



STEAMBOAT SPRINGS POLICE SERVICES

2027 Shield Dr., P.O. Box 775088, Steamboat Springs, CO 80477-5088

(970)879-4344 FAX (970)871-7090

Officer Report for Incident P1910417

Address: 325 7TH ST; SS SCHOOL DISTRICT
STEAMBOAT SPGS CO 80487

Offense Codes:

Offense: 0243 CITIZEN COMPLAINT

Agency: SSPD

Responding Officers: SILVA S

Responsible Officer: SILVA S

When Reported: 13:17:12 09/10/19

Disposition: CLO 09/12/19

Occurred Between: 13:17:12 09/10/19 and 13:17:12 09/10/19

Responding Officers:

SILVA S

Unit :

D61

Responsible Officer: SILVA S

Clearance: RTF REPORT TO FOLLOW

When Reported: 13:17:12 09/10/19

BAC:

Agency: SSPD

Disposition: CLO **Date:** 09/12/19

Occurred between: 13:17:12 09/10/19

and: 13:17:12 09/10/19

Complainant:

Last:

DOB: **/**/**

First:

Dr Lic:

Mid:

Address:

Involvements

Date	Type	Description	
09/26/19	Name	MAULDIN, KENNETH RAY JR	RP

Narrative

STEAMBOAT SPRINGS POLICE SERVICES
MISCELLANEOUS INCIDENT REPORT

SYNOPSIS:

On September 9, 2019, I, Detective Sam Silva, was briefed on this incident by Commander Stabile. It was originally reported through a widely distributed e-mail sent by Ken Mauldin. He sent the e-mail to numerous people including City Council Members, County Commissioners, the Police Chief and the Sheriff. The title of the e-mail was "Sexually obscene material in SSHS classroom". The contents of the e-mail is as follows:

Hello,

Because I believe this situation represents a broader concern for the community, I have included the District Superintendent, SSHS Principle, RE-2 Board of Education, Steamboat Springs City Council, Routt County Commission, SSPD Chief of Police, Routt County Sheriff, and the Routt County District Attorney in this communication.

While attending the SSHS PIC meeting yesterday I was shocked to learn that a high school teacher had introduced patently obscene sexual material into what I understand to be a literature classroom within the last few days. The material in question is a poem titled "Howl" by Allen Ginsberg. Those present were confidently and professionally assured by the SSHS Principle that the material was not approved for inclusion in a SSHS classroom, and will never be presented again. I recognize that we can't 'un-ring the bell' and that the specific event in question has passed.

I will spare recipients excessive quotations of the obscene references throughout the text and focus my comments on the concerns that I have related to a response to the incident. Any recipients that are unfamiliar with the poem can read it in it's entirety here: <https://poets.org/poem/howl-parts-i-ii>

As examples, here are two relevant quotes from the poem "Howl" for your consideration:

1. "...who howled on their knees in the subway and were dragged off the roof waving genitals and manuscripts, who let themselves be fucked in the ass by saintly motorcyclists, and screamed with joy,"
2. "... and continued along the floor and down the hall and ended fainting on the wall with a vision of ultimate cunt and come eluding the last gyzym of consciousness, who sweetened the snatches of a million girls trembling in the sunset,"

My understanding is that the teacher admitted to the classroom introduction of this material in writing to the SSHS Principle.

I suspect we would all agree that exposing minors to such graphic, sexually obscene material would shock the conscience of the community. I can assure everyone that the parents who remained behind after the PIC meeting for the reading of the poem experienced a shocked conscience. The parent reading the poem, who's 16 year-old daughter was reportedly in the classroom involved, was so upset he could hardly hold the paper still enough to read the text. In fact, it was such a profound shock to the conscience that one parent asked the father reading the poem aloud to other parents to "please stop." First, I would be disappointed if the SSHS staff and/or District Office has not referred the circumstances of this issue to the Steamboat Springs Police Department. It seems reasonable that distributing, assigning reading, and discussing such patently obscene sexual material with minors may meet the statutory elements of promotion of obscenity to minors under Colorado law. Obviously, if this teacher had provided the *exact same text* and initiated the *exact same discussion* with a group of minors sitting in McDonald's, resting off the core trail, or anywhere else in our community, law enforcement would have likely been notified to determine if a crime occurred. Colorado's obscenity statute (C.R.S. 18-7-102) provides an exception for law enforcement activities,

but provides no exceptions for teachers in a classroom. In the event that District staff or other parents haven't already reported this event to law enforcement, this email represents a report from a citizen.

Second, I was disappointed to learn that the teacher involved in what could reasonably be argued as the promotion of obscenity to minors was in the SSSS building yesterday, and presumably still responsible for the administrative custody of minors in a classroom.

It is my view that such poor professional judgement, combined with actions that may rise to a criminal act, should result in the immediate removal of the teacher from the classroom while additional facts are gathered and disciplinary measures are considered.

I look forward to everyone's thoughts on this important matter.

