

McGaan's Decisions on the Final exam Cases Spring 2013

Wertz v. Walnut Township Park Board

Decision 1 -- The ordinance is not vague but it is overbroad as it gives the complete power to regulate any activity, including protected speech activities, to a government agency - the Park Board. The law goes beyond necessary regulation for the benefit of all and gives absolute power to a government agency to prohibit speech activities, power that exceeds what is necessary to regulate the park. Ever since *Hague v CIO*, 1939 the USSC has recognized that public parks must be open for the purposes of "assembly, communicating thoughts between citizens and discussing public questions." Thus, a decision to find the law "overbroad" is probably appropriate (although a good argument that it is not overbroad could be acceptable, if well explained).

Decision 2 -- The rally in question is certainly "worthwhile speech" since it deals with matters of clear public concern, particularly state helmet laws. Nothing in this case refers to any of the categories under *Chaplinsky v New Hampshire*, 1942, that allow for considering the event "worthless" speech. (No fighting words are mentioned nor has defamation or obscenity been charged.) Thus, at most the event can be regulated, but it does fall in the category of speech worthy of protection.

Decision 3 -- This is a "time-manner-place" kind of case. The appropriate level one test is balancing specific government interests (maintaining the park) versus the free speech rights of the motor cycle "club." While a number of cases (mentioned in *Tedford* pp. 266-272) could be cited with proper explanations, The most appropriate precedent case for this issue is *P.E.A. v P.L.E.A.*, 1983 in which the SCOTUS establishes a three part analysis that indicates quintessential public forums like parks must be generally open to assembly and debate. Thus, regardless of their suspicions or their dislike of the motorcycle club, the Park Board should have issued the permit (and required the damage deposit, cleanup, etc. to protect the public usefulness of the park) as they have done with other groups. ***The appellate court should now issue an order requiring the the Park Board to issue a permit for the rally and picnic.***

Under *Poulos v New Hampshire*, 1953, Wertz had a duty to obey the Park Board's refusal to issue a permit since the Park Board could legally regulate use of the park **IF** they did so in a non-discriminatory way (even if in this case they did unfairly discriminate against the club. (This decision could go either way with appropriate explanation, e.g. citing *Lovell v Griffin*, 1938).

Therefore Wertz's conviction and fine are upheld.

Wilson v *The Daily News*

Decision 1 -- Previous court decisions have concluded that the defamation law of Illinois is neither vague nor overly broad.

Decision 2 -- This is the heart of the matter. Using the precedent case of *Chaplinsky v New Hampshire*, 1942, we must determine whether the editorial is "worthwhile" or "worthless speech" The case clearly concerns defamation (that is, whether or not the language in *The Daily News'* editorial is defamatory), one of the types of speech defined in *Chaplinsky* as not deserving first amendment protection. Therefore we must go (down) to level 2 to determine whether or not *The Daily News* can be punished for defamation.

Decision 3 - There are two issues under appeal, each of which helps determine whether or not the editorial is defamatory.

- First, could the *The Daily News'* failure to prove that their statements were true be held against the paper as the trial court had stated? Even if Wilson is considered a private citizen, under *Philadelphia Newspapers v Hepps*, 1986, it is the obligation of the plaintiff (Wilson) suing a media defendant to show the statements are false. The *The Daily News* has no obligation to prove truth. Thus, under this precedent the court would find in favor of the *The Daily News*.
- Second, if Wilson is considered a public figure, under *Times v Sullivan*, 1964 and *Gertz v Welch*, 1974, she would have had to show "actual malice or reckless disregard for the truth" by the *The Daily News*, which she had not done according to the trial court. "No evidence of malice or recklessness ... was introduced in the case." That would also be grounds to find in favor of the *The Daily News*.

Was Wilson a public figure? This decision could go either way with proper explanation since the *Gertz* case is somewhat vague as to what actions make one a public figure. I use *Curtis Publishing v Butts*, (but you could logically cite any of several cases in *Tedford* pp. 87-90) because Wilson held a significant decision-making office in the community that affected others and because she thrust herself into the public debate by making calls to radio talk shows. Thus, I conclude she is a public figure.

In any case, whether or not Wilson is a public figure or a private person, she didn't meet the requirements to sustain a defamation conviction. He needed to show either that the charges were false or that there was malice. He did neither.

Therefore, the defamation judgment against the *The Daily News* is overturned.