

Monday, April 30, 2007

### **Lucy van Pelt lurks in Cary, Illinois / Stephen King on the Virginia Tech murderer.**

Image from National Park Service's website. Lucy van Pelt repeatedly egged on Charlie Brown to kick the football she held, with Charlie each time being foolish enough to hold out hope that once and for all she would not pull the ball away, only to fall on his back each time. That fiction was replaced last week by Orwellian fact when straight-A Cary-Grove, Illinois, High School student Allen Lee -- with no history of mental illness -- dutifully followed his teacher's instruction to "write whatever comes to your mind. Do not judge or censor what you are writing," with the first few lines and last line of Mr. Lee's writing (here is his essay and his commentary on it) resembling a page from Stephen King, or one of his twisted characters. What was Mr. Lee's reward for following his teacher's instructions not to censor his writing? He ended up being prosecuted criminally with disorderly conduct (specifically, two counts of disorderly conduct). Also, on Monday, April 30, the school board will discuss possible disciplinary action against Mr. Lee. To boot, the Marines will no longer accept Mr. Lee's previously-anticipated October 2007 entry, not at least pending the outcome of his disorderly conduct prosecution. Someone(s) at Mr. Lee's school apparently wanted to have their cake (have Mr. Lee follow his teacher's instructions to a T) and eat it, too (upon regretting the assignment to Mr. Lee in this post-Virginia-Tech-massacre atmosphere, make Mr. Lee the scapegoat for the teacher's assignment, with a criminal prosecution). The Illinois code's disorderly conduct provision that most closely applies to Mr. Lee's situation does not appear to apply to him: "A person commits disorderly conduct when he knowingly ... [d]oes any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." 720 ILCS 5/26-1(a)(1) (emphasis added). This disorderly conduct provision is a Class C misdemeanor, which carries up to thirty days incarceration. 730 ILCS 5/5-8-3. The statute is unconstitutionally vague and overbroad for its coverage of doing "any act in such an unreasonable manner". Moreover, a person cannot be found guilty under the statute unless one provokes "a breach of the peace," which would have been absent here, where Mr. Lee merely fully followed the instructions of his creative writing teacher. To prosecute Mr. Lee for his essay would also violate the First Amendment. Mr. Lee asserts he was writing fiction as to the violent passages of his essay, and the contents of his essay support that assertion. To permit Mr. Lee to be prosecuted for his essay would permit Stephen King to be prosecuted for many of his murderous tales that very well could give graphic ideas to murderers, including Skeleton Crew's (1985) "Cain Rose Up" (written when Mr. King was in college), about a murderous college student on a campus shooting spree, which sounds frighteningly familiar after the Virginia Tech murders. In fact, in commenting on the Virginia Tech murders, Mr. King said: "Certainly in this sensitized day and age, my own college writing would have raised red flags, and I'm certain someone would have tabbed me as mentally ill because of them." Although the Supreme Court permits many more First Amendment limitations on school grounds than off, *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988), (1) such limitations on in-school speech do not reduce Mr. Lee's First Amendment defenses against his disorderly conduct prosecution (and the First Amendment, by itself, should prevent this prosecution), and (2) for the foregoing reasons, he simply should not be disciplined for his essay. Jon Katz. ADDENDUM: This blog entry was substantially updated on April 30, 2007, at 8:30 a.m. (EST).

Posted by Jon Katz in Criminal Defense at 08:15