the *Houston Chronicle's* right of access to the Houston "Police Blotter," "Show-Up Sheet," and "Arrest Sheet." The information maintained in those records included the arrestee's social security number, name, age, race, sex, occupation, address, his physical condition, the place of the arrest, charges filed, the court in which the case was filed and the names of the arresting officers.
37. *Id.* at 186.
38. *Id.*
39. 660 P.2d at 795.
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.* at 793.
46. 567 P.2d 731, 733 (Wyo. 1977).

examples offered by the court included *Williams v. Stafford* in which the court addressed a court-closure issure,[47] and *Record Times, Inc. v. Town of Wheatland,* where the court construed a state statute requiring municipalities to publish town bills.[48]

Consistent with its historical disclosure position, and in light of the constitutional questions involved, the court in *Sheridan Newspapers* ruled that statutes providing public access of public records should be construed liberally.[49] Conversely, exemptions from disclosure should be construed narrowly.[50]

The philosophy of disclosure and the rules of construction set forth by the court provided the framework against which the court construed the WPRA. With this framework in mind the *Sheridan Newspapers* court examined precedent in other jurisdictions where the Federal Freedom of Information Act (FOIA)[51] has been construed. In *Mead Data Central, Inc. v. United States of Department of Air Force,* the Court of Appeals for the District of Columbia stated that, "the focus of FOIA is information, not documents, and an agency cannot justify withholding an entire document simply by showing that it contains some exempt material."[52] The *Sheridan Newspapers* court also cited *Northern Cal. Police Practices Project v. Craig* where the California Court of Appeals stated: "The PRA [Public Records Act] is modeled upon the Freedom of Information Act"[53] and that, "the PRA has been judicially interpreted to require segregation of exempt from non-exempt materials contained in a single document."[54] The *Sheridan Newspapers* court cited with approval the reasoning embodied in the FOIA cases,[55] embracing broad disclosure, and then construed the WPRA in a similar fashion.[56]

The court in *Sheridan Newspapers* made it clear that the custodian of a public record may not withdraw entire categories of records,[57] or any records, without addressing the question whether withdrawal of *individual* records violates provisions of the WPRA.[58] The court added, recognizing the reasoning in the FOIA cases, that a particular record may not be withdrawn "where it is possible for the sensitive information to be excised and the balance of the record made available to public inspection."[59]

47. 589 P.2d 322 (Wyo. 1979). The court in *Williams* cited Gannett Pacific Corp. v. Richardson, 59 Haw. 224, 580 P.2d 49 (1978), for the proposition that access to court proceedings should be limited only under exceptional circumstances. *Id.* at 325.
48. 650 P.2d 297 (Wyo. 1982). The court construed the provisions of WYO. STAT. § 15-1-110 (1977), a statute which speaks to a municipality's obligation to publish town bills, to require the Town of Wheatland to publish the individual salaries of its employees.
49. 660 P.2d at 794.
50. *Id.*
51. 5 U.S.C. § 552 (1982).
52. 566 F.2d 242, 260 (D.C. Cir. 1977).
53. 90 Cal.App.3d 116, 123, 153 Cal.Rptr. 173, 178 (1979). *Craig* involved an action brought by a civil liberties organization against the California State Highway Patrol, seeking disclosure of information regarding the training practices of the state highway patrol.
54. *Id.*
55. *See supra* text accompanying notes 51-54. *See also* Environmental Protection Agency v. Mink, 410 U.S. 73 (1973); Department of Air Force v. Rose, 425 U.S. 325 (1976); State *ex rel.* Stephen v. Harder, 230 Kan. 573, 641 P.2d 366 (1982).
56. 660 P.2d at 797.
57. *E.g.,* law enforcement records.
58. 660 P.2d at 795, 796.
59. *Id.* at 797.

