

Report to the Virginia Press Association Regarding Finality of the Journalistic Integrity and Community Service Award Rendered in the 2022 VPA Competition in News and Advertising

The Virginia Press Association (the VPA) conducted its 2022 Competition in News and Advertising in accordance with written rules. Eligibility is specified in the Rules as follows: "The contest is open to all publications with Active, Associate, or Online memberships in the Virginia Press Association (VPA)." Each of the three participants in the competition for the Journalistic Integrity and Community Service Award (the Award) was accepted as a VPA member prior to the contest.

After the conclusion of the contest questions were raised publicly about the Award, including questions whether the winner should have been accepted as a member of the VPA. There is no procedure in the Rules for filing a formal complaint, and there is nothing that can be characterized as a formal complaint. The VPA has, however, received questions about the Award. To respond to these questions the VPA retained me as a lawyer to determine whether the Award was made in accordance with the rules and regulations governing the contest and is, therefore, final.

Conclusion

After reviewing the materials provided for the reasons more particularly set forth below, I conclude that the Award was made in accordance with the applicable rules and regulations and is not subject to an after-the-fact challenge. The Rules provide, "Experienced professionals from another state press association will judge your entries. Judges' decisions will be final." There is nothing ambiguous about the word "final."

The rules do not provide a procedure for an after-the-award challenge or provide any methodology for the evaluation of such a challenge. Serious policy considerations support the finality of the Award and all other awards made during the competition. Quality journalism may well be controversial and is subject to scrutiny, but being controversial is not and should not be disqualifying. The VPA's awareness of the potential for controversy in making evaluations of journalism reinforces the appropriateness of the Award being final. An award should be a celebratory event not an invitation to disparagement.

Analysis

Each of the Participants Had Been Accepted as a VPA Member

The three participants in the contest had been accepted as a VPA member prior to entering the contest. No one questioned the membership of any of the three, and each of the entries was presented to the judge as a valid entry. Everyone was aware that student publications were eligible for the contest, and no one had complained about student publication eligibility. There

are compelling reasons why student publications should be encouraged to join the VPA and why the VPA has a compelling interest in nurturing young journalists.

There is nothing that suggests a rationale for an after-the-fact revocation of VPA membership, there is no procedure specified for such a revocation, and the lack of both would seem to be deliberate and dispositive. For purposes of evaluating the propriety of the Award, the three participants will be treated as members.

The Rules Are Clear

Any analysis of an award made in a contest begins with an examination of the rules and regulations governing the competition. To state the obvious, those who enter any contest do so in accordance with and relying on the rules and regulations. Everyone who participates (the VPA, judges and contestants) agrees to be and are bound by the rules. The public anticipates and has a right to anticipate that the rules will be followed.

The rules and regulations are clear. Once the Award is made, the judges' decision is final. There is nothing in the rules and regulations authorizing a challenge or specifying procedures for how such a challenge would be made and evaluated. The adoption of the finality of the judges' decision is consistent with the practices of other similar competitions. This is not surprising in light of the fact that the evaluation of journalism is subjective, disagreements about subjective determinations are not unusual, and there are important policy reasons why those who participate and win should not be subject to potentially defamatory challenges, and why judges should not be subject to public condemnation for a reasoned exercise of discretion even if some feel the result is flawed.

Finality Has Important Advantages

The interest in finality is shared by participants, judges, and the public. Those who are accepted by the VPA as participants have the right to expect that the VPA acted appropriately in accepting their entries and entry fees and those who participate in the contest do not have a reason to anticipate that the VPA would make or endorse a determination that their conduct was so flawed as to be disqualifying. The distinguished professionals who agree to judge the contest have no expectation that the VPA will reject their reasoned conclusions. Participants and the public anticipate and have a right to anticipate finality.

Disqualification would require at a minimum conduct that deviates from normal and ethical journalistic standards. A determination that any journalist or aspiring journalist violated the minimum standards of the profession could be defamatory, and could subject the VPA to litigation, and if found by a jury to be false to possible damage awards. Having rules that eliminate or minimize defamation claims or any litigation is appropriate and the logic for such rule applies with special force in evaluating the work of students. Tarnishing the reputations and future prospects of those who have not yet commenced their final careers is a serious matter and was clearly not contemplated.

It is hard to even articulate a process for overturning the Award that would not magnify controversy, open the door to litigation and place unacceptable burdens on future contests. There

is no satisfactory adjudicative mechanism available to the VPA that would allow it to resolve disputes of fact. The VPA has no ability to require testimony or the production of documents from contest participants much less from those not involved in the contest. Injecting the tensions and stresses associated with adjudicative processes would seriously adversely affect the protection of the values which the VPA promotes.

The skills necessary to fairly adjudicate factual disputes are different from those used to evaluate the quality of journalism. Lawyers should not dictate standards to journalists on how to evaluate journalism, and the evaluation of journalistic quality is substantially subjective. It is hard to imagine any distinguished journalist who would assume the thankless task of evaluating any journalistic category if there was a risk the VPA would repudiate the judge's best professional judgment as being unworthy of any respect and substitute the opinion of a lawyer.

Overturning the Award Without an Empirically Supported Rationale Which Will Be Endorsed by All is Inappropriate

There has to be a basis for invalidating any award. Invalidating an award without finding and identifying impropriety suggests the invalidation is frivolous. On the other hand, saying a participant or judge engaged in improper conduct would require clear and convincing evidence which is not present here. There is no mechanism provided for resolving factual disputes, and I can think of none that would not open the door to serious problems.

