

Social Media Law Update

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[Bloggers and Web Media Beware: You Can Be Sued For Defamation If You Change A Video Clip And Distort The Speaker's Original Message](#)

By *[Michelle Sherman](#)*

Everywhere we turn, someone is blogging about something. We have come to expect that we will get much of our news through one form of web media or another. Many people subscribe to a certain web sites because the posts are in line with how they view the world. They may want a perspective that is viewed as extremely liberal or conservative. Like mainstream newspapers, blogs are selling advertising space. Blog posts are also drawing national attention to people and issues.

Blogs are a form of speech protected by the First Amendment. But, like other forms of speech, it is tempered by laws that prohibit speech that defames and slanders another person or a business. Because blogs are becoming profitable businesses with advertising dollars, they can be realistically sued for damages.

An event that especially stands out is the conservative blogger [Andrew Breitbart](#) who caused a firestorm with an edited video clip post of then Agriculture Department employee [Shirley Sherrod](#). As edited, the spliced video made Sherrod come across as a racist in her speech to an NAACP group, and made it sound as though she had in fact discriminated against a white farmer looking for assistance when she did not say any such thing.

Breitbart has said after the fact that he was trying to make the point that the NAACP tolerates racist behavior within its ranks:

“This was about the NAACP attacking the Tea Party and this is showing racism at an NAACP event; I did not ask for Shirley Sherrod to be fired. I did not ask for any repercussions for Shirley Sherrod; they were the ones that took the initiative to get rid of her; I – I do not – I think she should have the right to defend herself.”

Breitbart does not appear to deny that the video was altered to deliver a certain message, irrespective of what Sherrod was actually saying. He has also refused to apologize to Sherrod for

calling her a racist, and using his widely read blog to do it. Sherrod has said she plans to sue Breitbart, and it is very likely her legal action will include claims for libel and defamation.

An August 24, 2010 decision in the Ninth Circuit Court of Appeals demonstrates that journalists, including web journalists such as bloggers, can be sued for defamation if they do not accurately report what was actually said by someone. In [Price v. Stossel](#), the Ninth Circuit revived a lawsuit filed by a prominent California preacher against ABC 20/20 reporter John Stossel. The case arises from a 20/20 episode in which John Stossel was reporting on the financial dealings of ministers like Frederick Price. The 20/20 broadcast used a video clip of Price to try and make the point that money being donated to churches may be lining the pockets of the preachers and not serving the public good.

According to the Ninth Circuit, the broadcast made the point by playing a clip from a Price sermon that changed the meaning of what he was saying. Price was talking about a hypothetical man who was unhappy despite his wealth, and the broadcast made it sound as if Price was talking about his own life and how he lives. ABC played a clip in which Price said: "I live in a 25 room mansion. I have my own \$6 million yacht. I have my own private jet, and I have my own helicopter, and I have seven luxury automobiles."

The district court dismissed the action under California's anti-SLAPP statute (Cal. Code Civ. Proc. § 425.16), which is designed to protect First Amendment speech, and held that the clip was substantially true because Price was very wealthy, lived in an 8,000 square foot mansion, traveled the world in a Gulfstream jet, and owned a Rolls Royce.

The Ninth Circuit disagreed. Price can pursue his action based on the United States Supreme Court's decision in [Masson v. New Yorker Magazine, Inc.](#), a defamation case involving journalists and the words they attribute to someone.

The Ninth Circuit held:

"[W]hen dealing with material that is portrayed as a quotation, we are to compare the quotation as published with the words the speaker actually said. Where the published quotation contains a material alteration of the meaning conveyed by the speaker, the published quotation is false."

In *Price*, the defendants can still argue that other elements for a defamation claim have not been satisfied, and that Price has not been damaged. They can argue that the statements were not defamatory or made with the required degree of fault on their part. However, they will have to incur additional attorneys' fees and costs to do so. In addition there will be further attention to what was arguably sloppy journalism on their part.

The recent event of blogger Breitbart altering the video clip of Sherrod to make his point is arguably more egregious than the 20/20 broadcast. Further, it is very likely that bloggers will be held to essentially the same legal standards as mainstream journalists and media.

Bloggers should be mindful of the tensions between First Amendment speech and the legal limitations on that speech or otherwise risk costly litigation and possible damage claims that

could force the blog to shut down.

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