STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN JUDICIAL DISTRICT

CIVIL DIVISION

Tore Simonsen,

Petitioner

Request for Injunction

v.

Catholic Charities
Respondent

Facts

This is a love story. Nothing more and nothing less.

Tore Simonsen is currently homeless. He was a resident at Hennepin County Secure area located at 1000 Currie Avenue North, Minneapolis, Minnesota (hereinafter "Tramp Camp"). His residency ended unexpectedly as a result of filing this legal action against Catholic Charities. Tore Simonsen was told that as a result of filing the legal action, he could no longer be serviced by Catholic Charities centers. The Tramp Camp is operated by Catholic Charities (main office 215 Old 6th Street, St. Paul, MN). The residents of the tramp camp can stay for free on the first floor provided space is available. Residents can also stay in the pay for stay section of Branch 3 at a cost of $5 per night. Tore Simonsen is currently residing in the pay for stay area of Branch 3.

In order to enter and exit Branch 3, guests must go through breathalyzer screening and obtain a Catholic Charities identification card. Once inside, guests are subject to monitoring by staff and a regimented lifestyle. Cameras appear to monitor activity and it is not unusual for a Minneapolis Police Department official to be present during check in and throughout the evening.

On January 21, 2010, Tore Simonsen attempted to hand a flier[1] to save the television show "Dollhouse" on behalf of Eliza Dushku whom he loves. Tore Simonsen has been trying to save Dollhouse for several months and currently runs a blog, "Tore Simonsen Loves Eliza" (hereinafter, "Tore loves Eliza").[2]

He attempted to hand the flier to a volunteer who was serving meals. A staff or volunteer member intercepted the flier and gave it back to Tore Simonsen. Tore Simonsen again attempted to hand the flier to the volunteer and was again rejected. This went on for a few iterations, before the staff/volunteer threw all of Mr. Simonsen's fliers to the ground. Mr. Simonsen promised to take a picture of the staff/volunteer. Mr. Simonsen repeatedly takes photographs of events and incidents for the purposes of updating the blog and communicating the information to the public in order to generate

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1 The fliers typically are handwritten and read: "Save Dollhouse Unofficial fansite toresimonsen.wordpress.com Tore Loves Eliza ♥"

2 http://toresimonsen.wordpress.com

support to save Dollhouse.

True to his word, Mr. Simonsen retrieved a digital camera and took a photograph of the individual who repeatedly told him "not to take his picture." Subsequently, Mr. Simonsen was taken to the front desk where other staff told him taking pictures in the shelter was against policy. Mr. Simonsen asked for a copy of said policy, but was not provided with one. Staff told Mr. Simonsen he could leave copies of his fliers at the front desk but not "solicit" support in the shelter.

Mr. Simonsen was told to delete the picture of the staff. He did so. Mr. Simonsen then went back up to the second floor. A camera on the second floor monitors activities of the guests. Mr. Simonsen was undoubtedly recorded while going up to the floor.

Mr. Simonsen went to bed. In the morning, Mr. Simonsen took some pictures of the security camera before proceding towards Branch 3 of Catholic Charities.

Mr. Simonsen went to Branch 3 of Catholic Charities located at 740 East 17th Street. Mr. Simonsen swiped his card and ate breakfast during the second shift. Mr. Simonsen brought his own oatmeal and tea to breakfast that morning. After finishing breakfast, Mr. Simonsen proceeded to exit and re-enter the building. Mr. Simonsen was hoping to use the computers at the computer lab, but it was still closed. Mr. Simonsen took a photograph of the computer lab door. Mr. Simonsen then provided a copy of a Dollhouse flier to a visiting nurse from Hennepin county along with a brief rap about the show saving efforts.

After that, Mr. Simonsen proceeded to make himself some hot cocoa with an instant cocoa pack he had. A group of people were playing a game of Madden 2010 on a Playstation 3. Mr. Simonsen had taken photographs of people playing Madden 2010 to promote on his blog. Mr. Simonsen therefore decided to try to take another photograph. People playing requested not to have their photograph taken. A staff intervened and told Mr. Simonsen he had already been told he could not take pictures of people before. Mr. Simonsen was then directed to speak with Archie and Adam about taking photographs. Mr. Simonsen complied with the request and asked for permission. Mr. Simonsen was again told not to take photographs inside the premises. Mr. Simonsen then surreptitiously recorded the sounds of people playing Madden 10 on his digital camera (without taking photographs). After that Mr. Simonsen went outside the establishment and began taking pictures of the people inside. After he took a few photographs, they drew the blinds.

