

The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Redress = (verb) to remedy or set right (an undesirable or unfair situation).

1. Read through these two descriptions of the First Amendment.

“The most basic liberties guaranteed to Americans — embodied in the 45 words of the First Amendment to the U.S. Constitution — assure Americans a government that is responsible to its citizens and responsive to their wishes. These 45 words are as alive and important today as they were more than 200 years ago. These liberties are neither liberal nor conservative, Democratic nor Republican — they are the basis for our representative democratic form of government.” -[Middle Tennessee State University Free Speech Center](#)

“The First Amendment to the U.S. Constitution protects the freedom of speech, religion and the press. It also protects the right to peaceful protest and to petition the government. The amendment was adopted in 1791 along with nine other amendments that make up the Bill of Rights - a written document protecting civil liberties under U.S. law. The meaning of the First Amendment has been the subject of continuing interpretation and dispute over the years. Landmark Supreme Court cases have dealt with the right of citizens to protest U.S. involvement in foreign wars, flag burning and the publication of classified government documents.” -[History Channel Summary](#)

2. Watch this [C-Span Clip](#) of the late Justice Ruth Bader Ginsburg describing her understanding of the First Amendment in contrast to her dear friend and colleague the late Justice Antonin Scalia’s interpretation.

Classroom Exercise

The following are two case studies that illuminate the complex nature of the first amendment. Each case includes discussions questions.

First Amendment Case Study #1

Unvaccinated Student in Kentucky Sues After Being Barred from Playing Basketball

By Concepción de León

March 18, 2019, NY Times

<https://www.nytimes.com/2019/03/18/us/unvaccinated-student-basketball-lawsuit.html>

A student at a Catholic school in Kentucky has sued the Northern Kentucky Health Department, claiming it violated his First Amendment rights by barring him from playing basketball because he refused to be vaccinated against chickenpox.

The lawsuit, filed last week in Boone County Circuit Court on behalf of the student, Jerome Kunkel, an 18-year-old senior, argues that the action violates his right to freedom of religion. Being vaccinated, it contends, would go against Mr. Kunkel's religious beliefs as a practicing Catholic, because the vaccine contains "aborted fetal cells." The lawsuit came after an outbreak of chickenpox at Assumption Academy in Walton, Ky., prompted officials to send out two warnings in February.

On March 14, the Health Department issued a statement saying that because there had been 32 cases of chickenpox at the school, students who were not vaccinated or already immune could not attend school "until 21 days after the onset of rash for the last ill student or staff member." The statement also said all school extracurricular events would be canceled.

Mr. Kunkel's lawyer, Chris Wiest, said in an interview on Monday that the school had told him in February that he could not play in or attend any basketball games because he was not vaccinated. Mr. Kunkel is also now barred from attending school because of the Health Department's action.

"I'm pretty devastated," Mr. Kunkel, who was captain of the basketball team, said in an interview on Monday night. After playing for all four years of high school, "for it come crashing down at the end, it's not very fun," he added. Mr. Kunkel was not able to play in the last three games of the season.

The lawsuit contends that in Kentucky, students are allowed a vaccination exemption on religious grounds if they provide a sworn statement, which Mr. Kunkel did in early 2018.

The chickenpox vaccine is grown in cells originally derived from fetuses aborted in the early 1960s. Vaccines may contain nanofragments of DNA from the fetal cells, which are used because human viruses do not grow well in animal cells, according to a statement the vaccine's manufacturer, Merck, gave to ABC News.

It is unclear how many students have been barred from attending the school because they have not been vaccinated or were found to be immune. Mr. Wiest, however, said that the parents of at least 18 children at the school had contacted him since the Health Department's announcement. "I think this is going to be a much bigger fight at the end of the day," Mr. Wiest said.

Officials at the school did not immediately respond to a request for comment on Monday. But the Health Department defended its response to the outbreak.

The action, the department said in its statement, was "in direct response to a public health threat and was an appropriate and necessary response to prevent further spread of this contagious illness." A spokesman for the department declined to comment further.

Discussion Questions

1. Is the school violating the First Amendment by barring this student from playing basketball? Why or why not?
2. How did you form that opinion? What went into your decision? What life experiences are using to decide your opinion?
3. Now imagine you are this student's sibling - what do you think you would feel?

First Amendment Case Study #2

“Newsgathering and Privacy” from the MTSU Free Speech Center

<https://mtsu.edu/first-amendment/page/newsgathering-privacy>

Please note: This is a hypothetical teaching case and NOT a real story.

