

SUPREME COURT OF THE STATE OF WASHINGTON

PAUL TRUMMEL,

Petitioner,

v.

STEPHEN MITCHELL and
COUNSEL HOUSE, INC.

Respondents.

No. 75977-4

MOTION OF AMICI
CURIAE TO FILE AMICUS
BRIEF

I. IDENTITY AND INTEREST OF AMICUS

The American Society of Journalists and Authors is the national organization for leading independent non-fiction writers. The Society's mission is the professional welfare of journalists and authors, and a vital part of that mission is the Society's active, long-standing defense of the First Amendment together with a deep concern for censorship issues. The livelihood of the Society's members depends on the free exercise of speech and of the press.

The National Union of Journalists (United Kingdom and Ireland) is a bi-national trade union representing 35,000 journalists (including writers, editors, photographers, cartoonists, public relations workers, etc.) working in all media, including about 6000 freelances. The London Freelance

Branch is the branch (in United States labor parlance, the “local”) of which Paul Trummel is a member. It is composed of about half of the total number of freelances in the union, and its members may be based anywhere in the United Kingdom, Ireland, or the rest of the world. The London Freelance Branch of the NUJ is directly interested in this case insofar as one of its members, Paul Trummel, has suffered infringement of his freedom of expression through the trial court’s rulings – not to mention imprisonment stemming from exercising his journalistic and personal freedom of expression.

A. Statement of the National Union of Journalists, London Freelance Branch.

This now internationally notorious case presents the appalling spectacle of an elderly journalist thrown in jail and forced to endure several weeks in solitary confinement for exercising rights guaranteed by the United States’ First Amendment, the United Nations’ Universal Declaration of Human Rights, and the United Kingdom’s Human Rights Act.

The case also raises troubling questions about freedom of expression in relation to the Internet, a new medium with per se international reach, in which the right of free expression has yet to be

clearly established and in which, therefore, that right may be especially vulnerable.

Paul Trummel is a veteran journalist, public relations worker, media academic, and member of our union of journalists. He worked for many years in London and then moved to America.

Please note that as journalists, not lawyers, we are concerned with the principles of the practice of our profession and with our members' welfare. As we understand this case, Paul was jailed last year because he refused to acquiesce to a court order to remove various statements and items of information from his website, and so was held in contempt of court. We contend that it was a gross error to restrict his freedom of expression and then to jail him because he would not submit to that restriction.

As British people, but as journalists in particular, we greatly appreciate the fundamental protection of freedom of speech afforded to all Americans by the First Amendment to the Constitution. By that straightforward criterion it is very hard for us to understand how the court could have treated Mr. Trummel as it did, in America of all places.

However, since this case is in large part about freedom of expression on the Internet, a medium which is by its very nature affords

automatic global access to everything published on it, we feel it is also relevant to refer to civilized standards of freedom of expression that transcend national boundaries. For those standards protect the essential human aspiration to that freedom which is held dear by people in every country no matter what regime prevails currently. And those standards are enshrined in documents universally recognized by the civilized world. For example, the United Nations' Universal Declaration of Human Rights declares:

Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR 3d Sess., at 71, U.N. Doc. A/810 (1948), art. 17 (emphasis added).

The United Kingdom Human Rights Act addresses the same issue in nearly the same terms:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Human Rights Act of 1998, c. 42 (Eng.), art. 10.

Freedom of expression seems to us to be the crucial and overarching concern in this case.¹ But we would like to address several other points of detail arising from Mr. Trummel's case.

It appears that Mr. Trummel's bona fides as a journalist and his lack of a publisher other than himself became issues in the trial court. It was argued at the trial court that because he was publishing himself Mr. Trummel was not a journalist and therefore somehow not entitled to write what he chose, whether fact or opinion. If this characterization is even remotely accurate, the underlying notion seems far removed from national and international standards governing freedom of speech and journalism. It takes little imagination to notice just how very damaging the implications would be for all publishing media. But it would especially damaging in the realm of the Internet, where many more people, professional or amateur, are finding a new outlet to put their material in

¹ We say this with full regard to the second part of Article 10 of the Act:

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

front of the public at relatively low cost. This change in the very way ideas can be expressed and promulgated enhances individual freedom of expression itself and provides alternative voices to the corporate giants that increasingly control the “traditional” media in the UK, Ireland, the US, and worldwide. And it would be tragic to hobble this new medium just at the moment when it has emerged as the first eminently practical vehicle for implementing the Universal Declaration of Human Rights’ recognition of the “right to freedom of opinion and expression ... regardless of frontiers.”

