

Third Circuit Rules: No Constitutional Right to Privacy for Opinions Shared with Others with the Expectation that the Opinions Will be Kept Secret

The Third Circuit has rejected a school board member's claim that she had a Fourteenth Amendment right to privacy in opinions she shared in an investigation into an illicit relationship between a teacher and a minor student. Karen Malleus shared with investigators her view that the student had a vivid imagination and a history of exaggeration but only after she was assured by the district's lawyer and the school board that any report would remain confidential. In fact the report did not remain confidential. It was leaked to the press.

Malleus sued claiming that she had a constitutionally protected expectation of privacy under the Fourteenth Amendment because her opinions had been shared for a limited purpose and with the expectation that they would remain private.

The Third Circuit rejected her argument. It surveyed Third Circuit jurisprudence which traditionally has protected only two types of privacy rights - the right to confidentiality and the right to autonomy.

The right to confidentiality is limited to an individual's interest in not disclosing intimate facts about him or herself. In other words, it is "the right to be let alone." In this case, even though Malleus intended to share her opinion with a limited audience, she nevertheless volunteered it to others. Furthermore, the opinion she shared was a fact about others and did not concern intimate information (such as sexual, medical or financial facts) about herself.

Neither had she stated a right to autonomy which focuses on protecting independence in personal decision-making in matters relating to marriage, procreation, contraception, family relationships and parental child rearing. The Third Circuit held that the decision of a school board member to participate in an investigation into how a sexual assault investigation had been handled, while an important matter, does not implicate those types of interests.

Malleus contended that the Third Circuit should adopt a third category of privacy. More specifically, she proposed that if someone shares an opinion with the expectation that it will be kept secret, then the opinion must be kept confidential. The Third Circuit rejected the proposal: it had not previously recognized this as a protected category under the Fourteenth Amendment and declined to do so in this case.

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