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We covered a wide variety of court cases in Communication Law this year, and I learned how the precedents they set affect communication today. These cases encompassed everything from libel, protecting privacy, newsgathering, reporter's privilege, and electronic media regulation. For my paper, I have chosen to dissect some of the court cases we have learned about this year, further exploring the backstories and events of the case, as well as the lasting effects.

For my first case, I chose to look at Milkovich v Lorain. This case was the first time the court ruled whether expressions of opinion were covered by laws regarding libel. The case was filed by Michael Milkovich the King of Ohio high school wrestling and a member of the Helms National Wrestling Hall of Fame. No one can question Milkovich's qualifications as a coach with an impressive 262-25-2 record, but his truthfulness was questioned. Milkovich testified at a hearing regarding an altercation at a wrestling meet that involved his Maple Heights High School wrestling team. News-Herald sports editor Theodore Diadiun questioned Milkovich's veracity writing that everyone who attended the wrestling meet "knows in their heart" that Milkovich was not telling the truth when he testified at the hearing. Diadiun was then sued for defamation by Milkovich who claimed that the story damaged his occupation, accused him of perjury, and constituted libel.

The Oyez Project archives supreme court cases including everything from court audio to the history of cases. The website Oyez.org examines how different courts ruled on Milkovich v Lorain from lower courts up to the Supreme Court:

> The court ruled in favor of the paper, holding that Milkovich failed to show the article was published with actual malice. The Ohio Court of Appeals reversed and remanded. On remand, the trial court ruled in favor of the paper, holding that the article was a constitutionally-protected opinion. The Ohio Court of Appeals affirmed, but the Supreme Court of Ohio reversed and remanded, holding that Milkovich was not a public figure and the defamatory statements were factual assertions, not constitutionally-protected opinions. (oyez.org, 2021)

The case largely comes down to whether what Diadiun wrote in the local paper was an opinion and therefore constitutionally protected speech or if it fell under defamation. Originally the Ohio Court of Appeals agreed that Diadiun was constitutionally allowed to voice his opinion in the article. The Supreme Court of Ohio felt that despite Diadiun being allowed to voice his opinion on public matters and figures, Milkovich did not fall under that category and interpreted that the opinions were made as factual assertions and therefore were defamation of his character. At the end of the day, it does not matter if Milkovich did commit perjury when he gave his testimony or not but whether a reporter said he had when it had not been proven.

The Supreme Court ended up ruling 7-2 in favor of Milkovich writing that opinions should receive no privileges under the constitution and that Diadiun's claims were given as facts and could be tested for factualness. Thurgood Marshall and William J. Brennan Jr. dissented with Brennan writing that it is not possible to interpret Diadiun's statements as defamatory. The precedent of this case remains relevant today regarding who journalists are allowed to publish opinions on if said opinions cannot be supported by facts. Media outlets are capable of questioning politicians, public officials, and other public figures' honesty and often do. During Trump's presidency, many reporters accused him of lying in statements that he made and often

questioned his character. While normal citizens would be protected from libel being published that could hurt their reputation, public figures do not enjoy the same protection and are allowed to have opinions published and broadcast about them. This is important because if reporters could not question the character and reputation of public figures, we would not have freedom of the press. Public officials could silence opposition if they were protected and prosecute those who dared to voice their opinions. Making the distinction between the rights of public figures and regular citizens is necessary because it protects the rights of both citizens and the press. The significance of this case is that citizens are protected from having their reputations attacked by libel. Members of the press could unfairly target citizens with defamation and gossip that is opinionated and not based on fact. This case has established a way that the press differentiates between citizens and public officials and the regulations and freedom that they experience with each respectively.