In order for the custodian of a public record to effectuate withdrawal of a public record under the WPRA the *Sheridan Newspapers* court determined that he must: 1) determine whether the individual record in question falls within statutory exemptions provided under the WPRA;[60] and, 2) if it does, he must weigh the competing interests involving the public's right to know against the perceived harm to the public from disclosure;[61] and finally, 3) if he chooses to withdraw records from public inspection he must provide reasons for doing so.[62]

In the event of court action, the custodian must satisfy the court that statutory withdrawal, in light of the public interest, outweighs the public policy favoring disclosure.[63] If the custodian fails to give adequate reasons for withdrawal, or fails to give any reasons at all, the party denied inspection may force automatic disclosure of the record.[64]

The *Sheridan Newspapers* court interpreted that portion of the trial court's order, objected to by the City, which would require a showing of "extraordinary circumstances" and "good cause" as well as providing limitations on the time in which a custodian may effect withdrawal, as simply specifying the conditions contemplated by the WPRA provisions calling for the exercise of discretion by the records custodian.[65]

II. ANALYSIS OF THE COURT'S OPINION

A. A Constitutional Right of Access to State-Held Information

The court in *Sheridan Newspapers* declared that there is a constitutional right of access within the applicable freedom-of-the-press and due process provisions of the federal and state constitutions.[66] Noticeably, the court fails to provide any persuasive authority for its finding. The court articulated the importance of a free and unrestrained press and of constitutional protection from prior restraint.[67] The *Sheridan Newspapers* court then implied a "right of access" embodied in the first amendment freedom-of-the-press provisions.[68]

Interestingly, a majority of the United States Supreme Court Justices have been reluctant to recognize a constitutional right of access outside the scope of criminal trials.[69] In *Zemel v. Rusk* the Supreme Court noted that "the right to speak and publish does not carry with it the unrestrained right to gather information."[70] In *Houchins v. KQED, Inc.,* in which broadcast

60. *See supra* note 15.
61. 660 P.2d at 796.
62. *Id.*
63. *Id.*
64. *Id.*
65. *See supra* text accompanying notes 13-20.
66. 660 P.2d at 794.
67. *Id.*
68. *Id.*
69. *See* Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). *See also* Globe Newspaper Co. v. Superior Court, ___ U.S. ___, 102 S.Ct. 2613 (1982).
70. 381 U.S. 1, 17 (1965). The appellant in *Zemel* argued that a ban on travel to Cuba, in effect, interfered with his first amendment right to acquaint himself with our government's foreign policy. *Id.*

media sought access to a troubled section of the county jail, Chief Justice Burger, writing for a fragmented Court, noted that although there is an "undoubted right to gather the news" the first amendment does not "compel others—private persons or governments—to supply information."[71] Although the Court was badly fragmented in *Houchins,* one commentator suggested the seven participating Justices did agree on two basic propositions: first, the press has no constitutional right of access not available to the public in general;[72] and second, even assuming a constitutional right of access were recognized the Court has a "limited institutional capacity" to enforce a right of access to government-held information.[73] Chief Justice Burger and Justice Stewart, who have been called the "major architects" of the Court's position on access issues,[74] have both emphasized the difficulty in deriving standards for governing the disclosure of state-held information, and have suggested that perhaps the access question should be left to "political processes."[75]

The right of access issue was also addressed by the Supreme Court in *Richmond Newspapers, Inc. v. Virginia.*[76] The Court in *Richmond* held that "absent an overriding interest articulated in findings" the first amendment requires that "the trial of a criminal case must be open to the public."[77] There was no opinion to which a majority of the Justices subscribed but seven Justices did recognize the right of access to be embodied in the first amendment.[78] The opinions in *Richmond* once again reflected a badly fragmented Court,[79] and the extent to which the holding extends to other areas of state government remains uncertain.[80]

Although the Wyoming Supreme Court recognized a constitutional right of access in *Sheridan Newspapers,* it did not establish any clear constitutional standards governing the disclosure of government-held information. The reluctance of the United States Supreme Court to recognize such a right has been due, in part, to the difficulty in deriving appropriate standards and the desire to avoid confrontations with the other branches of government that might arise in an attempt to judicially enforce such a

71. 438 U.S. 1, 9 (1978). Chief Justice Berger delivered the opinion of the Court and was joined by Justices White and Rehnquist. Justice Stewart concurred in the judgment while Stevens, Brennan, and Powell dissented from the plurality. Justices Marshall and Blackmun took no part in the case.

72. L. TRIBE, AMERICAN CONSTITUTIONAL LAW Ch. 12 (1979 Supp.).

73. *Id.* at 68.

74. *See* Note, *The First Amendment Right of Access to Government-Held Information: A re-Evaluation After Richmond Newspapers, Inc. v. Virginia,* 34 RUTGERS L. REV. 293, 311-22 (1982).

