

INNS OF COURT – TABLE 3 PRESENTATION
December 7, 2022 – “Hate Speech”

Hypothetical #1 – Public Employee Speech

The Plaintiff, Mr. Inspector, was the long-time building inspector for East Overshoe, NH. Mr. Inspector was considered a good employee. He was responsive, efficient, and knowledgeable.

East Overshoe has a personnel policies manual that provides in pertinent part:

Harassment, discrimination or violence

Employees are prohibited from engaging in discrimination or harassment against other individuals, including co-workers and members of the public, on the basis of such individual’s membership in a protected classification. Protected classifications include . . . religion. . . .

Social Media Policy

Town personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships within the Town, are detrimental to the mission and functions of the Town, undermine respect or public confidence in the Town, cause embarrassment to the Town, discredit the Town, or undermine the goals and mission of the Town.

Mr. Inspector somewhat regularly posted on Twitter. While he never specifically identified himself as East Overshoe’s building inspector in his profile bio, his position with the Town was clear from his posting history. For example, he posted photos of himself outside of the Town Hall with other Town employees; he made several posts reminding people to vote in favor of the Town’s budget because his job could be on the line; and he periodically posted tips about what building inspectors look for when they come to a property.

On December 15, 2020, Mr. Inspector performed an inspection of a new bathroom in a townsperson’s home. The homeowner had a menorah displayed. Mr. Inspector passed the bathroom. However, after the inspection, Mr. inspection posted the following on Twitter:

“Anyone who has to go into a filthy home for their job should get employer supplied HAZMAT suits. Especially during COVID!”

Five minutes later he tweeted a link to an article originally published on a neo-Nazi website asserting that:

“[Antisemitic slur] had been responsible for all the historical plagues that had ever swept Europe.”

Ms. Townsperson lives in East Overshoe and followed Mr. Inspector on twitter. She saw the tweets and immediately reported Mr. Inspector to the Town Manager. She also called a local

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reporter who wrote a story about the incident that cited additional antisemitic tweets that Mr. Inspector had posted several years prior.

The Town Manager fired Mr. Inspector the day after the news report came out. Mr. Inspector has sued East Overshoe, claiming that the Town is liable under 42 U.S.C. § 1983 for violating his First Amendment rights. Mr. Inspector also asserts that his termination violated NH RSA Chapter 98-E, Public Employee Freedom of Expression.

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Hypothetical #2 - Student Speech

Ima Bigott is a seventeen-year-old high school junior. Bigott has a perfect “A” grade point average at the City High School. He is on the school’s varsity sportsball team, an editor of the school newspaper, and a member of the school’s outing club and debate team.

Bigott is also a bigot. He is a white nationalist. Like his parents he believes that this is a White Christian nation and that anybody who is not Christian of northern European descent is a guest, not a true citizen. Like his parents, Bigott belongs to the National Capitalist party. Party members march wearing tan uniforms with red armbands featuring two lightning bolts. They greet each other by raising their right arms in the type of salute that first became popular in Germany in the 1930s.

Along with his parents, Bigott took part in a demonstration at the New Hampshire State House in favor of a bill captioned the Anti-Woke-Schools Act, that among other things, would make it a misdemeanor to (a) teach about racially divisive topics, (b) advocate, during any class or school sponsored activity, for the position that any individual’s station in life is the result, in whole or in part, of “systemic racism,” or (c) deny students’ the ability to worship freely and silently at the start of each school day.

The demonstration was well publicized. More counter-demonstrators than demonstrators showed up. Both the organizers of the demonstration and the counter-demonstrators were surprised when Bigott and the National Capitalists showed up in their tan uniforms. The National Capitalists shouted the same slogans that we all heard during the Charlottesville march several years ago, and those slogans need not be repeated here.

Bigott was videotaped chanting these hateful slogans. The videotape was posted on Tik Tok and went viral. It found its way onto Twitter and, indeed, was replayed on all three cable news networks, i.e. FoxNews, CNN and MSNBC.

Bigott does not have a Tik Tok account. He does not have a Twitter account. He did not contact cable news. He did nothing to make his chanting go viral.

