

Thursday, November 1, 2007

From here, the Westboro Baptist Church case will be appealed.

First Amendment and the rest of the Bill of Rights. (From the public domain.) From October 22 to October 31, my life was consumed with my defense of the Westboro Baptist Church (WBC) and its pastor before a Maryland federal jury against charges of intentional infliction of emotional distress and intrusion upon seclusion. Each day, I drove to the heart of Baltimore for this trial, not once getting the time to enjoy the city except for the last day, during lunch while the jury deliberated. Only after the jury issued its verdict on October 31 did the court lift its gag order preventing the parties from communicating with the media, whose members daily covered the trial. A general overview of the case is here from the Baltimore Sun. The case arises from the picketing and related activities of WBC members concerning a soldier's funeral. I very much disagree with WBC's views, including its decision to picket soldiers' funerals. Of course, I believe strongly in responding to reviled speech with counterspeech. In addition to the above-listed emotional distress and intrusion upon seclusion charges, the lawsuit filed by the soldier's father alleged defamation, which the court dismissed the week before trial commenced. Committed to robust First Amendment protection, I accepted the role of defending WBC and its pastor in this lawsuit, while departing strongly with their message and actions. Having declined to dismiss the remainder of the lawsuit, the judge sent the case to the jury, which on October 31 returned a total verdict of \$2.9 million in compensatory damages and \$8 million in punitive damages. These are huge numbers, to say the least. This case stirs people's passions. I have heard from people taking issue with my defending WBC and its pastor in this case, and from others agreeing with my standing up for First Amendment rights, which I do again and again for people from across the political spectrum, believing that picking and choosing within the political spectrum is disingenuous to upholding the First Amendment. I went to law school idealistic about using my law degree for civil liberties, learned during law school that First Amendment rights are suppressed all the time, and feel heartened about being able to light a candle rather than to curse the darkness, through my First Amendment defense work. Protecting free expression often requires defending dark and/or controversial views and actions. It includes defending against cross burning statutes, defending the right of neo-nazis to march in Skokie, and defending the rights of the adult entertainment industry, As the American Civil Liberties Union's website proclaims: "It is easy to defend freedom of speech when the message is something many people find at least reasonable. But the defense of freedom of speech is most critical when the message is one most people find repulsive. That was true when the Nazis marched in Skokie. It remains true today." This WBC case will now proceed to the United States Court of Appeals for the Fourth Circuit, where the First Amendment issues will be argued and reviewed. Jon Katz. ADDENDUM II/II - November 7, 2007. A Google search reveals many views supportive of the jury's verdict. The webpages opposing or seriously questioning the verdict on First Amendment grounds are much fewer and take longer to find, so I list some of them here: Herald-Argus, Press-Dakotan, News Journal, News Tribune, Legal Blog Watch, Renew America, Debate Nation, and Daily Irrelevant, ADDENDUM I/II - November 4, 2007. Several people have been emailing me about this case, all disagreeing with the defendants' views and actions, some cheering the verdict, some taking exception (and sometimes strong exception) to my representing Westboro Baptist Church and its pastor, and some supporting my standing up for the defendants' Constitutional rights. My responses to those expressing dissent about my representation include, but are not limited to, the following: "As you apparently recognize, I do not share the Westboro Baptist Church's views. At the same time, I believe strongly in having their speaking, picketing, and preaching activities protected by the First Amendment, lest First Amendment protection not be extended to speech that I hold dear. I have been very much influenced by the American Civil Liberties Union to represent such clients as the Westboro Baptist Church. The ACLU lost many members when it supported the right of nazis to march down the streets of Skokie, IL, through a neighborhood with many Jewish people, including Holocaust survivors. I was in high school at the time, and it took some time for me to understand and support that position. Ultimately, the ACLU enjoyed a surge in membership, including with the PATRIOT Act-related substantial curbing of civil liberties. More behind my decision to defend this case is here <http://markskatz.com/justiceblog/archives/821-From-here,-the-Westboro-Baptist-Church-case-will-be-appealed..html>. "As to where the picketers stood, please see the news article here. It was conceded at trial that my clients never entered the funeral building. The testimony of law enforcement and church members was that they were on county-owned property, not on church property. Defense testimony showed that the picketing took place over one thousand feet from the building where the funeral took place."

Posted by Jon Katz in Jon Katz in the News at 01:00

Mr. Katz,

I was brought to your web site from your comments being included in the Google News comments system.

You have an unenviable task, working to maintain the rights of a group that most civil liberties supporters would not touch. The Westboro Baptist Church stands for nothing with which I would wish to be associated, but this case transcends that. Truly free

speech means protecting everything, regardless of content. Here in this country, the extreme ends of the spectrum includes this vile kind of proselytizing or pornography, but elsewhere that can be the teachings of Buddhist monks and exposing the truth about a government's actions. True freedom requires equality and any righteousness we claim as a "free society" is founded in that equality. Your efforts better represent what America stands for than so much of what is done in the name of this country.

While I cannot wish your clients well, I appreciate your efforts on their behalf.
Anonymous on Nov 3 2007, 09:05

Thanks, Jared, for taking the time to write, and for your support of the First Amendment.

In the midst of huge numbers of people cheering this verdict, I am happy that many others are voicing their opinion that the First Amendment gets damaged by permitting this verdict to stand. Thanks. Jon
Anonymous on Nov 9 2007, 06:03