According to information provided to Mr. Simonsen, no privately run shelter exists in the Twin Cities. All shelters are supported by public dollars. He is currently on a wait list for Our Savior shelter.

The shelter system works hand in glove with the state. In Minneapolis, the city-county homeless task force was formed 3-4 years ago and led to a program called Heading Home Hennepin. Mayor RT Rybak claims, "What we did with that was we coordinated all these services together and put a phenomenal person named Cathy Ten Broeke in charge of all that laid out a multi-point program that one by one by one we've been executing." This program is a 10 year plan to end homelessness in Minneapolis. It effectively coordinates all social services under one program. Although the Mayor claims they don't run shelters as a city, it appears that the Heading Home Hennepin includes the funding and oversight of shelter as well as homelessness programs in general. Everyone is involved in these partnerships, but no one wants to take any responsibility.

Although the city of Minneapolis does not formally run the shelter system directly, the city and county

work with the shelters and other service providers. Mayor Rybak stated that it was primarily the County and "private organizations" which operated the shelter system.

Mayor RT Rybak, in a question and answer session at Drinking Liberally, responded that St. Stephen's shelter worked with the police to effectuate arrests. According to Mayor Rybak, the city, in fact, went so far as to pay the outreach works to effectuate police operations. The outreach workers worked with police to try to identify troublesome individuals with multiple contacts with the law and connect them to social services. Mayor Ryabak said, "The city hired homeless outreach workers from St. Stephen's outreach workers to work directly with our police." The mayor explained, "So the police gave the names of people who have who are homeless who have multiple connections with the law and then instead of arresting them again and putting them back in the criminal justice system, we got them connected up with services and others." Such is the symbiotic relationship between the city and the shelters. Essentially, the government is outsourcing the administration of shelters to third parties but retains a large measure of control over the system through its task force, funding mechanisms, and police interactions.

The Heading Home Hennepin documents[3] indicate that the majority of the funding appears to come from a variety of government sources. Although some purely private funding exists, it is clear that the vast majority of funding is through Federal/State/County and other government sources.

ARGUMENTS

I. Operations violate right to privacy and 4th Amendment

A. Intrusion of seclusion

The operation of Tramp camp fundamentally impairs Mr. Simonsen's right to privacy. Mr. Simonsen is subject to constant surveillance. This surveillance will monitor all of Mr. Simonsen's activities. Aside from the bathrooms and showers, cameras monitor nearly all of his activities. Such surveillance is unwarranted and would not be tolerated by a resident in any apartment or hotel room.

Intrusion of seclusion occurs when one intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns if the intrusion would be highly offensive to a reasonable person. Lake v. Walmart Stores Inc., 582 N.W.2d 231 (Minn. 1998).

In Clayton v. Richards, 47 S.W.3d 149 (Tex. App. 2001), a wife hired the defendant to install equipment in her bedroom with her husband. Mr. Clayton sued his wife and Richards, alleging invasion of his privacy. The Texas Court of Appeals noted:

> "A spouse shares equal rights in the privacy of the bedroom, and the other spouse relinquishes some of his or her rights to seclusion, solitude, and privacy by entering into marriage, by sharing a bedroom with a spouse, and by entering into ownership of the home with a spouse. However,nothing in the . . . common law suggests that the right to privacy is limited to unmarried individuals.
>
> When a person goes into the privacy of the bedroom, he or she has a right to the expectation of privacy in his or her seclusion. A video recording surreptitiously made in

[3] The Ten-Year Plan to End Homelessness in Minneapolis and Hennepin County, Heading Home Hennepin, Presented by the Hennnepin County and City of Minneapolis Commission to End Homelessness, December 2006

