

Ward v. Santa Fe Independent School District: A Plaintiff's Ethnography of First Amendment Litigation

Marian L. Ward
University of Arkansas at Little Rock

The following autoethnography paper is to tell a first-hand, plaintiff's perspective of a Free Speech court case. It reviews some of my early experiences as a Christian public school student dealing with the administration and faculty's confusion about the state of First Amendment law. It then provides a timeline of events through those that precipitated my lawsuit in the fall of 1999. I discuss the fallout of that decision and my "15 minutes of fame" that followed after I became the face of the school prayer issues. After some background is provided about my hometown of Santa Fe, TX, the Supreme Court case Santa Fe v. Doe, and the atmosphere of that time period, I detail actions by Santa Fe Independent School District violating my First Amendment rights as a student and citizen. The subsequent years are discussed as well as legislation resulting from this experience.

"Don't raise your voice; improve your argument."—Archbishop Desmond Tutu, 2004

Discussion of American politics and history has been a part of my life for as long as I can remember. I suppose it's the tradition of white Americans to connect more to their heritage based on the generations on this side of the pond. Such was and is the case with my mostly-Irish-plus-a-mixture family. We value God, family, America, and food, sometimes in varying orders of priority. As I grew older, I found that our family unit was unique in that my parents' discussions with us went beyond these broad topics to specifics of political issues and candidates. I remember being annoyed at my dad's choice of talk radio over music in the car when he would take my brothers and me to school. I often laughed at myself as I remembered those days while listening to WMAL as an optimistic, aspiring politico in my mid-20s and suffering through many a DC commute on the "Beltway." It is hard to remember when I first heard of the Constitution or the cycle of elections. They were just part of the collective family value system for the Wards. By the time I reached junior high school, I was lamenting how many years I had left before being eligible to vote.

In the spring of 1995, I was a 13-year-old 7th grader and band nerd and had the accompanying priorities. Though most of my story took place my senior year of high school, it began 4 ½ years before in the junior high gymnasium.

It is exciting and right to tell this story, my story. There are lots of articles still floating around in digital newspaper archives and law school textbooks, but very few of those authors sought out the source. So, to be honest, I'm proud to finally have my say.

It is important to first discuss the events and atmosphere that eventually culminated with my suing the Santa Fe Independent School District (SFISD) at the age of 17 and the most well-attended football game in Santa Fe's town history. (This fact is probably not verifiable, but anecdotally true if you ask a local). Then, I must specifically discuss the first *Santa Fe* case, *Doe vs. Santa Fe*, as it was a major impetus for my own lawsuit. After that, I will re-live my journey through the craziest week of my young life up to that point. Finally, I will tackle one of the tougher questions: What happened (happens) after *Ward v. Santa Fe*?

Background

For those who might not know, Santa Fe is a small town Southeast of Houston, TX. It is roughly halfway between Houston and Galveston and somewhat represents the stereotypical small-town America, except without a main street or town square because of its growth along the railroad. According to Wikipedia and the 2010 census, its population is almost 94% white/Caucasian and a majority of residents are pretty evenly split between Catholic and non-Catholic Christian church affiliation (city-data.com).

For reasons that are only speculative, this area of Southeast Texas became a hotbed for First Amendment issues relating to public schools sometime around the early 1990s (*Jones v. Clear Creek*, 1991). There were legal complaints running the gamut from prayer at graduation ceremonies, to the election of chaplains in student groups, to whether or not Bibles were even permitted on school grounds. It was a confusing time for students, faculty, parents, and administrators. Everyone seemed to be waiting for a complaint or lawsuit regarding any expression that happened to be Christian and happened to take place on school property. Santa Fe was no exception to this tension, particularly when SFISD incurred its first Federal suit in 1995, which brings us back to my 7th grade gym class.