Victor Dutton, a reporter for a newspaper in a small Midwestern city, hears reports of animal cruelty on a large hog farm outside town. Having some family farm experience, Dutton applies for a job as a farmhand and is hired. He sees firsthand how some hogs are mistreated by other employees.

When Dutton reports the abuse to the farm owner, Andrew McTeel, McTeel calls the behavior “just guys being guys” and says “the animals get over it – they don’t remember what happens to them.” Dutton secretly takes notes, snaps photographs, and video-records several instances of animal cruelty. He quits his job after three weeks and returns to his newspaper, the *Farm City Tribune*, to write a series of stories about his experiences. Photos appear with the articles in print and videos accompany the reports on the newspaper’s website. Although most of Dutton’s reporting centers on animal mistreatment, he includes a few details about dirt and disorder inside the McTeels’ home, and writes that while he was talking to McTeel, Mrs. McTeel “was sitting at the kitchen table, drinking gin in the middle of the day.”

When McTeel sees Dutton’s work, he is furious. He complains to the *Farm City Tribune* editor that his privacy has been violated and his private property trespassed upon, and files a lawsuit in county court under a new state “ag gag” law that makes it illegal for individuals to take jobs on farms for the purposes of exposing wrongdoing (often called “whistleblowing”). A second lawsuit alleges “intrusive and offensive” invasion of privacy in regard to Dutton’s statements about Mrs. McTeel and the family’s home.

Meanwhile, a federal court strikes down the state ag-gag law as an unconstitutional violation of the First Amendment freedom of the press. The court acknowledges that accepting a job under false pretenses constitutes fraud, and that secret recordings on private property are a form of trespassing. But it rules that the public benefit in exposing of animal cruelty outweighs the privacy and trespass concerns.

In light of the federal ruling, the county court finds no merit in McTeel’s lawsuit concerning “whistleblowing” on his farm, but allows the second lawsuit to proceed on the issue of invasion of privacy.

Questions

1. What is the difference between paparazzi-like invasion of personal space, often with cameras or electronic bugging devices, and “trespassing” in order to expose crime or other wrongdoing that affects the public or that the public cares about?
2. What do you think of reporter Victor Dutton’s approach to newsgathering, including his reporting of information from inside the McTeels’s home? Did he make mistakes? Could he have obtained information about animal cruelty a different way? If so, how?
3. Is undercover investigative reporting always needed to bring undesirable practices to light? Should undercover reporting be done only as a last resort? Are trespassing and misrepresentation always wrong?

Additional Learning Opportunities

Research and consider real-life examples of journalistic/citizen investigative and undercover reporting involving trespassing or secret recordings:

- ["Ten Days at the Mad-House: How Nellie Bly Posed as Insane in 1887 in Her Brave Exposé of Asylum Abuse"](#)
- Jerry Thompson, *Nashville Tennessean* – ["My Life With the Klan"](#) undercover exposé
- James O'Keefe, Project Veritas – ["Is it okay for James O'Keefe's 'investigative reporting' to rely on deception?"](#) by Paul Farhi, *Washington Post*

Assessment/evaluation

Assign a short paper asking for a synopsis of the principles and issues involved in weighing the public interest in news reporting against the legitimate values of individual privacy. Alternatively, ask students to write a short response defending and/or criticizing the hog-farm investigation as carried out by reporter Victor Dutton. A third possible assignment might be to have students think of a situation, real or invented, that endangers or otherwise affects the public, and how news reporting under a free press might best bring that situation to light.

Materials and readings

Resource: ["Newsgathering and Privacy,"](#) Digital Media Law Project (includes a video)

Reading: ["Privacy and newsgathering,"](#) by David L. Hudson Jr.

Resource: "Liability for intrusive or harassing newsgathering activities," Reporters Committee for Freedom of the Press

Resource: ["Other newsgathering concerns – defenses,"](#) Reporters Committee for Freedom of the Press

Resource: ["Newsgathering and Drones: A Year in Review,"](#) by Charles D. Tobin and Christine N. Walz

Reading: ["Good news for farm animals and the First Amendment,"](#) by Brian J. Buchanan

Additional bibliography

The Right to Privacy, by Ellen Alderman and Caroline Kennedy. Vintage, 1997.

The Ethical Journalist: Making Responsible Decisions in the Pursuit of News, by Gene Foreman, pp. 229-251. Wiley-Blackwell, 2009.