> that place of privacy at a time when the individual believes that he or she is in a state of complete privacy could be highly offensive to the ordinary reasonable person. The video recording of a person without consent in the privacy of his or her bedroom even when done by the other spouse could be found to violate his or her rights of privacy. As a spouse with equal rights to the use and access of the bedroom, it would not be illegal or tortious as an invasion of privacy for a spouse to open the door of the bedroom and view a spouse in bed. It could be argued that a spouse did no more than that by setting up a video camera, but that the viewing was done by means of technology rather than by being physically present. It is not generally the role of the courts to supervise privacy between spouses in a mutually shared bedroom. However, the videotaping of a person without consent or awareness when there is an expectation of privacy goes beyond the rights of a spouse because it may record private matters, which could later be exposed to the public eye. The fact that no later exposure occurs does not negate that potential and permit willful intrusion by such technological means into one's personal life in one's bedroom."

Id. at 155–56 (citations omitted) (emphasis added).

In this case, Mr. Simonsen and others have been stripped of all of their privacy rights. At the Hennepin County secure area, there are video cameras on the second floor where people sleep. These cameras might record people while in a place and time where they have a reasonable expectation of privacy.

While Catholic Charities will raise security concerns, several points need to be made. First of all, most homeless people treat each other with respect. As homelessness is a long-term problem for many people, it is important to protect your reputation as a homeless person. Homeless people do not tolerate thieves and earning a reputation as a thief would be very detrimental to your reputation.

Second, most of the charities already have volunteers in place to handle disturbances and disruptions. Often times homeless people will alert someone if an individual becomes disruptive and staff can intervene. Although I personally find this administrative burden unnecessary in light of technical solutions, it remains true that the video taping of people in these situations- while they are sleeping- is often unnecessary.

Third, the charities themselves are making the situation more dangerous than it should be. The charities do not provide people with any locker space. Any and all property disputes could be resolved by providing people with something as basic as a storage locker. Instead, they invest in surveillance technologies, like breathalyzers and security cameras, rather than promote something homeless people need and which would actually improve their safety. The lack of locker storage options calls into question the seriousness of the government to adequately address the problem of homelessness. It is incomprehensible how anyone is supposed to seriously believe that anything is being done to address the situation of homelessness when at a practical level the homeless cannot acquire more than they can carry.

In multiple instances, I have personally witnessed people who have been threatened for their bags or possessions. In these cases, if the individuals had the simple capacity to securely store the items, the dangerous situation would never present itself.

Moreover, any safety concerns that these shelters might raise should be dismissed outright. If the shelters were truly concerned about the safety of the residents, they would provide them with

lockers to safely store their belongings. The shelters should not be able to create and maintain a dangerous environment for the purpose of establishing the need for "security" cameras. This rewards a reckless disregard for the safety of individuals served.

B. The operations violate the Fourth Amendment

Mr. Simonsen and other residents are required to submit to random searches and seizures. Prior to entering the facility or utilizing its resources, Mr. Simonsen and others are subjected to searches and seizures. A typical search and seizure is often in the form of a breathalyzer examination. Such tests are conducted with or without any indica of intoxication. In addition to that, other operations require the voluntary "waiver" of the 4th amendment, such as the storage lockers at Branch 3 in which participants must waive their 4th amendment right to be free from search and seizure and submit to locker searches. These are basically contracts of adhesion enforced by economic duress and could never be considered voluntary.

There is a dangerous curtailment of the fourth amendment in this situation. At every point in the system, the individual is essentially forced to give up basic rights in order to receive essential goods and services. Consider the simple act of renting a locker. In order to rent one at Catholic charities Branch 3, one is required to sign a consent to the search of the locker. In order to put this in proper perspective, it would be akin to consenting to having your house randomly searched in the purchase agreement or mortgage loan agreement. It is only the underlying necessity of the services that allows these so-called charities to obtain the consent they seek. Would an ordinary person on equal footing consent to such an agreement? The constitution is specifically class neutral and it was never intended that the rights would only attach as a matter of class. In order to give it full effect, it is impossible to give these waivers meaning.

In addition to that, individuals are routinely subject to random search and seizures. It is commonly necessary to submit to a breathalyzer in order to gain admittance to the shelter. Such a measure is considered a pre-requisite for entry. There need be no specific indica of intoxication. The staff administer these tests, often times with an on-duty police officer monitoring the situation. Such is the case at Branch 3.