In my next case, I examined Virgil v Time, Inc. and its effects on protecting privacy. Body surfer Mike Virgil agreed to an interview with Curry Kirpatrick for Sports Illustrated about his sport. After he and his wife were contacted over the phone by a checker from the magazine to confirm details of the story, he changed his mind on the piece and withdrew consent asking that his name not even be mentioned in the story. The story was published anyways, and Virgil chose to sue for invasion of privacy. The story covered many body surfers but focused less on Virgil's involvement in the sport and more on his character with personal stories that he had told Kirpatrick. These stories personified Virgil as a bad boy, maverick, and juvenile exhibitionist portraying him as an archetypical character popular in American society at the time that the story was published. These personal stories covered wild and outrageous acts. He talked of eating spiders because they are healthier than meat and of purposely injuring himself in order to receive

unemployment pay. His stories went as far back as fights when he was a linebacker in high school, including one incident when he bit a kid's cheek off in a gang fight between his buddies and thirty rivals. The Sports Illustrated article quoted Virgil:

> At the ski lodge there one night I dove headfirst down a flight of stairs—just because. Because why? Well, there were these chicks all around...I do what feels good. That's the way I live my life. If it makes me feel good, whether it's against the law or not, I do it. I'm not sure a lot of the things I've done weren't pure lunacy. (Sports Illustrated Vault, 1971)

The question became whether a news organization could be sued for the invasion of a private citizen's privacy if the information about them is humiliating or not newsworthy. Time, Inc. won the case in lower courts on the basis of Kirpatrick's story being newsworthy. The Supreme Court ruled likewise agreeing that Mike Virgil is a fascinating and buzzworthy character who the public would be interested in and was therefore newsworthy. Similarly, the court found that Kirpatrick's article was not offensive to Virgil. His personal stories were not sensationalized or embarrassing enough to offend a rational reader. Though Virgil might have been humiliated by his personal stories being published, they were newsworthy stories that were not offensive enough to be deemed unpublishable by the courts. This case helped to clarify the blurry line news reporters have tread weighing individuals' privacy against the public's right to know. Though it is still questionable to determine the vagueness of what makes a story newsworthy, this precedent helped establish that newsworthiness must be reached along with embarrassing stories not being offensive and unreasonably interfering and extending into citizens' privacy.

Following that case, I explored Food Lion, Inc. v Capital Cities/ABC, Inc. and the precedent it set for how reporters are allowed to go about newsgathering. I believe this case is by

far the most intriguing that we learned about in class with a background and story worthy of a movie in my opinion. From the undercover journalists exposing unsanitary practices to the aftermath of Food Lion attempting to get damages for lost revenue and fraud for breach of loyalty and trespassing, this groundbreaking case has all the drama and excitement you could ask for. ABC employees Dale and Barnett were hired as a meat wrapper and deli clerk by Food Lion where they secretly recorded footage with hidden cameras for the one to two weeks that they worked there. These videos were then broadcast on “PrimeTime Live” where ABC exposed the meat department at Food Lion and various unsanitary and illegal operations. Hidden camera video uncovered employees selling cheese that rats had infested and old meat that was bleached. Following the broadcast Food Lion came after ABC and the two employees for a slew of charges. Food Lion indicted Dale and Barnett for lying on their resumes. The duo had falsified their experience and backgrounds and failed to notify them of their employment at ABC. Financial damages were sought by Food Lion for the costs of training and wages of the two for applying with the knowledge that they would quit after temporary employment. Both women were satisfactory workers, and the wages were not sought as compensation for the quality of their work but because of them getting the jobs through dishonest applications. Food Lion argued that they were not loyal to the company like they were obligated and should be held accountable. On the grounds of trespassing Food Lion asserted that based on the employees' misrepresentations on applications Food Lion had not consented to them being on their property. More crucially, Food Lion accused the employees of breaching loyalty by filming non-public areas which the employees were not authorized to do because the company had not assented them to do so.

