Discomfort is not libel

Your Turn
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Welcome to Journalism 101, class.

Today's lessons come from the court ruling in Sandmann v. Washington Post on July 26, when a federal judge dismissed a young man's libel claim against a big newspaper. As a journalism professor and author on libel, I see important principles in the Sandmann case:

Truth-seeking is primary mission

News reporting inspires debate. When reporting veers to malicious falsehood, that's libel. Reporting controversy does not constitute libel.

Nicholas Sandmann, a private citizen and student at Covington Catholic High School, was unwittingly catapulted into the fray amid angry politics that divide our nation. He and his family – understandably – were upset by the glare of global attention. They sued for a quarter-billion dollars, the purchase price of The Washington Post in 2013.

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News evolves

News reports (video, photos and text) showed young Sandmann in a red MAGA ("Make America Great Again") hat, face-to-face with Native American elder Nathan Phillips on the National Mall in Washington, D.C., in January. Twitter exploded with viral videos with what appeared to be a confrontational moment between the two.

As the story evolved, journalists updated reports on the event in an era of heated us-versus-them politics and the 24-hour news cycle. Expanding their reporting, as more cell-phone video was released by onlookers, journalists informed us that a group of Black Hebrew Israelites was shouting slurs at Sandmann and other students in the moments before the initial viral video. His intent was to calm the situation, not to confront, he said.

More information, which may add to or revise meaning, does not constitute libel.

Opinions protected speech

"Few principles of law," said the federal judge in the Sandmann case (William O. Bertelsman), "are as well-established as the rule that statements of opinion are not actionable in libel actions."

Interestingly, Judge Bertelsman cited case law from Ohio to support his recent ruling that statements of opinion relating to matters of public concern are protected by the First Amendment (Milkovich v. Lorain Journal Company, 1990).

In the Sandmann case, the judge accepted Sandmann's statement that, when he was standing motionless in the confrontation with Phillips, his intent was to calm the situation and not to impede or block anyone.

"However, Phillips did not see it that way. He concluded that he was being 'blocked' and ... passed these conclusions on to The Post." The judge said the newspaper is not liable for publishing these opinions.

Protection of unpopular speech

One of the toughest assignments of the First Amendment is to protect unpopular speech, even hate speech. Our Constitution protects the right of Americans to chant "send her back" at a Trump rally, a hateful shout aimed at Congresswoman Ilban Omar (D-MN).

Meanwhile, the Southern Poverty Law Center reports an increase, for the fourth straight year, in the number of hate groups operating across the country.

As we protect speech – even expression we may find abhorrent – we certainly must not undermine the free press.

America's standard for protecting free press and its search for truth was established by the Supreme Court in Sullivan v. New York Times (1964). It safeguards the free press from libel abuse, a vital protection for reporting on the civil rights movement, Watergate, and Vietnam.

Today, some want to undermine Sullivan, to erode protection of the free press. As we consider the big picture, let's remember Supreme Court Justice Louis Brandeis' time-honored advice that the answer to bad speech is more speech, not "enforced silence."

Class dismissed.

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