Even if the 4th Amendment to the U.S. constitution does not apply, the Minnesota Constitution would probably prohibit these practices. In many respects these are no different than a sobriety checkpoint for drunk driving. I rely on *Ascher v. Comm. of Public Safety*, 519 N.W.2d 183 (Minn. 1994); *Gray v. Comm. of Public Safety*, 519 N.W.2d 187 (Minn. 1994).

In any event, the random searches and seizures which people are required to submit to, including breathalyzers, violate the fourth amendment. Since the shelters work, according to Mayor R.T. Rybak, hand in glove with the police, and since the police are routinely on duty at these shelter locations (especially during check-in), the distinction between the private charities and the public functions is essentially meaningless.

II. Mr. Simonsen's attempts to communicate are activities covered by the first amendment of the U.S. constitution and protected by the Minnesota Constitution.[4]

[4] We respectfully reserve issues of free exercise of religion and conscious and any other remedy under state and federal law because this is an emergency order, while still acknowledging, Mr. Simonsen should be allowed to worship Eliza Dushku as a goddess under the protections of the United States and constitutions of Minnesota.

The First Amendment of the United States is the core of our democratic system and represents in the words of the United States Supreme Court, "the matrix, the indispensable condition, of which nearly every other form of freedom."[5] Although, the First Amendment is only forty-five words, First Amendment incorporates five basic American Freedoms which are fundamental to a free and democratic societies. The basic rights include (1) the freedom of speech, (2) the freedom of assembly, (3) the freedom to petition the government and seek redress from the government, (4) the freedom of the press and (5) the free exercise of religion. The First Amendment applies to the states through the fourteenth amendment. Likewise, the language of the Minnesota Constitution boldly states in relevant part, "all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right" and "nor shall any control of or interference with the rights of conscience be permitted". Taken together, these are the fundamental rights which are at the core of this case.[6]

A. Mr. Simonsen's actions constitute free speech.

Mr. Simonsen is attempting to save the television show Dollhouse. Solicitation is a recognized form of speech protected by the first amendment. United States v. Kokinda, 110 S. Ct. 3115 (1990).

B. There is state action.

Under a balancing test, state action can be found only where there is either a symbiotic relationship or a sufficiently close nexus between the government and the private entity so that the power, property, and prestige of the state has been in fact placed behind the challenged conduct. State. V. Wickland, 589 N.W.2d 793 (Minn. 1999).

In this case, the state is outsourcing its responsibilities to charities for the purpose of dismantling the rights that would exist for the poor if they operated the facilities themselves. The government provides funding, oversight, direction and has created a task-force heavy with members of the shelter system itself. Mayor Rybak highlighted examples of private shelters being paid for by the government at their direction working hand in glove with the police.

1. The government lacks the ability to unilaterally remove rights by simpling masking behavior as private.

What is critical here is an understanding to whom the right belongs. The first amendment belongs to the individual. The state cannot unilaterally waive an individuals right by contracting the right away to a third party. If they could, all rights would be fundamentally illusory. For example, if the police officer in Birmingham v. Shuttlesworth were a privately contracted social worker instead of a "public servant" and the first amendment did not apply, this would effectively create a loophole that

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[5] Palko v. Connecticut, 302 U.S. 319, 327 (1937).

[6] "**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."** *The First Amendment to the U.S. Constitution.* The blueprint for personal freedom and the hallmark of an open society, the First Amendment protects freedom of speech, press, religion, assembly and petition. Minnesota residents and Roger Lambert Morgan also rely upon Minn. Const. Article I., Sec. 3, "Sec. 3. **LIBERTY OF THE PRESS.** The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right." Minnesota residents and Roger Lambert Morgan further rely upon, Minn. Const. Article I., Sec. 16, "Sec. 16. **FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP.** The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries."

would swallow the right. Realistically, the rights must not be extinguished by the form through which the government conducts its business.

2. The floating point first amendment analysis precludes alternative channels.

By creating a different set of rules for each location, the courts have essentially made a law degree a pre-requisite for understanding where and how one can exercise something as simple as freedom of speech. Today, it might require a permit, surety, and security to simply flier in a traditional public forum such as a park. The first amendment itself, is in fact the exception to the far more routine cones of silence the law now imposes on the ordinary individual.

