

The Internet Bubble, The Housing Bubble, and The First Amendment Bubble?

AMY GAJDA, *THE FIRST AMENDMENT BUBBLE: HOW PRIVACY AND PAPARAZZI THREATEN A FREE PRESS*, (2015).

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“Increasingly, personal privacy seems deeply vulnerable and deserving of new, more potent protections, just as the expansive new practices and identity of media are stretching the credibility of journalism’s claim to occupy a distinctive and privileged place in democratic life. The combined effect creates a sort of First Amendment bubble, in which constitutional protection for press and news media continually expands to the breaking point, jeopardizing future protection not only at the margins but also for the core.”¹

Amy Gajda’s *The First Amendment Bubble: How Privacy and Paparazzi Threaten a Free Press* is an interesting read about the advancements in technology that have threatened the privacy of all Americans, especially those with a celebrity status. Within her work, Gajda discusses how and why the courts have interpreted the First Amendment to balance the protections of both celebrities from the paparazzi, while still allowing journalists to provide the American public with this private material. The central theme of this book is that by the courts typically siding with journalists as to what is considered “newsworthiness” to disclose private

¹ See AMY GAJDA, *THE FIRST AMENDMENT BUBBLE: HOW PRIVACY AND PAPARAZZI THREATEN A FREE PRESS* 3 (2015).

material, they are creating a “First Amendment Bubble” that is destined to disrupt in the current age of news, entertainment, and social media outlets. Gajda poses the question of where the law should draw the line between the free disclosure that journalists and the public seek, and the legally punishable invasions of privacy of celebrities. The purpose and scope of this book review is to determine if Gajda’s fear is as real and prominent as she assumes, or if the courts are likely to stop the First Amendment Bubble from bursting before it bursts.

Amy Gajda is a former journalist, and a current professor of law at Tulane University Law School in New Orleans, Louisiana. Her career began in the 1980s as a television news anchor and producer at the PBS station in Harrisburg, Pennsylvania. She eventually went on to work for Charlottesville, Virginia’s NBC station, and the ABC station in Salisbury, Maryland. With each of these positions, Gajda faced difficult decisions as to what material she and her coworkers could air, and to what extent. With this, Gajda frequently found herself advocating for privacy of the victim, placing her professional benefit behind her. Gajda’s journalism career lasted for a decade, mostly dealing with “car crashes, drownings, fatal fires, political life, and kittens stuck in pipes.”² Although these areas of news may not seem glamorous, Gajda still had to make newsworthiness determinations almost every day of her journalism career. Before starting her teaching career at the University of Illinois, Gajda practiced law in Washington, D.C. At the University of Illinois, Gajda taught at both the law school and the journalism school. Now, at Tulane University School of Law, Gajda has been awarded the Felix Frankfurter Award for Distinguished Teaching, the law school’s highest teaching honor. Aside from *The First*

² See *id.* at x.

Amendment Bubble (2015), Gajda's works include *The Trials of Academe*,³ as well as co-authorship of *Media Law*,⁴ and *The Law of Higher Education*,⁵ all within the legal field.

The primary area of law that is of focus of Gajda's work is the First Amendment, specifically as it applies to journalism and the paparazzi. Gajda specifically cites court cases and decisions that surround this issue. She opens her book with the famous *Bollea v. Gawker* case,⁶ in which Gawker, a celebrity gossip website posted parts of a hidden camera video with audio of Terry Gene Bollea (Hulk Hogan) fully nude and engaging in sexual activity with a woman. Gajda explains the Florida federal court's analysis in siding with Gawker in publishing this content. The court, and Gajda, explain that courts are hesitant to rule in a way that might violate the First Amendment protections of expression, holding that a sex video is considered newsworthy based off of Hulk Hogan's persona as a reality television star.⁷

Gajda begins her book with a preface about her career path and her experiences with facing the question of whether or not material about a person that was frequently in the news (a politician, public official, celebrity, etc.) was considered newsworthy or subject to privacy. From there, the text includes an introduction that poses Gajda's main question – where should the law draw a line between First Amendment freedoms of expression and the right to people's privacy, and what legal and ethical restrictions exist, or should exist, in regards to publishing truthful information in an age where the news is constantly being updated? The introduction also contains a brief history of how the United States courts have dealt with technological advancements and how they apply to the First Amendment protections, citing famous cases

³ See AMY GUJDA, *THE TRIALS OF ACADEME* (2009).