75. *See supra* note 72. Justice Stevens dissenting in *Houchins* suggests that the Court need not "evolve standards governing disclosure of information." Rather, he suggests that the Court's task is "more limited, more familiar, and peculiarly judicial—to determine that a constitutional violation has taken place and to select an appropriate remedy." TRIBE, *supra* note 72, at 70.

76. 448 U.S. 555 (1980).

77. *Id.* at 581.

78. Note, *supra* note 74, at 311-22.

79. Chief Justice Burger authored the plurality opinion and Justice White and Stevens filed concurring opinions. Justice Brennan filed an opinion concurring in the judgment which Justice Marshall joined. Justice Rehnquist filed a dissenting opinion.

80. *See, e.g.,* Cox, *The Supreme Court, 1979 Term—Forward: Freedom of Expression in the Burger Court,* 94 HARV. L. REV. 1, 21 (1980). *See generally, The Supreme Court 1979 Term,* 94 HARV. L. REV. 149-59 (1980).

right. Difficult policy issues must be addressed in developing appropriate standards to govern the disclosure of state-held information.[81]

A. Statutory Restrictions on the Right of Access

The court in *Sheridan Newspapers* acknowledged the authority of the legislature to promulgate legislation, in the public interest, to restrain news-gathering activities.[82] The court did not attempt to define the permissible scope of such legislation but simply suggested that statutory restraints may "not . . . unlawfully deny the people's right to be kept informed," risking a first or fourteenth amendment violation.[83]

While the Wyoming Supreme Court failed to define the permissible scope of state legislation in the access area, a number of different approaches have been suggested. One commentator has suggested that a balancing test might be employed utilizing a less-restrictive alternative approach.[84] Under this test state action which infringes first amendment rights is permissible only if a legitimate state goal cannot be achieved by a less-restrictive alternative.[85]

Another suggested approach employs what is termed an "incompatibility test."[86] Utilizing this test, citizens have a presumed right of access to information held by the government, and the burden is placed upon the government to show that a disclosure would be incompatible with the normal activity of that particular institution.[87] This test requires that restrictions on access be narrowly drawn and non-discriminatory to avoid a constitutional violation.[88] A final suggested approach is that employing a two-part "content-conduct" test.[89] Under the first part of the test, emphasizing the content of the information sought, denial of access to information will be upheld only if disclosure of the information would "threaten the public good or welfare."[90] Under the second part of the test, emphasizing conduct, denial of access will be upheld only if the "means of gathering information significantly interfere with either the constitutional rights of others or a compelling government interest."[91] Once again, the application of this test would require the state to carry the burden justifying a denial of access.[92]

The relative advantages and disadvantages of each suggested approach are beyond the scope of this Note. It is clear, however, that a common theme runs throughout each approach. The state should bear the burden of justifying any denial of access to state-held information.

81. *See supra* note 75.
82. 660 P.2d at 795.
83. *Id.*
84. *See* Note, *The Rights of the Public and Press to Gather Information*, 87 HARV. L. REV. 1505, 1521 (1974).
85. *Id.*
86. Note, *The First Amendment Right to Gather State-Held Information*, 89 YALE L. J. 923, 936 (1980).
87. *Id.* at 937.
88. *Id.*
89. Comment, *The Right of the Press to Gather Information Under the First Amendment*, 12 LOY. L.A.L. REV. 357, 382 (1979).
90. *Id.* at 393.
91. *Id.*
92. *Id.*

The same commentator who has advocated the use of the "content-conduct" test in access cases has suggested that a denial of access to state-held information operates as the "functional equivalent" of prior restraint.[93] Consequently, it is argued that statutory restrictions on access should be subject to the level of scrutiny employed in cases involving prior restraints.[94] The argument is premised upon the notion that the press cannot publish information it has no opportunity to gather.[95] As a practical matter the press has been effectively restrained from publishing state-held information. It is suggested further that a denial of a right to gather information "could be the most insidious form of prior restraint" since "members of the press are unaware of what they might be publishing."[96] Still another commentator has argued that the concept of what may be termed a prior restraint could plausibly be extended to a "denial of press access to newsworthy events and records."[97]

The *Sheridan Newspapers* court cited a great number of cases which have held that "any system of prior restraints" bears a "heavy presumption against its constitutional validity."[98] This is not to suggest that every prior restraint is unconstitutional per se.[99] The United States Supreme Court has never formulated precise constitutional standards dealing with prior restraints but the "distaste for censorship" is deeply rooted in American law.[100] As a result prior restraints have been subject to the most "exacting scrutiny."[101]

The practical effect of a denial of access to state-held information clearly imposes a prior restraint on the publication of that material. A denial of access, then, should also be subject to exacting scrutiny.