Regards,
Ken Mauldin
Steamboat Springs

After being briefed on the incident I read the poem in full. The poem was approximately 10 pages long. It did contain the above quoted texts as well as other sexual references. I also read information from Poets.org regarding the poem and it's author, Allen Ginsberg (1926-1997). According to the web site, "Shortly after Howl and Other Poems was published in 1956 by City Lights Bookstore, it was banned for obscenity. The work overcame censorship trials, however, and "Howl" became one of the most widely read poems of the century, translated into more than twenty-two languages."

I then reviewed the C.R.S. Statute 18-7-102, Obscenity. Subsection (1.5)(a) states "A person commits wholesale promotion of obscenity to a minor or possesses with intent to wholesale promote to a minor any obscene material." The definition of "Obscene" given in Statute 18-7-101(2) Definitions states, "(a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex; depicts or describes patently offensive representations of descriptions of masturbation, excretory functions, sodomy, and sexual bestiality.....; and (c) Taken as whole, lacks serious literary, artistic, political, or scientific value."

Based specifically on the subsection (c) of the definition of "Obscene", a poem that was regarded as "one of the most widely read poems of the century, translated into more than twenty-two languages", "Howl" would not lack literary or artistic value, therefore it would not meet the statutory definition of "Obscene"; in which case the statutory requirements of 18-7-102 would not be met to charge for the promotion of obscenity to minors.

I submitted copies of the poem "Howl" and the biography of poet Allen Ginsberg from Poets.org to SSPD Records to be attached to the case file.

PHOTOS TAKEN: None

BODY WORN CAMERA: None

MOBILE AUDIO VIDEO: N/A

LOCATION OF CONSUMPTION: N/A

PROPERTY VALUE: N/A

IS THIS A "USE OF FORCE" INCIDENT? No

DOES THIS REQUIRE NCIC/CCIC ENTRY OR CANCELLATION? No

REPORTING OFFICER:
Detective Sam Silva, D61

REPORT DATE:
September 10, 2019

Name Involvements:

RP : 31785

Name: MAULDIN , KENNETH RAY

1141 THORNBURG ST; PO BOX 773567

STEAMBOAT SPGS, CO 80487

DOB: 07/23/67

Race: W

Sex: M

Phone: (678)386-7783

Dr Lic: 142270803

Height: 5'09"

Weight: 175

Eyes: BRO

Hair: BRO



OFFICE OF THE DISTRICT ATTORNEY
14TH JUDICIAL DISTRICT
MATT KARZEN, DISTRICT ATTORNEY

DECLINATION OF PROSECUTION

Subject: Educator, Steamboat Springs High School
Investigating Agency: SSPD
Agency Case #: P1910417
Date: October 2, 2019

This situation was submitted to the District Attorney by the reporting party, Mr. Ken Mauldin, originally via email and later in person. A supplemental submission was later received by Mr. Brett Cason.

On September 4, 2019, at a meeting of the SSSH Parent Information Committee, Mr. Mauldin was told that a teacher at the high school had introduced the poem *Howl*, by Allen Ginsberg, to some number of high school students in a literature class. He was told some or all of those students were under the age of eighteen, and that one or more parents were offended and concerned due to the presence of certain words and descriptions in that poem. Mr. Mauldin referred this incident to the Steamboat Springs Police Department as well as the District Attorney's Office, for assessment as to whether the teacher had violated Colorado's Criminal Obscenity statute, under C.R.S. 18-7-102. Subsequent to Mr. Mauldin's report, the DA's office received an email from a Mr. Brett Cason. Mr. Cason indicated he understood this office received a complaint regarding his daughter being "exposed to sexually explicit material in a high school classroom". According to Mr. Cason, "the poem was distributed in a handout to the course with the profanity removed. The students were then asked to fill in the blanks of the explicit material in their own handwriting." The SSPD determined the material at issue, the poem *Howl* by Allen Ginsberg, did not meet the definition of obscenity under C.R.S. 18-7-101(2) and for that reason declined further pursuit of the case. Mr. Mauldin requested the DA's Office assess the matter as well, and this office agreed to do so.

This review is limited to whether a criminal violation occurred under Colorado law. Defining criminally obscene speech requires assessment of the societal value and role of the speech at issue, meaning the First Amendment of the U.S. Constitution and Article II section 10 of the Colorado Constitution are at the center that analysis. Notably, in Colorado, freedom of expression is accorded broader protections than those provided by the First Amendment to the U.S. Constitution. People v. Ford, 773 P.2d 1059, 1066 (Colo. 1989).¹

¹ In reference to the constitutionality of incorporating community standards into a statute defining criminal obscenity, the Colorado Supreme Court articulated our more robust Colorado freedom this way: "In order to be constitutionally sufficient, the definition of "patently offensive" must incorporate a standard which protects all but the most



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MATT KARZEN, DISTRICT ATTORNEY

The first statutory provision involved is C.R.S. 18-7-102(2.5)(a), which defines Promotion of Obscenity to a Minor: A person commits promotion of obscenity to a minor if, knowing its content and character, such person promotes to a minor or possesses with intent to promote to a minor any obscene material. The key here is whether Howl is obscene, and Colorado defines obscene this way, in C.R.S. 18-7-101(2):

“Obscene means material or a performance that:

(a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(b) Depicts or describes:

(I) Patently offensive representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(II) Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.”

