CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

Expression does not lose constitutional protection to which it would otherwise be entitled because it appears in the form of a paid advertisement. Pp. 376 U. S. 265-266

The First Amendment, said Judge Learned Hand,

"presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. To many, this is, and always will be, folly, but we have staked upon it our all."

United States v. Associated Press, 52 F.Supp. 362, 372 (D.C.S.D.N.Y.1943). Mr. Justice Brandeis, in his concurring opinion in Whitney v. California, 274 U. S. 357, 274 U. S. 375-376, gave the principle its classic formulation:

"Those who won our independence believed . . . that public discussion is a political duty, and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law -- the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed."

In Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 310, the Court declared:

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields, the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times resorts to exaggeration, to vilification of men who

have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained, in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression

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are to have the "breathing space" that they "need . . . to survive,"

NAACP v. Button, 371 U. S. 415, 371 U. S. 433, was also recognized by the Court of Appeals for the District of Columbia Circuit in Sweeney v. Patterson, 76 U.S.App.D.C. 23, 24, 128 F.2d 457, 458 (1942), cert. denied, 317 U.S. 678.

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U. S. 476, 354 U. S. 484.

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

Stromberg v. California, 283 U. S. 359, 283 U. S. 369. "[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions," Bridges v. California, 314 U. S. 252, 314 U. S. 270, and this opportunity is to be afforded for "vigorous advocacy" no less than "abstract discussion." NAACP v. Button, 371 U. S. 415, 371 U. S. 429.

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Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth -- whether administered by judges, juries, or administrative officials -- and especially one that puts the burden of proving truth on the speaker. Cf. Speiser v. Randall, 357 U. S. 513, 357 U. S. 525-526. The constitutional protection does not turn upon "the truth, popularity, or social utility of the ideas and beliefs which are offered." NAACP v. Button, 371 U. S. 415, 371 U. S. 445.

"Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment . . . of free speech. . . .

Wood v. Georgia, 370 U. S. 375, 370 U. S. 389. The public

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official certainly has equal, if not greater, access than most private citizens to media of communication. In any event, despite the possibility that some excesses and abuses may go unremedied, we must recognize that

"the people of this nation have ordained, in the light of history, that, in spite of the probability of excesses and abuses, [certain] liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 310. As Mr. Justice Brandeis correctly observed, "sunlight is the most powerful of all disinfectants." [Footnote 3/7]

[Footnote 3/7] See Freund, The Supreme Court of the United States (1949), p. 61.

For these reasons, I strongly believe that the Constitution accords citizens and press an unconditional freedom to criticize official conduct.

[Footnote 3/2]

The requirement of proving actual malice or reckless disregard may, in the mind of the jury, add little to the requirement of proving falsity, a requirement which the Court recognizes not to be an adequate safeguard. The thought suggested by Mr. Justice Jackson in United States v. Ballard, **322 U. S. 78, 322 U. S. 92-93, is relevant here:**

"[A]s a matter of either practice or philosophy, I do not see how we can separate an issue as to what is believed from considerations as to what is believable. The most convincing proof that one believes his statements is to show that they have been true in his experience. Likewise, that one knowingly falsified is best proved by showing that what he said happened never did happen."

See note 4, infra.

[Footnote 3/5]

MR. JUSTICE BLACK, concurring in Barr v. Matteo, 360 U. S. 564, 360 U. S. 577, observed that:

"The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees. Such an informed understanding depends, of course, on the freedom

people have to applaud or to criticize the way public employees do their jobs, from the least to the most important."

MR. JUSTICE GOLDBERG, with whom MR. JUSTICE DOUGLAS joins, concurring in the result.

In my view, the First and Fourteenth Amendments to the Constitution afford to the citizen and to the press an absolute, unconditional privilege to criticize official conduct despite the harm which may flow from excesses and abuses. The prized American right "to speak one's mind," cf. Bridges v California, 314 U. S. 252, 314 U. S. 270, about public officials and affairs needs "breathing space to survive," NAACP v. Button, 371 U. S. 415, 371 U. S. 433. The right should not depend upon a probing by the jury of the motivation [Footnote 3/2] of the citizen or press.

The theory

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of our Constitution is that every citizen may speak his mind and every newspaper express its view on matters of public concern, and may not be barred from speaking or publishing because those in control of government think that what is said or written is unwise, unfair, false, or malicious. In a democratic society, one who assumes to act for the citizens in an executive, legislative, or judicial capacity must expect that his official acts will be commented upon and criticized. Such criticism cannot, in my opinion, be muzzled or deterred by the courts at the instance of public officials under the label of libel.