

Instructor: Prof. Freeman

1. A group of students at Capital City High School left school three hours early to join a political protest outside City Hall. Along with other protesters, they were arrested and subsequently convicted in juvenile court for violating a city ordinance that prohibits "conduct tending to lead to a breach of the peace." Also, because of their unexcused absence from school, they were declared truant and suspended for one day of school (after full compliance with procedural due process). Their convictions and suspensions were reviewed by the United States Supreme Court. What results, and why?

**BEST ANSWER**

The city ordinance will be held unconstitutional and the convictions will be reversed on two grounds. First, the ordinance is void for vagueness, thus violating procedural due process. The language "tending to lead to a breach of the peace" fails to put persons on adequate notice that their contemplated conduct is forbidden. Thus persons must necessarily guess at the law's meaning and differ as to its application. The lack of adequate notice violates a basic element of procedural due process.

Second, the ordinance's vagueness leads to its facial overbreadth. The vagueness permits the ordinance to be applied in an overly broad fashion, sweeping within the scope of the prohibition both unprotected conduct and protected speech. Because narrowly tailored means are not used, the ordinance fails strict scrutiny.

Because the ordinance is vague and overbroad, the nature of the forum is irrelevant. If it were a valid law, the court would hold that the protest occurred in a traditional public forum. But again, since the law is both void for vagueness & overbroad, the result is the same in public and non-public forums.

The suspension for being truant raises no 1<sup>st</sup> Amendment issues. Being truant is pure conduct, not speech, even if the purpose was to go elsewhere to express ideas. The mere fact of truancy, by itself, was not intended to convey a message and reasonable onlookers would not view truancy as expressive. Because 1<sup>st</sup> Amendment is not implicated, rational basis review will be applied and the suspensions will be upheld.

2. Allen Alberts, an aggressive and ambitious sports reporter for the Capital City Daily News, was constantly looking for stories that would enhance his reputation as a fearless, insightful reporter. Based on an anonymous tip, Alberts wrote and the Daily News printed a story stating that two National Football League (NFL) head coaches conspired to fix the annual game between their teams. The story was false, and neither Alberts nor the Daily News learned the anonymous tipster's identity. One coach, Roberts, filed a libel action seeking \$2,000,000 in actual damages and \$10,000,000 in punitive damages against the Daily News. The other coach, Williams, filed suit against the Daily News seeking only a declaratory judgment that the story was libelous. Ultimately, the United States Supreme Court decided both cases on first amendment grounds only. What results, and why?

### BEST ANSWER

The issue present in both cases (Williams & Roberts) is if (defamation)/libel is protected by the 1<sup>st</sup> amendment. (Defamation)/Libel is not protected under the 1<sup>st</sup> amendment. When dealing with defamation, you first must determine if the individual(s) involved are private or public figures. Here both Roberts & Williams will be found to be public figures – There are 2 ways to be a public figure: (1) Achieve fame or notoriety, or (2) thrust ones self into public light. Here, it's likely that they are public figures because they are NFL coaches (fame & notoriety) and similarly in the case a college head football coach was considered a public official. According to NY Times v. Sullivan, when a public official is involved to recover actual damages, they must prove actual malice – knowing the information is false or reckless disregard for the truth – on the part of the ? -Daily News reporter. NY Times also explains that NO punitive damages can be recovered. Here, Roberts would not be able to recover any punitive damages and only recover actual damages if he could prove actual malice on the part of the Daily News reporter - a hard standard to meet. In regards to declaratory judgment for Williams, this has been addressed by Justice White in a concurring opinion in Dunn & Bradstreet v. Greenmoss, but never adopted by a majority. White feels focus not on \$ damage, but should focus on declaratory judgment because the injured party is worried about clearing their reputation, not about monetary. The injured party wants the court to find the story false. A declaratory judgment would remove actual malice protection for ? according to White. White also feels NY Times standard is too hard to meet and injured party left w/damaged reputation & information is polluted w/false information to the public. Unfortunately for Williams, White's approach as never been adopted and to receive even a declaratory judgment, Williams would still have to prove actual malice.