If you walk through the city, you will find a different set of rules being applied in almost every setting. A parks and recreation department may not post fliers for events which compete with their own events. (Such was the case with a Martin Luther King Day flier promoting an event.) A park board might require insurance for holding a demonstration. It might prohibit any fliering on the basis that it could create litter. As you walk out of the park down the street, you might pass by a hospital where fliering could be prohibited. The MTC bus company might try to exclude you from any outreach conducted near their bus shelters. In otherwords, the first ammendment changes step by step. Such was not the intention of the first ammendment. Moreover, although each example is of a "specifically" fixed set of rules, the overall effect is to create a first ammendment that floats with almost no bright line rules and subject to the whims of petty officials.

According to the law as it stands today, one cannot necessarily flier in a park without surety. One cannot flier at a publicly financed mall or in skyway. (What is a skyway but an elevated sidewalk?) Moreover, because anything- even entire cities- can be bought and sold, the question of what happens to the rights is critical. After all, the entire City of Minneapolis could be sold to a multitude of private interests. Would all rights be extinguished?

The answer would appear to be no. Rights exist outside of the sphere of the state and lie within the realm of the individual. Just as I cannot sell something I do not own to another person, the state cannot sell the rights away. It is akin to child support hearings in which the parents cannot waive the support owed to the child. Since the rights belong to the individuals and are not the property of the state, such rights cannot be extinguished merely by contracting space away to private parties.

Moreover, it is necessary to reitirate the confusion that comes from having a multitude of rules that affix to different locations. It is extremely complex to know what rules apply where- and it is doubtful the average person knows. I relunctantly introduce Schenck v. Pro Choice Networks of New York. According to a 2002 CRS:

> "In Schenck v. Pro-Choice Network of Western New York, the Court applied Madsen to another injunction that placed restrictions on demonstrating outside an abortion clinic.98 The Court upheld the portion of the injunction that banned "demonstrating within fifteen feet from either side or edge of, or in front of, doorways or doorway entrances, parking lot entrances, driveways and driveway entrances of such facilities" — what the Court called "fixed buffer zones." It struck down a prohibition against demonstrating "within fifteen feet of any person or vehicles seeking access to or leaving such facilities" — what it called "floating buffer zones." The Court cited "public safety and order" in upholding the fixed buffer zones, but it found that the floating buffer zones "burden more speech than is necessary to serve the relevant governmental interests" because they make it "quite difficult for a protester who wishes to engage in peaceful expressive activity to know how to remain in compliance with the injunction."[7]

[7] "Freedom of speech and the press: Exceptions to the First Amendment", Report for Congress (CRS), Henry Cohen, Updated May 16, 2002, Order code 95-815A. Available online.

Unfortunately, today every location has its own rules and "fixed" or not the rules change as the individual moves across the landscape. Again, if you move out of park, past a hospital and onto a train terminal, the rules will be different in each case. The underlying rational of rejecting floating buffer zones is sound. Unfortunately, Schneck appears to miss the forest for the trees. This is typical of the abortion line of 1st amendment cases which should never really apply outside of their specific context. Nevertheless, I want to introduce the underlying rationale in order to highlight the modern problem which emerged as a result of having different rules for different places.

3. The emerging private license to censorship.

Finally, the emphasis on the public versus private conduct was never intended to sanction widespread censorship. The constitution established ammendments to limit power, not shape it. It appears that we have become all to comfortable with powerful private institutions censoring and disciplining speech they find unacceptable. Unfortunately, such behavior is counterproductive. As inefficient as free-speech is, it makes up for it in innovative debate. Silence, efficient on the front end, costs everyone in the long run. In any event, it seems we have unfortunately mistaken the limitations on government as a license for private activity which could never have been seriously intended by the group of American revolutionaries that fought to secure their rights.

Increasingly private Universities, once bastions of free speech and public discourse, are now severely restricting public discourse on their campuses. St. Katherine's provides an excellent example of how private universities have created a wall of silence around them designed to keep out uncomfortable speech and debate. Tore Simonsen was promptly escorted off the campus when he attempted to solicit support there.