That year, two families sued SFISD—one Mormon, one Catholic—anonously as “Jane Doe.” They had what can best be described as a laundry list of complaints, including many of the incidents listed above. They felt the school district had violated the

Establishment Clause of the First Amendment in a number of ways (oyez.org). In my memory of that time period, I found out about the lawsuit while sitting in my early-morning junior high P.E. class listening to the announcements over the school's P.A. system. It became clear while I talked about the news with my fellow Christian classmates that we were all concerned about the effects of the school district being thrust into controversy.

We soon found that our fears were founded and the environment at school from those in authority became one of constant fear that we might accidentally do something "too Christian" and incur another lawsuit. A group of us decided to send a clear but peaceful message regarding our displeasure. For the remainder of the school year, we placed Bibles on our desks every day and wore Christian t-shirts weekly. As you can imagine, we had several very worried teachers trying to tell us we couldn't bring Bibles to school. I am not sure if I was brave or youthfully ignorant or some combination, but I calmly disagreed with them and usually "won" in these discussions. Even in those days, I was pretty dogmatic in my belief that I was afforded rights of Free Exercise and speech under the U.S. Constitution, despite being a member of a "majority" religion.

As my friends and I expected, fear of subsequent lawsuits, general ignorance of the law, and some extremely poor legal advice caused the imposition of odd and inconsistent rules regarding religious expression over the next few years. The only religious viewpoint that faced any scrutiny, however, was Christianity. Countless times over those years in school I was told I could not bring a Bible. More than once I had to have a special permission slip signed by my parents to reference Scripture or a Bible story in a school project. It should be noted that on these occasions, students referenced topics like "Hinduism and the Afterlife" and "What is God in Buddhism?" and had no such permission slip requirements.

The Federal courts focused on student-led prayers as the *Doe* case made its way through the system over the next 5 years. Most specifically, they zeroed in on student-led prayers at high school football games. When the case first came before U.S. District Court Judge Samuel Kent, he found even student-led, student-initiated prayers before football games and graduation ceremonies unconstitutional in his opinion. He was so concerned a high school student might accidentally say "God" over a microphone at a football game that

he threatened, “Anybody who violates these orders, no kidding, is going to wish he or she had died as a child when this court gets through with them” (web.caller.com, 2000). When SFISD appealed the case in the 5th Circuit Court of Appeals, a 3-judge panel ruled that graduation prayers are OK, but out of the question for football games (web.caller.com, 2000). Santa Fe ISD proceeded then to appeal their case to the U.S. Supreme Court.

In what I believe was an effort to protect student expression, but comply with the new law, the school district changed its policy to allow for the election by the student body of a person to give a “message” of safety and sportsmanship during the pre-game ceremonies. We held this election at the end of my junior year, in the spring of 1999. On a whim, I put my name on the ballot and promptly forgot about the election as I headed into my summer vacation.

A Big Week and a Big Game

The 5th Circuit’s ruling came down shortly before the beginning of my senior year of high school. On SFISD’s appeal, the panel found that graduation prayers were permissible, but those offered at football games were not (caller.web.com, 2000). Though I was keeping up with the progress of the *Doe* case, I had no idea my life was about to change rapidly and drastically. During our summer band rehearsals shortly before the school year began, interviews with the superintendent and others began to appear in the local newspaper.

All eyes were on Santa Fe, TX, to find out how our little town dealt with the news. We suddenly found ourselves on the cutting edge of First Amendment jurisprudence, though few of the residents thought of it in those terms. They did know, however, that we had been thrust into the front lines of the controversy.

School started about two weeks before the first football game. I found out some time early that week that a fellow student had won the election to be our student speaker for the pregame ceremonies. The problem was, the media also found out about her. Understandably, she was not pleased to be the face of this hot-button issue. During the same week, Santa Fe ISD’s superintendent, Richard Ownby, told reporters that if the student decided to pray, she would be “disciplined as if she had cursed” (*Amarillo Globe-News/AP*, 1999).” This student was also in the band and approached me after rehearsal on the

Wednesday about a week and a half before the September 3rd season opener to let me know she did not want to deal with the pressure, inform me that I was next on the ballot, and ask me to take over. I have often thought that the line between bravery and stupidity can be razor thin at times. Sometimes I think when I said “yes” in that moment, it was one of those occasions.

