

Case Summary – All Purpose Public Figure/Freedom of Speech

Abstract

There is a fine line between infringing on a person's right to free speech and stating a personal opinion regarding what he or she said. Each day, the people of the United States announce their views, feelings, and preferences on a variety of topics such as food choice, celebrities, and politics. These general statements are accepted because of the laws that are upheld in the United States. The Constitution and Bill of Rights grant each person unalienable rights which cannot be limited. The freedoms of expression and speech are two of the fundamental rights entitled to each person, and each right is one's catalyst for uniqueness and character.

However, when demonstrating your right to free expression or speech, you must be mindful of the expression and speech of others. In this case, the plaintiff, an editor and part-time mayor, has sued the defendant, a town councilman, for violating her right to freedom of speech. She contends her rights as a journalist and citizen were breached by the councilman's comments and actions. The councilman has a right to criticize the actions of the plaintiff, but she also has the right to speak her mind about the stories in her community. This issue raises a serious question about where the boundaries for public figures and journalists begin and end in relation to the freedom of speech.

Background

In this case, the local newspaper editor is also the town's part-time mayor. These two duties could possibly create a conflict of interest for her and the town because her political opinions and affiliations could provide bias within her work as an editor. To

manage the two duties, she would have to walk a very fine line. As a mayor and editor, she becomes concerned that the town's high school graduates are signing up to join the Army without knowing the proper risks and benefits. She fears the Army recruiter fails to lay out the proper information when the students inquire about the military branch, and could be making promises that neither he nor the Army can keep. Her concern is that the students are not considering the benefits of college and are looking for the quickest way to escape from a small town. As a mayor and editor, this puts her in a tough position. The recruiter and his lies may be leaving the members of her town unhappy. As a mayor, it is her duty to protect the interests of her town and ensure deceit does not exist, especially when dealing with students and their future. On the other hand, her job as an editor is to report the relevant news of the town, whether bias or unbiased.

She decides to publish an editorial about the issue and is immediately labeled as unpatriotic by one of the conservative representatives on the town's council. In addition to being labeled unpatriotic, her actions could have caused the recruiter to be labeled incorrectly and also turn the town's graduates away from the military altogether. Not only does the politician label her as unpatriotic, he initiates a recall drive to get her removed as mayor. On top of the political motives, the councilman begins to urge local advertisers to stop advertising in the newspaper where she is editor. In response to his actions, the mayor sues him for limiting her freedom of speech. As an editor and mayor, she is entitled to her opinion and is granted civil rights just like any individual. The question is whether or not the councilman infringed upon her freedom of speech by the actions he took in and out of the political arena.

Argument

In this case, I am going to be arguing the side of the plaintiff. I believe her claim that her freedom of speech was violated is accurate and could be proven by various examples of case law. I am also going to arguing the issue of libel. The case summary may present itself in a way where the plaintiff could also sue the councilman for libel and I am going to argue she would be successful in doing so if she felt it was necessary. The councilman's comments and actions were out of line when considering the editorial, the situation, and the rest of the scenario.

It is critical to this case to establish whether or not the plaintiff is a public figure, and if so, what type of public figure. If she is deemed a public figure, it is necessary to determine if that status should have weight in this case. The law treats public figures differently in certain scenarios, especially libel, and although that is not what she initially sued for, it is necessary to determine her status because it may influence the ruling. There are two kinds of public figures: all-purpose public figures and limited-purpose public figures. Justice Lewis Powell of the Supreme Court was the individual who established these two categories and noted in his ruling of *Gertz v. Welch* (1) that all-purpose public figures are individuals who "occupy positions of such pervasive power and influence that they are deemed public figures for all purposes." In the same opinion, Justice Powell established limited-purpose public figures were persons who "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." (2) Although Justice Powell was only speaking on a national level, all-purpose public figures may exist on a local level. In *Steere v. Cupp* (3), Justice Herd of the Kansas Supreme Court stated the appellant, the county attorney,

was a “public figure for all purposes by virtue of his general fame and notoriety in the community.” Based upon Justice Powell’s definitions, the plaintiff’s status in the community as mayor, and *Steere v. Cupp* as a case precedent, the plaintiff could be classified as an all-purpose public figure. But, since this case does not involve the plaintiff as a mayor, she should be regarded as a journalist only. This would be possible if it could be proven that the plaintiff was able to keep both of her occupations separate, without one influencing the other.

(The next paragraph is stated in present voice and past voice...you may want to use one or the other for a better flow. I notice a lot more present tones (such as “is”) but then a lot of your verbs are past tense (such as “called,” and there are also a lot of “was” which is past tense).