The internet, is the final, and perhaps most compelling example of the strange new face of censorship. Considered the epitome of open communication, the internet is slowly disintegrating as a means of free speech. The internet was created, paid for, and is still essentially controlled by the United States Government. Yet, we increasingly see private forces attempting to control and regulate it in ways which do not serve the public. An ordinary user might have to navigate spam filters, captcha codes, on-site administrators, and other users to make a simple post. What is allowed or is not allowed appears to be almost totally arbitrary. Most of the time such scrubbing is done as a method of "spam" control. However, it appears that most people have forgotten that the freedom of speech requires some amount of abuse in order to effectively operate.[8] As a result, the internet is increasingly scrubbed of legitimate speech as well as spam. Sadly, most professional spammers can get through denying access to ordinary citizen outreach only.

4. Catholic Charities, in coordination with the government and other service providers, essentially have a monopoly on homelessness.

Moreover, the breath and scope of services provided by Catholic charities is so significant that it is effectively operating as a company town. (Relying on Marsh v. Alabama 326 U.S. 501) (1946). Catholic Charities operate shelters in both Minneapolis and St. Paul. They provide access to services such as social workers, foot care, housing assistance, laundry, nursing, and shelter. Opportunties to access such services is limited to winning a lottery in other cases or accepting the deplorable services at Harbor Lights.

[8]As Madison said, "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press." This does not mean that responsible steps to curtail abuse should not be undertaken. However, in many cases the responsible step will come after the abuse, rather than it is now. For example, Tore Simonsen has endured many defamatory and slanderous statements on the internet- all of which could at some point be the subject of legal action. This would not, however, prove any kind of justification for shutting down the entire blogs or denying access to any internet communications by those making such statements.

Access to a variety of services alone does not minimize the de facto condition that the services are provided under a network of "private" rules all with the same aim, to provide bread and order and strip the individual of their underlying liberty interests. It is much like a gorgon, with many snakes but only one real face. The state should not be allowed to hide behind a mask of charities in order to deprive people of their freedoms.

Mayor Rybak stated that all of the activities are coordinated as a result of a government task force on homelessness. Therefore, any notion of separation is purely illusory, as all the groups and organizations are in the words of Mayor Rybak "coordinated."

In any event, Mr. Simonsen's ability to secure alternative housing is so tenuous that it would effectively impair him from enjoying ordinary freedoms. The constitution is wisely and explicitly class nuetral. In order to maintain its class nuetrality, it cannot sanction the deprivation of rights based upon nothing more than poverty.

C. Intrinsic Freedoms endangered by petty officials.

Finally, the United States Supreme court has always been dubious of the actions and abilities of petty officials to determine our individual freedoms.

This question appears to have been squarely addressed by the United States Supreme Court in Shuttlesworth v. Birmingham, 382 U.S. 87 (1969). In Shuttlesworth v. Birmingham, the Reverend Shuttlesworth and a group of ten or twelve people were standing in front of a Birmingham store when requested to disperse by a policeman. The others dispersed, leaving Shuttlesworth standing alone defiantly. When he refused a second request to move, he was arrested and convicted of two city ordinances prohibiting obstruction of the sidewalk and refusal to obey a police request to move one, and refusal to obey "any lawful order" of the police. The Supreme Court unanimously overturned the conviction.

The opinion of the Court by Justice Stewart definitively rejects the notion that the state may delegate to the police full discretion in regulating behavior on public streets:

"Literally read… the second part of this ordinance says that a person may stand on a public sidewalk in Birmingham only at the whim of any public officer of the city… Instinct with its ever present potential for arbitrarily suppressing First Amendment liberties, that kind of law bears the hallmark of a police state."[9][1]

Likewise, in Cox v. Louisiana (II), 379 U.S. 536 (1965), Justice Black in his concurring opinion, elaborated on the question of the finality of police judgment by noting that the danger of vagueness which lurks in giving police final and ultimate power to order people around.