A determination that a judge or participant acted inappropriately would probably be defamatory, and such a determination could subject the VPA to litigation. The expense and disruption caused by litigation is significant, and opening the door to litigation is a poor policy decision. Litigation would inevitably taint what should be a celebratory event.

Any Procedure for Overturning an Award Would Be Expensive

The expense of any evaluative process challenging an award would be considerable. Evaluating facts and making factual determinations is different from and much more difficult than a determination that rules and procedures have been followed. Adopting procedures that require factual determinations without providing the means to assure that such determinations can be made fairly would be improvident. I note in passing that even if one ignores expense, devising such rules would be difficult.

Making disputed factual adjudications requires someone to present evidence on behalf of each participant as well as someone to evaluate the evidence. To say little good would come from any such procedure is to state the obvious. The fact that nothing in the rules governing the contest suggests the availability of factual adjudication reflects what seems to be a wise decision which I endorse and one which I am required to accept.

Even if One Ignores the Rules Nothing Establishes a Basis for Invalidation of the Award

A review of the three submissions even in the context of the allegations does not suggest that the Award should be overturned. Each of the submissions is well done and should be the subject of pride to the three submitters. The writing in each is clear, each addresses significant issues of

public concern, and all seem consistent with the best traditions of public service journalism. Each makes one proud that the values for which the VPA stands are being honored. Making a determination that would diminish the value of any of the three submissions seems completely inappropriate even if it were authorized. The VPA's role is to celebrate and reward such quality journalism and not to attack those who serve the public interest so well.

Having read each of the submissions and the judge's comments, I find nothing that justifies a finding of invalidity. Even if one disagrees with the judgment, this does not establish or suggest that the judgment was flawed or deviated from expected standards. Judging the quality of journalistic submissions is difficult, and there is nothing I have seen that would suggest much less establish that the judge acted in any way inappropriately. Any subjective determination may be subject to debate, but good journalism encourages debate.

Nothing Suggests the Judge Acted Inappropriately

It is also appropriate to note that adopting procedures to criticize publicly the decisions of those who take the time and provide the effort to judge where decisions are difficult would make it difficult to obtain judges. Distinguished journalists and journalism professors do not anticipate and should not have reason to anticipate that the VPA will find their evaluation has no merit. A judge assumes the risk that some will disagree with a judgment; a judge does not assume the risk the judgment will be found so flawed as to be ignored.

The press and the public have the right to criticize the award, and this right has been exercised. The public may agree or disagree with the criticism. But acknowledging the possibility of public controversy is fundamentally different from saying that public controversy about any award justifies the VPA making a determination that the evaluation was so flawed it must be overturned. In other words, not only do the rules prohibit such a determination, but even in hindsight this prohibition reflects wisdom. The finality of a decision is a virtue.

The Fact It Is Possible to Conjure Conduct that Would Invalidate an Award Does Not Suggest There Must Be Procedures for Doing So

There are situations where invalidation of an award might be suggested, but they are so rare that they do not invalidate the analysis above. If it were determined by clear and convincing uncontradicted evidence that submissions were plagiarized, this would be a fundamental deviation from journalistic norms. But even in this rare instance, there is no provision for making the award to another entrant, and absent clear and overwhelming evidence establishing procedures to determine plagiarism would be fraught with peril. In this case it seems clear the contributions of the winner are original.

I note there is an allegation that one of the articles submitted by the winner was not a final draft. This does not suggest invalidating the award, but instead indicates the writer was highly skilled. The award is based upon what was published. There is nothing suggesting that contestants can or should have the ability to invalidate awards because editors published a version of the story prior to the author's final review. Even if one were to condemn this conduct (on which I make no judgment), this should not invalidate the Award.

The One Incident Where An Award Was Rescinded By The VPA Does Not Change The Analysis

The only occasion where an award has ever been rescinded involved submissions which were altered and "improved" so the articles submitted to the contest were different from the stories that actually ran in the newspaper. The alteration of the submissions obviously fundamentally violated the rules of the contest which is designed to honor published journalism. There was no dispute about the alterations since it is easy to compare what was in the newspaper with what was submitted for judging.

There is no such allegation involved here. The fact that an award was voided when it was made based on material that was never published does not establish or even suggest that awards made in accordance with the published rules are subject to challenge.

Tension Between a Student Newspaper and the Institution It Covers Does Not Invalidate the Award

The existence of tension between a student newspaper and the institution it covers is neither surprising nor a fact that invalidates the Award. Quality journalism generates controversy, and these controversies are resolved, if they are resolved, by the competition of ideas in the marketplace not by the fiat of the VPA or any other organization. The fact that an educational institution is subject to controversy does not diminish its stature nor deflect from its many contributions to the Commonwealth. No one disputes the importance of VMI's contributions to the Commonwealth, and nothing in this report is intended to diminish the debt all Virginians owe to a great institution.

But even great institutions are subject to journalistic inquiry. It is not the role of the VPA or any lawyer to resolve these questions which are left to an informed citizenry.

Conclusion

For the reasons set forth above, I conclude the Award is final and is not subject to challenge.



Conrad M. Shumadine

June 8, 2023