It is necessary to determine if the plaintiff’s right to free speech was infringed upon by the defendant. Every citizen of the United States has the right to free speech, including journalists and politicians, however your stature or status may affect the impact and meaning of your words. In this case, the editor/part-time mayor published an article in her newspaper that stated her opinion on the Army recruiter assigned to the local high school. After stating her opinion, the councilman called her “unpatriotic.” His comment regarding her patriotism was an infringement upon her freedom of speech. In *Miami Herald Publishing v. Tornillo* (4), it was ruled the Miami Herald could not censor the opinions of its editors because that would be limiting free speech and controlling the information distributed through the press. Although the defendant was not censored by a publishing company, the councilman tried to influence and control the content of the paper based upon his own views as to what was “patriotic” and “unpatriotic.” He did not

have any influence on the plaintiff in regards to her duties as an editor, but had she known her opinions would garner such comments she may not have justly reported as she did. This, in turn, was a direct violation of the plaintiff's freedom of speech and her job as editor of the newspaper. Also, the councilman's attempts to remove the mayor from office and reduce the number of advertisers in her paper were also an infringement on her First Amendment right. He attempted to punish the defendant for expressing her opinion and doing her job.

In addition to the breach of free speech, the legal issue of libel is present in this case. Even in a libel case, I believe the plaintiff's status as mayor should be removed. It was already established the plaintiff could be considered an all-purpose public figure and in *New York Times Co. v. Sullivan* (5), the court ruled that in a libel case, a public figure must prove "actual malice" (6) was intended, therefore making it tougher for people in the spotlight to win defamation cases. On the other hand, Module 5 states, "Legal recourse of libel and slander *does not apply* to what the law and the courts consider public figures, especially *political figures*." [emphasis added] (7) Clearly, political figures, and most other public figures, put themselves in a position to be scrutinized and broken down, both in a personal and professional manner. The recall campaign initiated by the defendant is legal and therefore not considered "actual malice." The councilman's attempt to limit advertising in the plaintiff's newspaper is considered a libelous action because he is attempting to limit her salary and earnings from her full-time job. Although the plaintiff most likely has a portion of her salary that is unrelated to advertising, there is the possibility the number of ads in her newspaper could affect bonuses, availability for overtime, and even benefit coverage. Not only could the plaintiff sue the councilman for

libel, but the publishing company of the newspaper could sue as well. Since the councilman's tactics would be affecting overall revenue for the paper and its notoriety, he is entering into an arena where the publishing company could sue him for financial loss and defamation of character. Although it was not the initial issue, a libel case could be pursued if the plaintiff and the publishing company wished to do so.

Closing

In this case, it is clear the defendant violated the plaintiff's right to free speech. He was expressing a view that impeded on her rights and duties as a journalist, therefore censoring her speech. *Miami Herald Publishing v. Tornillo*, a case where it was ruled a publishing company could not censor or influence the opinions of an editor, stands as a relevant precedent for this case even though the source of censorship is different. Also, the issue of libel is present in this case. Since the councilman targeted the plaintiff's finances and status as a reputable reporter, she could prove he intended to inflict malice upon her and defame her character with his comments and actions. Overall, this case is tough to sift through and determine the actual legal issues involved, but once that is accomplished, it is easy to see the defendant infringed upon the plaintiff's right to freedom of speech and could be sued for libel. No one should be hindered of their First Amendment rights, whether you are a political figure, an editor, or both. The plaintiff has a right and duty to speak her mind, a right that should not be taken away or criticized in an inappropriate manner, which is exactly what the defendant did.

Case Law and Statutory Citations

(1) 418 U.S. 323 (1974).

(2) 418 U.S. 323 (1974).

(3) 602 P. 2d 1267 (1979).

(4) 418 U.S. 241 (1974).

(5) 376 U.S. 254 (1964).

(6) Infoplease. (n.d.). New York Times Company v. Sullivan. In *Infoplease*.

Retrieved October 1, 2008, from

<http://www.infoplease.com/ce6/history/A0835522.html>.

(7) Sterin, J. Charles. (2008). Module 5: Special Issues Mitigating Privacy. In

COMM400 Course Content. Retrieved October 7, 2008, from

[http://tychousa10.umuc.edu/cgi-](http://tychousa10.umuc.edu/cgi-bin/id/CDI/index.pl?class=0809:COMM400:6980&module=5&default=M5-Module_5/S1-Overview.html)

[bin/id/CDI/index.pl?class=0809:COMM400:6980&module=5&default=M5-](http://tychousa10.umuc.edu/cgi-bin/id/CDI/index.pl?class=0809:COMM400:6980&module=5&default=M5-Module_5/S1-Overview.html)

[Module_5/S1-Overview.html](http://tychousa10.umuc.edu/cgi-bin/id/CDI/index.pl?class=0809:COMM400:6980&module=5&default=M5-Module_5/S1-Overview.html).