> "In the case before us Louisiana has by a broad, vague statute given policemen an unlimited power to order people off the streets, not to enforce a specific, nondiscriminatory state statute forbidding patrolling and picketing, but rather whenever a policeman makes a decision on his own personal judgment that views being expressed on the street are provoking or might provoke a breach of the peace. Such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat."[10]

[9] Shuttlesworth v. Birmingham, 382 U.S. 87, at 90-91 (1969)

[10] Cox v. Louisiana (II), 379 U.S. 536, at 571 (1965)

Today, however, under an obscure funding system, the state seeks to create a new police under the label social worker. Such labeling should not justify the deprivation of the intrinsic rights and liberties of the individual. I urge the court to read these cases by substituting the word social worker for police. The underlying rationale can only lead one to conclude that the arbitrary and capricous decision of these petty officials cannot be a substitute for genuine freedom. This assertion is bolstered by the fact that Mayor Rybak indicated Minneapolis paid outreach workers to coordinate their activities directly with the police.

III. Mr. Simonsen's blogging is protected by the first and fourteenth amendment.

Thanks to advances in technology, we are all journalists now. Blogging is now a fact of life. Tore Simonsen has blogged for years.

Tore Simonsen is communicating newsworthy information to the public. The fact that Tore Simonsen loves Eliza Dushku and is trying to save her television show does not fundamentally alter the fact that he is also communicating valuable information about the state of services at a charity which the public should know about.[11]

Tore Simonsen has posted on many subjects. He has covered access to internet among homeless and low income people (comparable to the national net-nuetrality debates). He secured an admission by Rep. Tim Walz that people are being warehoused without need or benefit in mental health facilities. He asked Mayor Rybak about safety conditions in shelters. In fact, having witnessed threats of violence and seen people expelled from Catholic Charities services, he blogged about those things as well.

Tore Simonsen's posts make Catholic Charities uncomfortable. Tore Simonsen's posts on the expired milk is highly relevant to donors. The fact that Tore Simonsen was targeted for repression at Catholic Charities is likely owing to the fact that his real portrayals of services provided there. Tore Simonsen's posts raise basic questions that make Catholic Charities uncomfortable such as:

> Do Minnesota taxpayers want to subsidize assaults on basic free speech and First Amendment freedoms? Do members of the Board of Trustees of Catholic Charities want to be party assaults on basic freedoms? Do donors or volunteers to Catholic Charities want to support attacks on basic American freedoms?[12]

It is these uncomfortable questions which are likely the underlying basis of the Catholic Charities current ban on Mr. Simonsen's use of the facilities. Consider that Catholic Charities Branch 3 allowed an individual to bring a Playstation 3 onto the premises and solicit people to play games, but seeks to deny Mr. Simonsen's activities.

Barring Mr. Simonsen from taking pictures and effectively blogging would impair a citizen/clients rights to raise important questions about the nature of the goods and services being provided at public expense.

Moreover, Mr. Simonsen should be allowed to take photographs in order to effectively communicate the information. The unauthorized use of a television camera and subsequent airing of the video tape on a T.V. news program, constitutes actionable trespass. Copeland v. Hubbard Broadcasting Company, Inc. , 526 N.W.2d 402 (Minn. App. 1995). But see Desnick v. American Broadcasting Company 187 Cal. App. 3rd 1463, 232 Cal. Rptr. 668 (1986) (rejecting the claim of invasion of privacy for use of hidden camera at ophthalmology clinic.) The court in Desnick reasoned that imposing liability for trespass for clandestine newsgathering of this type might impinge on a

[11] Mr. Simonsen is not attempting to do anything but save a television show for a woman he loves- no matter what it looks like.

[12] Paraphrasing from FIRE's Guide to Free Speech on campus. Available online.

valuable newsgathering technique.

In this case, Mr. Simonsen's blogging constitutes a valuable form of newsgathering information. Mr. Simonsen is not a trespasser, but has a legitimate right to be on the property. Mr. Simonsen is reporting on information that would be of use to the public. There is no legitimate reason to prohibit Mr. Simonsen from gathering his information. The attempts by Catholic Charities to impair Mr. Simonsen are designed to set up a "charitable" curtain cutting of the free flow of information between the homeless and poor and the rest of the world. Such a system is fundamentally incompatible with a free society.

Although it may be argued that Catholic Charities is exempt from the provisions as they are not state actors, this fundamentally ignores the nature of the relationship between the state and the charities.