Further, the strange logic of the original judgment seemed to imply that if a purported journalist is not a journalist he or she possesses even fewer rights than the ordinary citizen. That is, restrictions were imposed on Mr. Trummel’s publication partly because the court, by its own criteria, deemed him not to be a journalist and then further deemed that this meant he did not have an ordinary citizen’s right to express his or her ideas and publish them. Even by the standards of legal logic, this seems very strange thinking indeed.

In regard to the content of Mr. Trummel’s site, we do not have the comprehensive knowledge to argue that any given part of it is accurate, fair, and so on. But it seems undeniable that his freedom of expression was

restricted by the court (first by order and then by incarceration) on the basis, in part, of statements by individuals that what he wrote caused them offence or pain.

Again we do not have the knowledge to argue that any given part of the case presented by Mr. Trummel's accusers is accurate, fair, and so on. But if this line of thinking is to be any part of judicial response to journalistic or other expression in any country, then freedom of expression is in deep trouble. It is evident that journalists often cause offence to all sorts of people, including politicians, by telling the truth. But the court's judgment in Mr. Trummel's case would suggest that if anyone complains that, in some fashion, they are offended by anything they read then its publication could be restricted or terminated. This would lead to constant prior restraint of publication, the limitation of existing publications, and, generally, the dominance of what might be called "the official version" of any set of events. It would lead only to a travesty of the whole principle of freedom of expression.

It appears that the original judgment resulted from an almost farcical—yet for Mr. Trummel quite appalling—confusion of an anti-harassment action with all sorts of other concerns that should never have been on the same table. Whatever the necessary limits on freedom of

expression in a democracy—one thinks of the law of defamation—they simply cannot include the unconscionable sorts of abuses to which Paul Trummel was subjected by the trial court in this case.

B. Statement of the American Society of Journalists and Authors.

The American Society of Journalists and Authors is the national organization for leading independent non-fiction writers. We would like to present our views in this amicus curiae brief because the issues in this case bear directly on the concerns of all writers.

One issue appears to be whether Mr. Trummel was serving as a “journalist” when he wrote or posted the texts in question. We believe it is important for the court to note that in none of the fifty states in the United States is there a licensing requirement for journalists. Nor are there other legal or quasi-legal requirements for becoming a journalist. That is because, under the prevailing interpretation of the First Amendment, it would be a de facto violation of that amendment for the government to impose a journalism license or other requirement. The act of writing – whether or not the writer is a member of any association or union – is sufficient. No person and no organization can decide who is or is not a journalist.

The trial court noted that Mr. Trummel did not have a publisher. But even a publisher is not necessary to serve as a journalist. Some of the most important statements in the history of our nation have been self-published or have appeared in small, private newsletters or broadsides. Tom Paine and I.F. Stone are notable examples, but the list could go on and on.

The trial court's ruling seems to saying that because it did not consider Mr. Trummel to be a journalist, he is not entitled to protection under the First Amendment. But that amendment protects free speech for all people, regardless of whether the words are committed to paper. Even if Mr. Trummel had simply stood on his porch and spoken his opinions, he would have the right to do so under the First Amendment. That applies to the respondents as well. They would have done better to respond to him with more speech rather than with an attempt to gag him. They would have done better to use permissible tools, such as libel law, rather than attempt to exercise prior restraint against his free speech.

II. FAMILIARITY WITH ISSUES

Counsel for the amici curiae has read the parties' briefs and filed a brief on behalf of amici curiae in the Court of Appeals, as well as a brief in support of the petition for review, which the Court granted. Counsel is

familiar with the scope of the arguments presented by the parties, and has not unduly repeated arguments raised by the parties.

III. ISSUES TO BE ADDRESSED BY AMICUS

1. Whether the finding of harassment and anti-harassment order were impermissibly based on Mr. Trummel's constitutionally-protected speech.

2. Whether Mr. Trummel was denied due process at the hearing where his publications were found to constitute harassment.

3. Whether the content-based restrictions on Mr. Trummel's website are unconstitutional prior restraint.

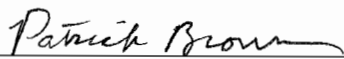
4. Whether the findings of contempt against Mr. Trummel must be vacated under the prior restraint exception to the collateral bar rule.

IV. WHY AMICUS BRIEFING WILL ASSIST THE COURT

The journalists' groups participating in the amicus brief possess in-depth familiarity and expertise concerning journalistic practices and freedom of expression. Just as appellate courts traditionally defer to administrative agencies because of their specialized expertise, so may this Court benefit from the cumulative and in-depth expertise of these journalists' groups in deciding a case, such as this one, with profound

national and international ramifications for the practice of journalism and for institutions founded on freedom of expression. In addition, the views of the journalists' groups participating in this amicus provide some index of national and international professional opinion regarding the treatment of Paul Trummel by the lower courts of this state.

RESPECTFULLY SUBMITTED this 23rd day of May, 2005.

By: 
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