

Opinion

First Amendment protects speech we despise, too

Monday, March 14, 2011

By Nat Hentoff, columnist

In a historic March 2 decision, the Supreme Court ruled on the range and depth of the First Amendment's protection of the cornerstone of our individual constitutional liberties — our right to free speech! Before the nine justices was what Tony Mauro of the New York Law Journal described as:

"Some of the most offensive speech (the Supreme Court) had ever had to rule on, delivered in one of the most sensitive settings: the funeral of a military hero."

In *Snyder v. Phelps*, Albert Snyder — father of 20-year-old Matthew Snyder, a Marine killed in Iraq, an American fighting to protect us all — filed a lawsuit for invasion of privacy and emotional distress against members of the Westboro Baptist Church in Kansas. At this Marine's funeral, some of the members of that church picketed the grieving mourners while holding such signs as:

"Thank God for Dead Soldiers," "Fags Doom Nations" and "Thank God for 9/11."

These pickets have appeared at other funerals of soldiers to get publicity for sulfurous protests against this country's tolerations of homosexuals. Such utter insensitivity to the feelings of the mourners is, to say the least, disgusting to me and most other Americans.

At the start of this lawsuit, Albert Snyder won a judgment of more than \$10 million (later reduced) in damages from the Westboro Baptist Church, the source of the picketing.

The Fourth Circuit Court of Appeals, declaring that the First Amendment, reversed that jury verdict in federal district court, protected this protest by picketing.

As the case of *Snyder v. Phelps* headed for the Supreme Court, there began a fiery national debate on whether the First Amendment can actually protect such language at the funeral of an American who had lost his life fighting for this nation.

Among the organizations on the side of the First Amendment free-speech rights of the picketers were the American Civil Liberties Union; the Reporters Committee for Freedom of the Press (where I am on the Steering Committee); the Thomas Jefferson Center for the Protection of Free Expression; the Foundation for Individual Rights in Education (FIRE), where I am on the Advisory Committee; and of course, this country's ever faithful constitutionalist, John Whitehead, president of the Rutherford Institute.

In view of the final 8-to-1 Supreme Court decision, validating the First Amendment protection of the repugnant language of those picketing the funeral of the dead Marine, I find of special interest the identities of those on the other side, insisting that there is no First Amendment protection of these pickets.

This includes U.S. Senate leaders Harry Reid (D) and Mitch McConnell (R) and 40 other members of the U.S. Senate; Veterans of Foreign Wars of the United States; the American Legion; and attorneys general of Kansas and 47 other states and the District of Columbia.

Before I report on how and why all but one member of the Supreme Court (Samuel Alito) ruled for the First Amendment, I strongly recommend that the full context of this case and its result be discussed and debated in our public schools — that is, those schools still having courses in American history and the Constitution in order to instruct the new generation in why they are Americans.

Writing for the Court majority, Chief Justice John Roberts, taking somber note of the fact that the protesters had added to the "already incalculable grief" of the dead soldier's father, said: "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and — as it did here — inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker.

"As a nation," he continued, "we have chosen a different course — to protect even hurtful speech on public issues (and these certainly are public issues) to ensure that we do not stifle public debate."

Underlying the ruling were the facts that the picketing occurred on public land, and 1,000 feet away from the church, within local rules of distance from the funeral, and done under police supervision.

In strong dissent, Samuel Alito insisted: "Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case." He added that public streets should not be "regarded as a free-fire zone in which otherwise actionable verbal attacks are shielded from liability."

Disagreeing with Justice Alito, J. Joshua Wheeler of the Thomas Jefferson Center for Freedom of Expression, valuably emphasized that this "powerful affirmation of First Amendment principles goes beyond the facts of this case."

Were I still teaching in schools why we are Americans, and what it takes to remain free, actively participating citizens, I would bring into the discussion Floyd Abrams, long a leading Bill of Rights defender before the Supreme Court:

"The ruling today represents another example of American fidelity to the principle of freedom of expression to a degree that is unknown anywhere else in the world."

In this respect -- despite Presidents George W. Bush and Barack Obama -- we remain the global light of freedom.

And I would also quote to my students what the Rutherford Institute's John Whitehead said of this vitally patriotic ruling: "Robust free speech -- even of the extreme variety -- in the open marketplace of ideas is one of the few hopes we have as citizens." Especially these days.

What a pity that the majority and minority leaders of the U.S. Senate and 40 other members of that august body did not know enough about who we are, and must continue to be, to approve the Supreme Court's decided majority opinion in *Snyder v. Phelps* -- as they exercise their own First Amendment rights continually.

Which 2012 presidential candidates will cite this decision when emphasizing our values?

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