It is still not clear why participants in a Madden 2010 gaming session feel that they have an expectation of privacy which would be protected. The game was being played in an area accessible to the public. Anyone could sign up and play the game and observe the game being played.

Other events, such as the library opening on Monday is likewise covered by the media. No one who was at the library for its opening day could expect privacy from media cameras in attendance. Likewise, a recent fundraising effort at the Crystal court was similarly very public in nature. Although the event was held on private parties and required participants to sign in, the event was covered by bloggers and media. Participants were subject to interviewing and people could take pictures. Tore Simonsen took and posted pictures of the event which he considered newsworthy as well.

Conclusion

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions.[13] The constitutional safeguard, we have said, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."[14] "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."[15] "[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions," Bridges v. California, 314 U.S. 252, 270, and this opportunity is to be afforded for "vigorous advocacy" no less than "abstract discussion." N. A. A. C. P. v. Button, 371 U.S. 415, 429. [376 U.S. 254, 270] The First Amendment, said Judge Learned Hand, "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." United States v. Associated Press, 52 F. Supp. 362, 372 (D.C. S. D. N. Y. 1943). Mr. Justice Brandeis, in his concurring opinion in Whitney v. California, 274 U.S. 357, 375-376, gave the principle its classic formulation:

"Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the

[13] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

[14] Roth v. United States, 354 U.S. 476, 484 (1957).

[15] Stromberg v. California, 283 U.S. 359, 369 (1931)

fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed."

As Madison said, "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press." 4 Elliot's Debates on the Federal Constitution (1876), p. 571. In Cantwell v. Connecticut, 310 U.S. 296, 310, the Court declared:

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Nevertheless, Tore Simonsen's protests are well within the constitutionally protected areas of free speech. Apparently, heightened sensitivity to criticism appears to be the primary impetus to the injunction at hand. It is very clear that Catholic charities seeks to protect is image. It does not want images of expired milk to get to the public. Nor does Catholic charities want the public to know about the conditions under which it operates its homeless shetlers. Catholic Charities would be all too happy to accept the good will of public donations without scrutiny or oversight. In order to achieve this, Catholic charities attempts to create a tapestry of silence- a charitable iron curtain, in order to keep the truth of the conditions from reaching the public.

Perhaps, in our softness, we have forgotten how rough and tumble the American democratic process is and was meant to be. Democracy is not for the faint of heart. The Boston tea-party, the civil rights marches of the 1960's, the women's suffrage movement, and a host of other social reform movements were not won by cowards impaired by the phantoms of slight infractions. They were achieved by people who had courage to act and take their message to the streets.

Tore Simonsen must marshall his lowly resources and personal courage to mount a campaign at a much lower level. Tore Simonsen is the everyman, not the psion of privilege and power. Silencing Tore Simonsen silences everyone.

Even more remarkable are the damaging implications of not finding state action where it is unlikely the Catholic charities could operate without state funding. The state cannot deny individual rights by outsourcing services to private parties. It is not the state's right to waive fundamental rights, but for the individual to freely and knowingly consent to a waiver of the rights. In the case of the homeless, the unequal nature of the bargaining conditions does not allow for a level playing field. Nevertheless, such inequality should not be used as a basis for securing a release of rights. The constitution is wisely and explicitly class nuetral.

In order to maintain its class nuetrality, it cannot sanction the deprivation of rights based upon nothing more than poverty.

Finally, this case, more than anything is about life, liberty and the pursuit of happiness. At the core of all our democratic beliefs and ideals are basic notions of self-determination and the freedom to do what you want and make yourself happy. Though, Mr. Simonsen is currently in the pursuit phase, his happiness lies with Eliza Dushku.[16]

In response to his authoring four scripts intended as a gift to Eliza Dushku, Mr. Simonsen has at times been labeled insane, forced to take medication, and ultimately thrust into a homeless situation. It is against this backdrop, that Tore Simonsen is forced to take action at every level and against anyone

[16] It is of course entirely up to Eliza Dushku to decide whether or not to accept Tore's love. Tore can only offer it.

or anything that seeks to inhibit his ability to express his love for Eliza Dushku.

Respectfully submitted,

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