The viral Tik Tok post did not go over well at the City High School. The Student Social Justice network called for a one-day sick out citing the viral Tik Tok post. Approximately 200 of the school’s 800 students stayed home. Because the school banned demonstrations on school property, the Student Social Justice network organized a nightly candlelight vigil at City Hall to object to the Anti-Woke-Act. They carried signs with Bigott’s screaming image, obtained by a screen shot from the Tik Tok post.

Apparently unaware of the Streisand effect, the City High School principal, eager to find a scape goat, suspended Bigott and demanded a letter of apology. When Bigott refused to apologize for taking part in a lawful march at the State House to support pending legislation he

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was expelled. The principal said that Bigott disrupted the functioning of the school because his conduct caused the sick out and the nightly vigils, all of which had a deleterious effect on classroom learning. Still the principal said he would welcome Bigott back, if only he issued a public apology for his extreme and distasteful speech.

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Hypothetical #3 – Attorney Speech

Attorney Venom is a solo family law practitioner in Keene. She is licensed and practices regularly in New Hampshire and Vermont. She donates annually to the Iranian American Women’s Equality Society, which provides mentorship to younger generations of Iranian females globally. Attorney Venom represents a mother, Cheryl, in a contentious parenting case pending in the Keene Family Division concerning Cheryl’s daughter. Cheryl temporarily resides in Brattleboro, Vermont. The child’s father, Ramin, splits his time between Keene and his brother’s beach house in Wells, Maine. Ramin is *pro se* and he filed a pending Motion to Modify the temporary parenting plan to allow him to travel with his daughter to his native country of Iran for the summer. He alleges that Cheryl is addicted to opioids. Since Ramin is the only stable, male figure-head in his daughter’s life, Ramin wants an orderly surrounding for his daughter over the summer with his family in Iran. Attorney Venom’s client, Cheryl, opposes the Motion to Modify and denies she has any addiction.

A court-ordered mediation is facilitated by Manchester mediator, Slim Mellow, which takes place remotely via Beam Me Up video conferencing. Attorney Venom drives to Brattleboro to be physically present with her client during the remote mediation. Ramin participates remotely from the beach house in Maine. In the joint introductory session, the remote mediation becomes heated. Attorney Venom becomes increasingly agitated over Ramin’s controlling personality, his insistence on traveling with his daughter to Iran, and his exaggerated claims that Cheryl is an addict. Attorney Venom can’t take it anymore and finally blows up before Slim has a chance to separate the parties into breakout rooms. Attorney Venom proclaims in a loud tone: “Ramin, you are crazy if you think that girl is ever going to Iran. Any Court in this country is going to find that you are a classic male @\$%^&* and your country is full of #%\$%^&&** [insulting and demeaning remarks]. Later that night, with cocktail in hand, Attorney Venom re-states her offensive remarks and personal opinions verbatim at an Inns of Court meeting at the Hotel Concord when she recounts her bad day at mediation with a few of her colleagues.

Ramin files professional conduct complaints against Attorney Venom in Maine, New Hampshire and Vermont. The New Hampshire Attorney Discipline Office finds professional misconduct by Attorney Venom under NH Rule of Professional Conduct 8.4(g) for taking action at mediation that was motivated by animus against Ramin’s sex and national origin, where Attorney Venom knew her conduct had the primary purpose of harassing Ramin. A public reprimand is imposed. The Vermont Professional Responsibility Board disciplines Attorney Venom for violating ABA Model Rule 8.4(g), as adopted in Vermont verbatim, for engaging in conduct related to the practice of law that she reasonably knew was harassment and discrimination on the basis of sex and national origin. Vermont imposes mandatory cultural and gender sensitivity training, a 3-month suspension for Venom’s statements made at mediation, and a consecutive 3-month suspension for her statements made at the Inns of Court meeting. Venom files a federal lawsuit seeking a declaratory judgment that NH and VT Rules 8.4(g) violate her First Amendment rights. The NH & VT federal courts specially assign Judge Evon Brusk to consider the cases jointly. Judge Brusk immediately declares the Rules to be unconstitutional and

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enjoins her professional discipline, which ruling is now on appeal to a joint panel of the First and Second Circuit Court of Appeals.