Because subsection (c) applies as a requirement to each other defining characteristic of obscenity that precedes it in the statute, and because that component of the offense is singularly dispositive in this case, it is addressed first.

The poem Howl has undisputed status as a profound act of speech in American literature, culture and politics. Nominal research demonstrates that its significance on all of these fronts is well-documented by diverse and committed stakeholders in American history, politics and culture, and education - from “Encyclopedia Britannica”, to “Slate”, to the “Yale-New Haven Teachers Institute”.

A piece of speech that has for over sixty years inspired countless people to consider their individualism, their relationship to the organized state, their political voice and ability to think freely – if that is not the definition of “serious literary, artistic or political value”, then that statutory phrase has no discernable meaning, which would mean the statute is unconstitutionally vague.

The criminality of Howl was famously litigated in 1957 and produced a result consistent with this assessment. Although the modern Colorado definition of obscene incorporates as one component the ever-shifting standard of “contemporary” “average” values, a statutory scheme that is on seriously amorphous constitutional ground, in this scenario attempting to identify those values,

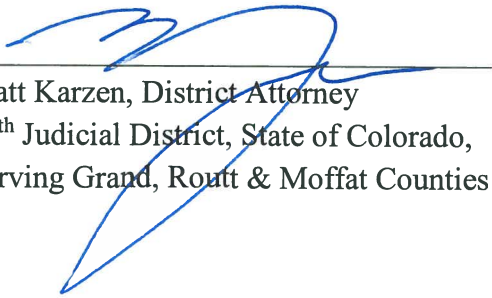
insufferable of sexually explicit material. Although both federal and state courts have approved definitions of “patently offensive” which incorporate community standards of decency, acceptance, or tolerance, we believe that the tolerance standard better protects freedom of expression, and is the only standard of the three which would satisfy the Colorado Constitution. Whereas “decency” implies a community standard of what is proper, and “acceptance” connotes approval, tolerance stretches the community’s standards to their outermost limits. *When a tolerance standard is employed, material is not offensive unless the community cannot endure it.* (emphasis added).

ROUTT COUNTY
PO Box 770129
Steamboat Springs, CO 80477
970-879-1146 Fax 970-870-5201



OFFICE OF THE DISTRICT ATTORNEY
14TH JUDICIAL DISTRICT
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such as they might be today, is not required: Howl, as a whole, has demonstrable and serious literary, artistic and political value, and is therefore not, by definition, obscene. Because Howl is not obscene, there was no crime.²



Matt Karzen, District Attorney
14th Judicial District, State of Colorado,
Serving Grand, Routt & Moffat Counties

² This declination of prosecution does not address whether a civil entity such as a school could impose, as an administrative policy, any time, place or manner restrictions on the dissemination of material such as Howl by Allen Ginsberg, as that type of restriction on freedom of expression is outside the scope of authority of the District Attorney's Office.

ROUTT COUNTY
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From: Matt Karzen mkarzen@14da.org 
Subject: last one
Date: November 5, 2019 at 11:45 AM
To: richardprice@weber.edu

MK

This is what Mauldin apparently sent out initially, to several public officials – it was sent to our general inbox, so I didn't see it until someone forwarded it to me.

You now have all documents/emails covered by your request. For future reference, we have a form we use for records requests that contains mandatory statutory language, so if you want further information on this or any other subject, please let me know and I can email you that form – but in this instance, you now have everything you asked for. If you have any questions, please don't hesitate to reach out. MK

From: Ken Mauldin <kennethmauldin@gmail.com>
Date: September 5, 2019 at 10:52:06 AM MDT
To: Brad Meeks <bmeeks@ssk12.org>, <ktaulman@ssk12.org>
Cc: Joey Andrew <jandrew@ssk12.org>, <klee@ssk12.org>, Margie Huron <mhuron@ssk12.org>, Michelle Dover <mdover@ssk12.org>, <klatterman@ssk12.org>, Jason Lacy <jlacy@steamboatsprings.net>, Kathi Meyer <kmeyer@steamboatsprings.net>, Robin Crossan <rcrossan@steamboatsprings.net>, Lisel Petis <lpetis@steamboatsprings.net>, Heather Sloop <hsloop@steamboatsprings.net>, <smacys@steamboatsprings.net>, Scott Ford <sford@steamboatsprings.net>, <tcorrigan@co.routt.co.us>, <dmonger@co.routt.co.us>, <bmelton@co.routt.co.us>, Cory Christensen <cchristensen@steamboatsprings.net>, <gwiggins@co.routt.co.us>, <routt14@14da.org>
Subject: Sexually obscene instructional material in SSHS classroom

Hello,

Because I believe this situation represents a broader concern for the community, I have included the District Superintendent, SSHS Principle, RE-2 Board of Education, Steamboat Springs City Council, Routt County Commission, SSPD Chief of Police, Routt County Sheriff, and the Routt County District Attorney in this communication.

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Steamboat Springs

Matt Karzen
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14th Judicial District, State of Colorado

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