The Supreme Court has noted that it is the character of the right involved that establishes what standard should be applied in determining where an "individual's freedom ends and the State's power begins."[102] A free flow of information is necessary to the governing powers of the people and is the very foundation upon which democratic theory rests.[103] In light of the fundamental nature of the right involved, the state should be permitted to restrict access to state-held information only upon a showing of a compelling state interest and that the restriction in question is narrowly tailored to serve that interest.[104]

93. Comment, *supra* note 89, at 364.
94. Comment, *supra* note 89, at 382.
95. Comment, *supra* note 89, at 363-64.
96. *Id.*
97. Blasi, *Toward a Theory of Prior Restraint: The Central Linkage*, 66 MINN. L. REV. 1, 15 n.17 (1981).
98. New York Times Co. v. United States, 403 U.S. 713, 714 (1971); Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963).
99. Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 558 (1975).
100. 16A AM. JUR. 2d CONSTITUTIONAL LAW § 498 (1979).
101. *Id.*
102. Thomas v. Collins, 323 U.S. 516, 529-30 (1945).
103. *See supra* note 26 and accompanying text.
104. *Cf.* Globe Newspaper, Co. v. Superior Court, ___ U.S. ___, 102 S.Ct. 2613 (1982). The Court in Globe stated that, "where, as in the present case, the State attempts to deny the right of access in order to inhibit disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Id.* at 2620.

B. Custodial Discretion Under the Wyoming Public Records Act

The *Sheridan Newspapers* court outlined the procedures and standards which must be followed in order for a custodian of public records to effect withdrawal under the WPRA.[105] Briefly, the majority interprets the WPRA to require the custodian, in the exercise of his discretion, to determine whether the record falls within statutorily designated categories, *and,* if it does, to determine whether effecting withdrawal of a record is in the public interest.[106] Consequently, the custodian must exercise his discretion twice.

Chief Justice Rooney argued in his concurring opinion, with regard to the appeal brought by the newspaper, that the custodian is required under the WPRA to exercise his discretion only in determining whether the record in questions falls within a statutory category which may be permissibly withheld from public inspection.[107] The custodian need not exercise further discretion—if the record falls within a statutory exemption the legislature has determined that withdrawal is in the public interest.[108] The Chief Justice argued that the statute provides in plain language the extent to which the custodian is to exercise his discretion. The custodian may deny the right to inspect police records of investigations, intelligence reports, and security procedures, on the ground that disclosure would be contrary to the public interest.[109]

In his dissenting opinion with regard to the appeal brought by the City of Sheridan, the Chief Justice strenuously objected to "the dicta in the majority opinion" that "would extend by judicial fiat the perimeters of the right of access beyond that specifically set forth in the act."[110] The Chief Justice referred to the majority's acceptance of the trial court's order as specifying conditions contemplated by the WPRA provisions calling for custodial discretion.[111] Arguing that the statute does not require a showing of "extraordinary circumstances," "good cause shown," or "limitations on time for denial," the Chief Justice stated that the requirements of the act "are not to be enlarged by judicial legislation."[112]

The more plausible interpretation of custodial discretion under the WPRA is that offered by the Chief Justice. The plain language of the statute, asserted by Chief Justice Rooney, requires that the custodian of a public record need only exercise his discretion to determine whether the record in question falls within a statutory exemption.[113] It is unclear whether the majority has in fact judicially legislated additional requirements which a custodian must entertain before effecting withdrawal under the WPRA. Perhaps the existence of the constitutional claim involved is due, in part, to the curious construction of the WPRA rendered by the majority. By adopting the order of the trial court the *Sheridan* court only confused the issue.

