Does Privacy Have A Place in Public Discourse?

Florida Star v. B.J.F

"The public's right to receive news is nearly all encompassing. It extends to publicity about public figures who invite public attention by their activities, those who are involuntarily placed in the public eye such as crime victims, information as hard news, and information as entertainment(McNulty, 108)."

The ability to keep information private has become extremely difficult in recent years. Technology has created a network of personal information that expands beyond the purchasing points, website visits, and various other places. As Adam Moore points out, "The ease with which highly personal information is retrieved, compiled, disseminated, and stored represents an important change from our analog past(81)." In the present day and age, there is an excess of personal information that is exchanged from company to company and individual to individual with no regard to how it may impact the original owner of the intangible property. Issues respecting informational privacy rights have been quite commonly seen in Supreme Court cases throughout the history of the United States of America. There are arguments for and against the disclosure of private facts.

The issue of privacy in public discourse permeates throughout the United States. For instance and most recently, Congress teeters on the brink of passing the Cyber Intelligence Sharing and Protection Act (CISPA), a bill that, "directs the federal government to conduct cyber
security activities to provide shared situational awareness enabling integrated operational actions to protect, prevent, mitigate, respond to, and recover from cyber incidents. CISPA's main objective is to ensure the security of potential cyber threats. On April 22nd of 2013, CISPA passed in the House of Representatives. There are several restrictions considering the privacy rights of individual citizens. As described in section three:

- Sets forth requirements with respect to the use and protection of shared information, including anonymization or minimization of such information and prohibiting the use of such information to gain a competitive advantage and, if shared with the federal government, exempts such information from public disclosure and prohibits the use of such information for regulatory purposes. Specifies that a non-federal recipient may only use such information for a cybersecurity purpose. Prohibits a civil or criminal cause of action against a protected entity, a self-protected entity, or a cybersecurity provider acting in good faith under the above circumstances.

Section three of the bill sets the restrictions of the government from a wide range of access and usability of personal information. Still, many citizens feel that this is an infringement of their individual rights. This is just an example to illustrate how privacy rights have become increasingly more and more debated as technology expands.

The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The following will focus on a particular case involving a woman in Florida, and the local newspaper. The case, Florida Star v. B.J.F will be discussed, as well as various critiques
from scholars in respect to privacy rights in public discourse. This particular case also illustrates the power of U.S constitutional law over state law.

The purpose of analyzing Florida Star v. B.J.F is in view of the speech itself, which involved one of the most tragic and embarrassing situations that a woman could imagine happening in their lifetime. As Professor Denno points out, "the great majority of news organizations in this country do not publish the names of alleged rape victims either at the time the rape is reported or when the victim testifies at trial. This "conspiracy of silence" is based, in part, on the media's recognition that rape is more personal, traumatic, and stigmatizing than other crimes(1113)." This case illustrate how even a case involving rape can be struck down by the power of the First Amendment.

In 1983, B.J.F reported her own sexual assault and robbery to the local police department in Jacksonville, Florida. The police chief left a copy of the police report in the pressroom. Later, a reporter came across the police report and used the information to publish the report in the newspaper. The Florida Star, a newspaper in Jacksonville intentionally disclosed her full name in the paper as the victim of robbery and sexual assault. B.J.F filed a lawsuit against the Florida Star wherein she won punitive and compensatory damages for their actions. According to Florida state law, statutes 794.03:

- No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter, except as provided in s. 119.071(2)(h) or unless the court determines that such information is no longer confidential and exempt pursuant to s. 92.56. An offense under
this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083(1).

Making it unlawful for the Florida Star to publish the identity of B.J.F, she won the case in 1984. The defendant, Florida Star appealed to the Supreme Court on the grounds that Florida state law (specifically, statute 794.03) violated their First Amendment rights. The case was heard by the Supreme Court in 1989. They concluded that Florida state law did infringe upon the Florida Star's First Amendment right, namely "freedom of the press" and reversed the ruling of the lower court. LexisNexis notes:

- The tension between the right which the First Amendment accords to a free press, on the one hand, and the protections which various statutes and common-law doctrines accord to personal privacy against the publication of truthful information, on the other, is a subject the court has addressed several times in recent years. The court's decisions in cases involving government attempts to sanction the accurate dissemination of information as invasive of privacy, have not, however, exhaustively considered this conflict. On the contrary, although the court's decisions have without exception upheld the press' right to publish, the court has emphasized each time that the court was resolving this conflict only as it arose in a discrete factual context.

The Supreme Court based its ruling on the Florida Star's factual published material. Due to the truth of the information itself, the Supreme Court decided that the Florida Star did not overstep its bounds by printing B.J.F's full name in its newspaper. The question of whether it was an invasion of B.J.F's privacy was crushed as a result of the Supreme Court's ruling.
According to Denno, the Supreme Court made its decision based on three key reasons referencing the "Daily Mail standard (Denno, 1119)". The Daily Mail standard came from Smith v. Daily Mail Publishing Co. in 1978, which made it a crime for the newspaper to publish the name of a juvenile offender without the consent of the court in Virginia. Denno states that, "the Daily Mail standard protects only the publication of lawfully obtained information (1119)", and "the government still retains methods of safeguarding sensitive information, such as a rape victim's name, from disclosure (1120)." Denno states that the second reason behind the Supreme Court's ruling involved the prior ruling in Cox Broadcasting Corp. v. Cohn, wherein the Court noted, "penalizing the press for disseminating publicly available information is not likely to serve the State's interest (Denno, 1120)." Lastly, Denno suggests that the Court felt if they placed censorship on the media's publication of truthful information, it could further jeopardize First Amendment rights for the media, at large.

As mentioned before, there are many arguments for and against privacy in public discourse. There are also limitless circumstances and factors that come into play regarding these issues. In Florida Star v. B.J.F, the arguments are quite certain. Given B.J.F's affliction, is it permissible to expose the name of a rape victim? Should Constitutional law override state law in such a situation? The protection of Constitutional law and most significantly, the First Amendment ultimately nixed the suggestion of protecting a victim of rape from public humility. The Court interpreted the law on the grounds that the information was truthful and obtained legally, but should there be more protection for cases that involve rape victims? Some feel that by protecting rape victims from the public, it places the victims in a category that labels them as shameful. The other side of the argument expresses how giving the public such information results in the victims sense of trauma from the experience to worsen. As Denno explains,
"Ziegenmeyer (another rape victim), not the media, made the decision to go public with her case. Furthermore, although Ziegenmeyer was hailed for her courage, she now claims that she would have never reported the crime if she had known at the time it occurred that he identity would be disclosed(1125)." In other words, it is difficult to determine whether labeling individuals involved in sexual assaults as "victims of rape" because the victims themselves may have a difference of opinion regarding the disclosure of the information to the public. Perhaps the decision of the court is best summed up by John Stuart Mill's examination of liberty, "The strongest of all the arguments against the interference of the public with purely personal conduct is that when it does interfere, the odds are that it interferes wrongly and in the wrong place(70)." If the government placed any limitations on the First Amendment, things would go awry and this is what is feared the most.