Food Lion sought the biggest damages for fraud. FindLaw is the best source I have found and does a great job at examining every charge that damages were sought for as well as the arguments made by both sides addressing these charges. It states Food Lion's burden of proof for fraud claims:

> As indicated, under North and South Carolina law a plaintiff claiming fraud must show injury proximately caused by its reasonable reliance on a misrepresentation...In this case, therefore, Food Lion had to show (1) that it hired Dale and Barnett (and incurred the administrative costs incident to their employment) because it believed they would work longer than a week or two and (2) that in forming this belief it reasonably relied on misrepresentations made by Dale and Barnett. (FindLaw, n.d.)

Food Lion was tasked with showing how both employees had cost the company as a result of lies that they had made. Arguments against this were that nowhere in the contract were the employees obligated to a time of employment with the contract even stating that either employees or the company could cease employment at any time. In addition, the states of North and South Carolina where the employees worked are at-will employment states which makes it unreasonable for an expectation of employment duration. It was also known that their employment positions had high turnover rates. In addition, the company chose to seek damages for the lost revenue and stock value from the broadcast which had shown videos obtained as a result of fraud.

In 1995 Food Lion brought the case to court in Greensboro, North Carolina. By 1996 the court had ruled that ABC was liable for disloyalty, fraud, and trespassing. Nominal damage of two dollars was awarded for the trespass and loyalty breach by Dale and Barnett. An impressive $5.5 million was awarded in punitive damages for fraud by ABC and an additional $1,400 in

compensatory damages for the training of the employees. The punitive damage was found to be exorbitant by the U.S. District Court which lowered it to $315,000. Both parties were unhappy with this settlement and appealed. Food Lion was upset that the court found that the fraud did not correlate with the company's lost revenue and stock value from the negative exposure and wished to still seek damages. Meanwhile, ABC argued that they had not committed fraud in the first place and should have only paid damages for trespassing.

The Fourth Circuit U.S. Court of Appeals in Richmond, Virginia struck down the fraud charge. LexisNexis does a great job summarizing why fraud was rejected:

> In finding that the reporters did not commit fraud upon the plaintiff, the Court held that the contract they signed upon employment stated that either party could terminate employment at any time for any reason. Thus, the plaintiff had to assume the risk of the reporters' early departure at the time of employment, and the circumstances under which they were hired were irrelevant. Further, in finding that the defendant could not be held liable for any stock damage or loss of revenue, the Court found that the claims made on the defendant's program were true, and thus not defamatory, regardless of how they got the information. In order to receive punitive damages, the statements had to meet the *New York Times* standard of "actual malice" in publishing something with a reckless disregard for its truth. (LexisNexis, n.d.)

As stated earlier, to meet fraud Food Lion would have to be able to prove that they hired the two employees with an expectation that they would work for longer than they did because of misrepresentations made by Dale and Barnett. The fact that the contract insured that either party could terminate employment at any time and no time period was agreed upon means that Food Lion could not prove that they were injured by the duo quitting shortly after starting. On top of

that, the company could not have surmised how long both women would stay at the Food Lion given North and South Carolina's at-will employment doctrine. What ABC broadcast about Food Lion was true and not defamation. They were not responsible for the company losing money in the market because of a reality that they had shined a light on.

The most consequential precedent set by this case regarding reporters is that they are not immune to trespassing and employee loyalty laws. Reporters are categorized as regular citizens and have no special privileges for investigative reporting that would protect them from laws that the general public must abide by. Dale and Barnett were fortunate to only be charged a dollar each for trespassing as nominal damage. The court saw this being the first case ruled upon where reporters were trespassing to expose something that the public should be informed of. While ABC did something that people were grateful to be enlightened about, the court charged them as an example. By validating that both reporters trespassed the court set a template for how reporters would be tried under similar circumstances in the future. The charge would likely be much more costly for a reporter to make today now that the precedent has been set that trespassing as a reporter is still illegal.