⁴ See MARC FRANKLIN, DAVID ANDERSON, LYRISSA BARNETT LIDSKY, & AMY GUJDA, *MEDIA LAW: CASES AND MATERIALS* (2016).

⁵ See MICHAEL A. OLIVAS & AMY GAJDA, *THE LAW AND HIGHER EDUCATION: CASES AND MATERIALS ON COLLEGES IN COURT* (4th ed. 2016).

⁶ See *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (2012).

⁷ See *id.* at 1331.

throughout. *The First Amendment Bubble* is divided into eight chapters with divisions within. All of the chapters are in chronological order, each discussing a different matter related to journalism and the First Amendment. Some examples of her chapters include “Legal Protections for News and Truthful Information: The Past,” “The Devolution of Mainstream Journalism,” “The New Old Legal Call for Privacy,” and “The First Amendment Bubble, Absolutism, and Hazardous Growth,” to name a few. The book is 302 pages long, including notes, and while it is an interesting read that goes by quickly, Gajda could use to cut a lot of information out of her book. Due to the historical context that she provides in each chapter, Gajda has a tendency to repeat herself, adding a lot of text to her work.

The author’s thesis is that changes in the First Amendment application in courtrooms, newsrooms, classrooms, and Congress should be made to more tightly define the length in which the media may go to make legal and ethical sound newsworthiness determinations. As someone that has a great deal of hands-on experience in the news industry and the legal field, Gajda’s cautionary read is valid. Gajda provides a thorough analysis of media case law, in which she displays evidence that broadcasting organizations, news platforms, and journalism outlets must rid themselves of the mindset that the First Amendment will protect them from anything that they publish. She warns that if those in the media industry continue to persist, the courts and legislature will eventually push back so hard, that the First Amendment protections that Americans know today will eventually collapse.

Considering the current climate of news in the United States, Gajda takes a smart approach to her book, mostly focusing on cases that involve “news outlets” that focus on celebrity gossip, revenge porn, and publish humiliation of average citizens. Media outlets that focus on this material are extremely popular in the United States, and coupled with social media,

is how many Americans rely on getting news updates. Considering this, Gajda advocates for these platforms, claiming that they deserve the same First Amendment protections and treatments that the courts have granted to more reputable news sources over the years. The author notes that traditional journalism sources are becoming desperate for readers, and are increasingly publishing tabloid-like material to appeal to the majority of American readers. This, according to Gajda, creates blurred lines between tabloid, entertainment journalism and newsworthy, current event journalism that neither judges, journalists, or the public have made an effort to define. Thus, lawsuits that arise from tabloid, gossip-related journalism receives the same treatment in court as mainstream journalists, expanding the First Amendment protections for journalists. However, while Gajda uses the type of media outlets that the majority of Americans rely on, this book is not written for the masses. Because her work is so case heavy, the work is filled with legal terms and procedures that might go over the average American's head.

Gajda provides a clear and well-articulated argument on the dangers the First Amendment may face for both the news industry and the legal field. Her strength is that she has a great ability to provide relatable examples where American citizens might be subjecting themselves to an invasion of privacy. Here, Gajda focuses on teenagers posting to social media platforms, such as Facebook, Twitter, and Instagram, and having those materials screenshotted and posted to another website, displaying their username, picture, name, and content with no repercussions.⁸ By applying the law to real world experiences, Gajda is able to connect with readers other than those in the legal and journalism fields, while providing useful, cautionary advice as to what these people publicly post on social media. With this, Gajda narrows in on a

⁸ See GADJA, *supra* note 1 at 9.

personal, relatable matter that everyone can relate to that allows people to sympathize with celebrities and public officials that are always subject to public exposure.

Overall, for a law student or someone in the legal or journalism field, Gajda's book is a decent read. While repetitive and lengthy, the author provides a great deal of research in terms of case law, statistics, and even law review articles from the nineteenth century to strengthen her argument. Within *The First Amendment Bubble*, Gajda stands up to journalism and the news and challenges them to be conscious of the fact that celebrities and public officials are human beings and should be subject to the same privacy rights as the average citizen. Gajda, through her use of relevant cases and examples, provides a convincing argument for maintaining privacy rights to those that the media industry attempts to pierce.