When I got home, I spoke to my parents about the conversation. They were extremely supportive and let me know that they were fully behind whatever decision I made. (As a significant aside: anyone who might think that I was coerced in any way to get involved with this controversy by my preacher father and that I might not be able to make up my own mind never met 7-year-old me, much less the 17-year-old version). My dad and I agreed that since I had no official word on what the guidelines were for this pre-game message, we would go to the regularly-scheduled school board meeting the next evening, that Thursday. At that meeting I still got no official word as to whether or not I would actually give the message, but I did get the school’s current guidelines. As my memory serves me, it was a short paragraph basically stating that a student could give a message of his or her choosing that expressed the ideals of sportsmanship and safety during the football game. It seemed that all of the school officials were as lost as Superintendent Ownby on how to proceed. My dad decided to start calling legal foundations to seek advice. In those days there were very few. Over the last decade or so, several more nonprofits have sprung up to help students and schools in similar situations. This effort kept coming up short as most of the groups didn’t even return calls. One of the few that did said something to the effect of, “Maybe she can quote the Founding Fathers.” We finally hit a breakthrough when we got a call from one of the other parents. She said that she and her daughter, along with several other families, had worked with an attorney from Houston to file an *amicus curiae*—“friend of the court”—brief for the *Doe v. Santa Fe* case (techlawjournal.com, 2008).

My parents and I met with Kelly Coghlan that Sunday afternoon at our church. He showed us a video with a commentary from Dennis Prager (a Jewish, conservative political commentator) and a speech from then-President Bill Clinton. Both were basically and eloquently in support of freedom of religious speech, even for Christians and Christian students, under the First Amendment. I distinctly remember saying that the last thing I

wanted to do was file a lawsuit and that I wanted to do everything possible to avoid it. Coghlan said he would take the case, but he would only work for a 1999 penny. I decided to retain him as my attorney within about an hour of sitting down, though we were unable to pay his fee that day.

Some time over the weekend the word got out that I was the new (unofficial) message-giver. The *Houston Chronicle* even ran the story with a huge, sweaty picture of me and titled it “Santa Fe Gets New Speechmaker.” A copy of that picture hung on one of my teacher’s classroom walls for quite some time after that. The media barrage became absurd. At least once my dad called to tell me not to come home from school because reporters were in the driveway. I was unable to answer the phone at my house without being badgered, so my parents screened my calls. After a ridiculous write-up in the *Galveston Daily News* by an over-zealous young reporter, I finally made a statement to say I wouldn’t tell anyone what I was doing and they could all find out on September 3rd. This was technically true, as I genuinely had no idea.

On Tuesday (4 days before the first game), I was summoned to the principal’s office over the school’s public address system. Principal Gary Causey and I awkwardly looked at each other as I sat in his office. He finally told me we were waiting for Mr. Ownby, the superintendent, to join us. After Mr. Ownby arrived, Mr. Causey began a spiel about how I’d never had any discipline problems and how he didn’t expect any now. He even pointed at the student handbook and reminded me that he would have to punish me if I did or said anything that might get the school or me in trouble, though he wasn’t clear what that punishment might be. The indication was anything from detention to expulsion, however. None of them were good options for a senior preparing to graduate with honors from his high school in a few months. He then handed me a piece of paper with new guidelines from the National Association of Secondary School Principals (NASSP). (It should be noted that the NASSP is a political/lobbying entity whose interest is that of secondary school principals and not necessarily students and has no legal authority in this situation). The new NASSP guidelines were much longer than the ones I received at the school board meeting the Thursday prior. The first two were pretty reasonable. They mentioned sportsmanship and safety as the topics and requested that there be no profanity. The third, however, even went

beyond the court ruling, stating, “Prayers, blessings, invocations, and *references to a deity* are prohibited [emphasis mine].” According to these guidelines and the principal’s almost dramatic pointing at the student handbook, I could be punished up to the point of expulsion if I quoted from the Declaration of Independence over the microphone at a high school football game. Further, Mr. Causey asked that we all meet again that Thursday—the day before the first game—so he could look at my speech “in case anything needs to be edited.” I was certainly no Constitutional law expert at age 17, but this was enough to send off serious censorship alarm bells in my head. I agreed to their meeting and immediately went home and called my attorney.

