

Top Ten Cases You Might Not Have Heard of But Should Know

Every media lawyer knows *New York Times v. Sullivan*, but what are the cases that illustrate important principles and aren't quite so famous? Here are ten cases and the important principles they illustrate.

Memphis Publishing Co. v. Nichols

<https://law.justia.com/cases/tennessee/supreme-court/1978/569-s-w-2d-412-2.html>

This is the quintessential "libel by omission" case. Every fact in the story was absolutely true, and yet it left the false implication that the plaintiff was having an adulterous affair.

Principle: This is the perfect example of why you can't take facts at face value. You have to ask questions to make sure you aren't missing a key detail.

Noonan v. Staples

<https://caselaw.findlaw.com/us-1st-circuit/1308763.html>

Noonan was fired by Staples for violating the company's expense policy and the company sent around a memo telling employees that he was fired – which was TRUE. There was a Massachusetts state law from 1902 that allowed a person to sue based on true statements that cause harm if the statement was made with "actual malice," which at that time, the court found, meant "ill will." Because the firing was not a matter of public concern, the constitutional protections provided by Supreme Court precedent do not apply, and the court allowed Noonan to go forward with his lawsuit.

Principle: While constitutional protections in libel cases are strong overall, they don't apply in all situations. And, libel law is a matter of state law. States have quirky rules! If a case involves a private figure and isn't clearly a matter of public concern – and especially if the state at issue has old statutes that apply – you can't take for granted that the speech will be protected.

Norton v. Glenn

<https://casetext.com/case/norton-v-glenn>

Two city councilmen had a fight and one said defamatory things about the other. A local reporter wrote about the spat and was sued by the one "defamed." Although the dispute was *completely newsworthy*, no one actually believed that the defamatory accusations were true and, technically, repeating false, defamatory statements you believe are false is the definition of "actual malice." The Pennsylvania Supreme Court noted that this principle raises problems for the press, but also didn't think it could override US Supreme Court precedent. Therefore, because the plaintiff properly alleged a defamatory statement made with actual malice, the statement wouldn't be protected.

Principle: Sometimes people say things you know are false and defamatory. Repeating them – even if they are highly newsworthy -- can create liability if there aren't other applicable defenses.

Bonus Principle: The court noted that fair report privilege might apply if the city council proceeding counted as an "official" proceeding for the purposes of the state fair report privilege. But note that every state's fair report privilege is different! Some cover only court proceedings. Others cover any kind of government action. Some cover written documents, others don't. Know your state's law, and keep in mind that other states are different.

Huskey v. NBC

<https://law.justia.com/cases/federal/district-courts/FSupp/632/1282/2260491/>

A court denied NBC's motion to dismiss a privacy claim brought by a federal inmate who asked not to be filmed when a camera crew was getting footage in a prison. NBC argued that he had no expectation of privacy in prison, but the court disagreed.

Principle: The broad publication of material by mass media is qualitatively different from the limited exposure people have in places like, say, a prison exercise room. Courts can be very sympathetic to privacy claims, especially when they are in places that are not completely open to the public.

Virgil v. Time

<https://casetext.com/case/virgil-v-time-inc>

A surfer gave a dishy interview to a reporter, but balked when the fact checker asked about some of the statements. He “revoked” consent to publish and sued when the magazine published the material anyway.

Principle: Telling a reporter something is not the same as agreeing to its disclosure, and consent is required if the information is not a matter of public concern. A person can have a protectible privacy interest under state law if they do not consent to broad disclosure of the information, even if they tell it to a reporter.

Hawkins v. Multimedia, Inc.

<https://law.justia.com/cases/south-carolina/supreme-court/1986/22496-1.html>

A teenager named in a story about teen pregnancy was allowed to sue for publication of private facts when he did not understand that his name would be used in the story and did not consent.

Principle: When reporters interview people, they cannot assume that the people they speak to understand what they are doing. Courts tend to be protective of minors anyway, but they are also protective of those who are not necessarily sophisticated or media-savvy. When dealing with people who aren’t government officials or public figures, it’s good to make sure they understand what the reporter plans to use and that they consent.

Green v. Chicago Tribune

<https://casetext.com/case/green-v-chicago-tribune-co>

A mother whose son was killed sued a newspaper that published the words she spoke over her dead son’s body in the hospital. The court found that she had a protectible privacy interest, and there was not an adequate connection between her and the “public interest” in deaths from gang violence.

Principle: There is a distinction between newsworthy *topics* and newsworthy *people*. Even if a topic is newsworthy (in this case, the issue of gang violence), you can’t force any person (in this case, the mom) to be your anecdote. Consent is required to disclose a particular person’s story – unless the person is otherwise newsworthy on their own. (For an example where a person was deemed to be sufficiently newsworthy, see *Veilleux v. NBC, Inc.*)

LANS v. KCAL

<https://caselaw.findlaw.com/us-9th-circuit/1316574.html>

TV news is very competitive! When there is breaking news, it’s natural to want footage of the events. In this case, one station took footage from another station during the 1992 Los Angeles riots. They claimed it was “fair use,” but the court disagreed. The amount taken was significant, there was nothing transformative about the use, and it was in direct competition with the station that shot the footage.

Principle: Not everything used for “news reporting” is fair use, even though reporting is one of the enumerated potential fair uses in section 107 of the Copyright Act. Uses that are competitive and not transformative are unlikely to be fair. See also, *Los Angeles Times v. Free Republic*.

Stanton v. Metro Corp.

<https://caselaw.findlaw.com/us-1st-circuit/1490047.html>

A young woman's picture was used to illustrate a story about teen sex. Nothing in the story was about her. The court allowed her case to proceed.

Principle: Libel or false light claims can arise from the juxtaposition of a person's image with defamatory content.

Bonus principle: The magazine seemed to be aware of this problem and included a disclaimer that made it clear that the pictures were of teens unrelated to the story. BUT!! The court found that the disclaimer wasn't prominent enough to override the initial connection readers would make between the large photo of the plaintiff and the large headline about teen sex. A disclaimer might not be sufficient!

Burns v. DOJ

No. 99-3173 , slip op . at 2 (D.D.C. Feb. 5 , 2001)

The court found that the DOJ could deny a FOIA request that asked the agency to listen to several volumes of audio tapes to find one specific recording. The court found that the request was not adequately specific to identify the record requested.

Principle: FOIA requests are most effective when they are precise and narrow. Broad request, especially those that require burdensome research on the part of the agency, may be denied.