

FARMER'S EDUCATION AND COOPERATIVE UNION v. WDAY

Legal Brief

Telecommunications 384 - Section 3

David Lightfoot - 10/4/02

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The case Farmer's Education and Cooperative Union (NDFU) v. WDAY started when a colorful U.S. Senate candidate and former socialist, Arthur C. (A. C.) Townley stated that the Farmer's Union was "Communist" during his speech which was shown on WDAY on October 29, 1956. In the speech, Townley stated the Farmers Educational and Cooperative Union of America were conspiring to "establish a Communist Farmers Union Soviet right here in North Dakota."¹ At the time, the Farmer's Union was the strong force in the state when it comes to elections. WDAY personnel told Mr. Townley that his comments were libelous before the speech was given and warned him about what would happen if he gave those comments.

A few months later, at the 30th annual convention of the Farmers Union, the union president Glenn J. Talbott told the delegation that legal action was planned for Arthur C. Townley based on his comments in his speech.² By the time that legal papers were served to Mr. Townley, he had disappeared. The papers were served to WDAY-TV in January of 1957. They were prompted to sue both Mr. Townley and WDAY-TV for \$150,000 for libel. WDAY's spokesman insisted that a state law made it mandatory that the station carry any campaign speech by a bona fide candidate.³ At the time, the NDFU was wanting to test the

constitutionality of the claim WDAY made about having immunity during such a broadcast. So the case went to the district judge in Fargo, North Dakota.

On May 23, 1957, the District Judge John C. Pollock of Fargo declared the state law unconstitutional, stating that the comments that A. C. Townley made had contained "certain statements, therein to be false and that if such statements were in fact false, they were libelous."⁴ Then Judge Pollock acquitted WDAY from liability of libel on the basis of Section 315 of the Communications Act of 1934. The section states that:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate."⁵

Because of Section 315, the Farmer's Union decided to go to the North Dakota Supreme Court. Assuming that if the state statute was unconstitutional, the so should the federal law. So on to the North Dakota Supreme Court they went.

This time the NFDU claimed that Townley's speech was not an "answering," or rebuttal, speech but a first speech. They also claimed that Section 315 was only effective towards answering speeches. Also that if Section 315 was applicable, it doesn't save WDAY, since they were warned about his

speech and what exactly was being said. Also, the suit was against WDAY-TV because the Farmer's Union was not exactly a political candidate, it was a bystander watching the events of the 1956 United States Senatorial race. According to North Dakota law though, only a four-fifths majority of the five member North Dakota Supreme Court can declare a law unconstitutional. The court held a four to one vote claiming that WDAY-TV was not liable for A.C. Townley's speech.⁶ Still, the NDFU was not happy and decided that it was time to take the case to Washington D.C. home of the Federal Supreme Court.

On March 23, 1959, the case Farmer's Educational and Cooperative Union v. WDAY went to the United States Supreme Court. After about three months of arguments and long decisions the decision came down that Section 315 was in fact constitutional and that WDAY was not in the wrong with their decision not to censor Mr. Townley's speech. The Supreme Court explained about why Section 315 was made in the first place:

“It is obvious that permitting a broadcasting station to censor allegedly libelous remarks would undermine the basic purpose for which 315 was passed - full and unrestricted discussion of political issues by legally qualified candidates.”⁷

The NFDU argued that broadcasters like WDAY do not need a specific immunity to protect themselves from liability for defamation since they may either insure against any loss, or in the alternative, deny all political candidates use of station facilities, which the Supreme Court said:

“We have no means of knowing to what extent insurance is available to broadcasting stations, or what it would cost them. Moreover, since [Section] 315 expressly prohibits stations from charging political candidates higher rates than they charge for comparable time used for other purposes, any cost of insurance would probably have to be absorbed by the stations themselves.”⁸

Eventually, the Supreme Court, with a five to four vote, was in favor of WDAY. The NDFU claimed that the decision was still wrong because the libelous speech, even though free from censorship according to Section 315, still attacked an innocent bystander and not another candidate running for office. The Farmer’s Union assumed that as the meaning of the section when it was created by Congress. They had assumed that A.C. Townley used Section 315 to hurt the organization, not to actually run for office. Most of the opinion was written by Justice Hugo Black, who expressed that the Congressional prohibition of censorship by broadcasters forbids them to delete material that is considered libelous. Justice Felix Frankfurter wrote the minority of the decision stating that himself as well as the other Justices agreed with Justice Black’s first part of the decision, but had to issues with the second part of the decision:

“Due regard for the principle of separation of powers limiting this court’s functions and respect for the binding principle of federalism, leaving to the states authority not withdrawn by the Constitution or absorbed by the Congress, are more compelling considerations than avoidance of a hardship legally imposed.”⁹

The Supreme Court ruled that no station can be sued for libel or slander or it can not act in any manner because of what a candidate has said about either another candidate or private citizen. Unfortunately the provision is so stringently interpreted that it would be wrong for the station to ask for a copy of the speech before it is given out for censoring.¹⁰

In simple terms, this case was mostly over a station that aired a candidate (because of the Equal Time rule in Section 315) who said a few comments that might have gone too far. This case went through all the courts (district, North Dakota Supreme Court, and the United States Supreme Court) with WDAY getting a victory mostly two to one. How has this case helped political broadcasting today? Well, it reminds the candidates that what they say might hurt them and their candidacy. Farmer's Union v. WDAY has become an excellent example case for students to study to explain exactly what Section 315 in the Communications Act of 1934 is and how it's used today in our broadcasting society.

In my sincere opinion and with the gracious help of information from the North Dakota's Farmer Union, I was able to find enough information to make some sense out of this case. I found that the case was interesting as though one small line will change the view of the way things are done in the future. All was said was one small opinion, obviously false, and that comment blew out all this controversy because of basic name calling. I am upset thought that through constant e-mails though WDAY, I was not able to get any information from their view on this case. There are probably times that it seems like this brief is biased

towards the North Dakota Farmer's Union, but I tried not to make it biased in that way.

Endnotes

1. Teeder, Jr., Dwight L. and Le Duc, Don R., Law Of Mass Communications. (Westbury, New York: The Fountain Press, 1995) p. 142
2. "FU To Launch Libel Suits" Union Farmer 21 November 1956: Page 1.
3. "Where's Townley? Has He Skipped?" Union Farmer 7 February 1957: Page 1.
4. "NDFU Advances 'First Step' in its Libel Suit" Union Farmer 10 June 1957: Page 3.
5. 47 U.S.C. 315
6. "NDFU's Libel Action v. Townley, WDAY, Goes to ND Supreme Court" Union Farmer 25 August 1957: Page 3.
7. 360 U.S. 525
8. 360 U.S. 525
9. "Radio, TV Stations Cannot Censor Political Broadcasts Even Though Libel Is Admitted; 3rd Party Injured" Union Farmer 10 July 1959: Page 2.
10. Carter, Barton T, Dee, Juliet, Gaynes, Martin J., and Zuckman, Harvey. Mass Communication Law. (Saint Paul, Minnesota: West Publishing Company, 1994) p. 418.

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Bibliography

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Mass Communication Law. Saint Paul, Minnesota: West Publishing
Company, 1994.

Communications Act of 1934 – Section 315. 47 U.S.C. 315.

Farmer's Educational Cooperative Union v. WDAY. 360 U.S. 525 (1959)
<http://laws.findlaw.com/us/360/525.html>.

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"NDFU Advances 'First Step' in its Libel Suit." *Union Farmer*. 10 June 1957:
Page 3.

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