The fourth case that I looked at in Branzburg v Hayes revolves around reporters' privileges when it comes to requiring reporters to testify. Of all the cases that I have delved into this one appears to have the most negative effect on reporters making it more difficult to obtain sources. Branzburg was a reporter who interviewed various people who used and/or synthesized drugs in Kentucky for an article he wrote for a Louisville newspaper. He was subpoenaed to testify in two trials regarding drug crimes but refused to testify citing the first amendment not wanting to disclose his sources. Similarly, both reporters Pappas and Caldwell were called to testify against the Black Panthers. Pappas entered a Black Panthers headquarters in a boarded-up

store to get material from a news conference that was being held. He later reentered the building under the condition of not disclosing anything he saw or heard except for an anticipated police raid. The raid never occurred, and no story was written about the event. Just two months later he was ordered to testify in front of the Bristol County Grand Jury regarding what he had seen and heard in the Black Panthers' headquarters as well as the identities of people. Not wanting to go back on his word that he had given the Panthers to enter the building he too cited the first amendment. Caldwell was a New York Times reporter who had been covering black militant groups including the Black Panthers. He was subpoenaed to turn in interviews, tape recordings, and notes that he had received from spokesmen and officers of the Black Panther Party. Caldwell felt that the subpoena overreached and cited his first amendment to not testify. The Legal Information Institute explained the court subpoenaed Caldwell because of various threats made against the government and the President of the United States by the party. In 1969 an officer made a speech on tv where he said that the party would kill the president. In addition, Caldwell had quoted the party in previous articles talking about picking up guns and using violence and force to overthrow the government.

In a close 5-4 decision the Supreme Court ruled that commanding reporters to hand over confidential information and testify does not violate the first amendment and it serves necessary state interest. Justice Byron R. White wrote the majority opinion, “Since the case involved no government intervention to impose prior restraint, and no command to publish sources or to disclose them indiscriminately, there was no Constitutional violation” (oyez.org, 2021). Essentially reporters must testify to any confidential information they have in court if it is necessary for a government investigation just like the average citizen. Not having the privilege to be able to avoid testifying makes it difficult for reporters to gather confidential sources. People

are hesitant to inform a reporter if they know that the reporter can be forced to testify against them in court. We cannot promise anonymity and security to sources knowing that we have an obligation to the American justice system. This precedent handicaps reporters from being able to report on illegal activities and other nefarious stories that need to be reported on because they cannot promise immunity to sources. Though this is understandable when information testified could help save lives and protect the country's security it still serves as a major impediment to reporting.

The last case I covered was United States v Playboy which covered the regulation of electronic media. The United States government wished to block and scramble the Playboy channel from the hours of 6 a.m. to 10 p.m. in order to prevent the channel from bleeding into other stations where children might be exposed to it. The government thought that allowing pornography at nighttime only was not an over-invasive step to help protect children in households. Playboy argued that there were less restrictive ways for the government's interest to be achieved:

> Playboy challenged section 505, arguing that this content-based restriction did not satisfy strict scrutiny. Playboy noted that section 504 of the act, the lockbox provision, provided a less restrictive alternative that would allow the government to regulate sexually oriented programming without offending its First Amendment speech rights. In effect, each household had the option of making Playboy programming completely unavailable in that household. (The First Amendment Encyclopedia, 2009)

Though it's understandable that the government wants to protect children from sexually explicit broadcasting the supreme court ruled in a 5-4 decision that it would be unconstitutional to block the programming entirely because there were less restrictive ways for the government to

achieve their interest of keeping children from being exposed. This makes sense because blocking all broadcasting during a certain time period because of the channel's content was not justifiable when parents had other ways to block the channels or not even purchase them to protect their kids.

In Communication Law we have examined these five cases and how they are relevant. They establish precedents applicable to communications today. The difference between private and public individuals is established with regard to libel as well as newsworthiness being a requirement in order to bypass the privacy of private citizens. Additionally, reporters must abide by laws that pertain to other citizens such as trespassing and subpoenas. Lastly, regulation of electronic media must take the least restrictive method available in order to avoid overreach.

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