105. *See supra* notes 60-64 and accompanying text.
106. 660 P.2d at 798-99.
107. *Id.* at 802 (Rooney, C.J., concurring).
108. *See supra* note 13.
109. 660 P.2d at 802.
110. *Id.* at 801.
111. *Id.* (Rooney, C.J., dissenting).
112. *Id.* at 803.
113. *See supra* note 15 and accompanying text.

III. IMPLICATIONS FOR THE PRACTICING ATTORNEY

The failure of the *Sheridan Newspapers* court to establish any discernible standard regarding the permissible scope of statutory restriction in the access area has left the validity of WPRA provisions providing for exemptions from disclosure in doubt. Although the court spoke in grand and eloquent terms of the import of first amendment freedoms, not once did the court suggest that the WPRA provisions which allow the custodian to permissibly withhold a record from public inspection might be constitutionally suspect. By adopting a standard employing strict scrutiny, as has been suggested in this Note, certainly many of the exemptions from disclosure within the WPRA are subject to constitutional attack. In addition to a statutory right of access defined under the WPRA, after *Sheridan Newspapers* the attorney seeking to force disclosure of state-held information now has a recognized constitutional claim.

The *Sheridan Newspapers* decision is important in another respect. The court defines the duty of the custodian of a public record who desires to withdraw from public inspection.[114] The court requires the custodian to determine whether the record falls within designated categories, and then to determine whether withdrawal of the record is in the public interest.[115] Finally, the court's decision requires the custodian to perform the burdensome task of excising exempt material from non-exempt material whenever it is possible to do so.[116] Significantly, the *Sheridan Newspapers* court relied to some extent on cases interpreting FOIA for guidance in construing the WPRA.[117] FOIA was enacted to serve citizen interest by requiring disclosure of information requested of the executive branch.[118]

Similar to the WPRA, FOIA provides for certain exemptions from disclosure.[119] If an applicant's request for information is denied, he may first appeal to the agency head,[120] and then to a United States district court.[121] Both the WPRA and FOIA provide that a court may force disclosure of a record which has been impermissibly withheld.[122]

The *Sheridan Newspapers* court acknowledged the principles of disclosure underlying FOIA, and readily construed WPRA provisions in a

114. 660 P.2d at 796.
115. *Id.*
116. *See* Northern Calif. Police Practices Project v. Craig, 90 Cal. App. 3d 116, 153 Cal. Rptr. 173, 178, where the court states: "Undoubtedly the requirement of segregation casts a tangible burden on governmental agencies and the judiciary. Nothing less will suffice however, if the underlying legislative policy of the PRA favoring disclosure is to be implemented faithfully."
117. *See supra* notes 51-56 and accompanying text.
118. *See supra* note 74 at 296.
119. 5 U.S.C. § 552 (b) (1976), provides for exemptions of the following categories, (1) information authorized by the executive to be kept secret in the interest of national security or foreign policy; (2) internal personnel rules and practices of an agency; (3) information specifically exempted from disclosure by statute; (4) trade secrets; (5) interagency and intraagency communications; (6) personnel, medical, and other files, disclosure of which would constitute an unwarranted invasion of personal privacy; (7) certain investigatory records compiled for law enforcement purposes; (8) certain reports prepared for agencies which supervise financial institutions; and (9) geological data concerning wells.
120. 5 U.S.C. § 552(a) (6) (A) (iii) (1982).
121. 5 U.S.C. § 552(a) (4) (B) (1982).
122. *Id.*; WYO. STAT. § 16-4-203(f) (1977).

similar fashion. In doing so, the Wyoming Supreme Court has indicated that FOIA cases may provide fertile precedent for cases arising under the WPRA. The attorney on either side of the access issue is provided with an abundant source of case law with which to prepare his case.

CONCLUSION

The *Sheridan Newspapers* decision is important in a number of respects. First, the Wyoming Supreme Court recognized a constitutional right of access to state-held information embodied in the first amendment. The court, however, failed to establish constitutional standards to govern such a right. The failure to define a standard defining permissible state regulation in the access area has left the constitutional validity of WPRA exemptions from disclosure in doubt. A number of possible approaches in establishing such a standard have been suggested. A free flow of information is fundamental to democratic government, and any state law restricting or impinging upon this right of access should be subject to strict scrutiny. Finally, the *Sheridan Newspapers* decision indicates that FOIA cases may provide authority for future WPRA cases.

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