

## Ninth Circuit Tells ABC, Stossel "You Can't Say

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The United States Court of Appeals for the Ninth Circuit recently revived a defamation suit brought by a prominent California preacher against ABC and reporter John Stossel. The case, which had been dismissed by the District Court under California's anti-SLAPP statute, arose from a broadcast of ABC's 20/20 in which Stossel reported on the financial dealings of ministers like the plaintiff Frederick Price. In particular, Stossel's story focused on whether money donated to some churches was being put to good use or simply lining the preacher's own pockets.

The Ninth Circuit succinctly characterized the case as follows:

Journalists and publishers risk a defamation action when they put words in a public figure's mouth. The New Yorker magazine learned this to its chagrin in *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991). The issue in this case is whether there are similar risks when a network television program broadcasts a statement actually made by a public figure, but presents the statement in a misleading context, thereby changing the viewer's understanding of the speaker's words.

The facts of the case are quite simple. ABC played a clip of Price during a sermon in which he 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."

Stossel then said: "At least he tells people about it, but many preachers don't advertise how well they live."

The problem was that in the actual sermon, Price was speaking in hypothetical terms about a rich man who was unhappy because he had lost his faith. He was not speaking about himself, a fact which ABC acknowledged in a later retraction.

The District Court dismissed the case, holding that the clip was substantially true because Price was in fact very wealthy. It was undisputed that Price lived in an 8,000 square foot mansion, traveled around the world in a Gulfstream jet, and owned a Rolls Royce.

Ninth Circuit Tells ABC, Stossel "You Can't Say That!"

The Ninth Circuit disagreed. Relying largely on the Supreme Court's landmark *Masson* case, 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.

The District Court had erred, the Court said, by comparing the assets identified by Price in the clip with his actual assets. In reality, under *Masson*, the court should have "compared the meaning conveyed by the Clip as broadcast with the meaning of Price's own words in the context of the sermon he actually delivered."

Analyzed in that way, the clip of Price was false because he was not saying that he had those assets himself (even if he actually did have comparable assets). In fact, the entire sermon made clear that he was using a parable.

Because of the procedural stance of the case, the only issue before the Court was falsity, so there is no discussion about whether the statements were defamatory or were made with the requisite degree of fault.

Nonetheless, the case provides an instructive lesson in how *Masson* might apply to broadcast clips. Reporters almost always have to truncate a quote to make it fit in a broadcast story, so providing enough context -- and making sure to characterize the quote accurately -- are important.