By Wednesday, I knew the issues were piling up, but was still hesitant to file a lawsuit. I was still a 17-year-old kid trying to graduate and go off to college, but simply concentrating on school responsibilities was becoming increasingly difficult. After lunch that day, three teachers stopped me in the hallway. I had taken classes with two of them before and knew the other in passing, as Santa Fe High was fairly small. They sort of circled around me and with what I still believe to be good intentions, began to try to talk me out of doing anything that might violate the orders. It was no quick conversation and it soon led into a discussion about Principal Causey. They kept asking if I’d seen him that day and telling me he looked “distraught.” They tried to tell me that he could lose his job if I said or did anything “wrong.” Later, I found out that he had gotten news that day that his brother had fallen off a roof and was severely injured and his demeanor had nothing to do with the escalating controversy or me.

Thursday morning, one of the teachers from the previous afternoon decided to visit me in the school library where my class was working on research projects. She asked me to step out into the hallway to visit with her. This time, I brought along my best friend to witness the conversation. To this day, I am so pleased that I was thinking quickly in that moment. Once we were seated together in the hallway, she dove right back into the conversation from the day before. She went on about how Mr. Causey was her friend and she didn’t want him to lose his job. She reminded me that he had two daughters that were around my age and that was their security. As she was talking, she began to cry and even quote scripture: “Doesn’t the Bible even say, ‘render unto Caesar...?’” Her tirade went on

for a good 20 minutes. Looking back, I actually chuckle a bit at how intimidated they must have been by me at that point and I still had not even personally decided what I would do in that press box when the time came. It was after this conversation I knew what I had to do. It had become clear that my only recourse was to file suit.

Thursday afternoon I had my scheduled meeting with the principal and superintendent. This time, my mom was there as a witness. It seemed like someone had tipped them off that editing my speech would be a bad idea, so they reneged a bit on that request. They did, however, remind me of the new guidelines and of the fact that I would have to be punished if I did anything to violate the orders. After this meeting we were to meet Kelly. In a whirlwind of a car ride with an attorney who was apparently well insured we got our documents notarized and picked up a bank check for the filing fee. The Federal District Court in Galveston—remember judge Sam Kent?—was to close at 4:30pm and we were literally running across the lawn at 4:28pm to file our lawsuit so the judge would have a chance to see it before the next night's football game.

Friday, September 3rd was the big day and also happened to be my attorney's birthday. By daylight, the media had gotten wind of *Ward v. Santa Fe*. Thankfully I had to be at school and could avoid them for a few hours during the day. They generally respected my request to be left alone until my 3rd quarter press conference, with the glaring exception of the local Fox affiliate. While I was getting ready to meet with the band before the game, they called to say they were "in the neighborhood" and asked to get some footage of me leaving my house. As it turns out, they were in our driveway. They were sorely disappointed when I turned them down for an interview as they had 9:00pm news rather than 10:00pm.

It's like reliving someone else's life to recall the events of the afternoon and evening of September 3, 1999. Wisely, Judge Kent recused himself from taking the case because of his involvement in *Doe v. Santa Fe* and my lawsuit was sent to judge Sim Lake in Houston. I was already in uniform and in the band hall when the judge issued a temporary restraining order barring the school from punishing me for anything I might say during the course of the lawsuit. My principal was overjoyed and came to see me before the game. He gave me a huge bear hug and we shared the last warm moment we would have.

I can still remember the sounds and feeling of the stadium that night. One could speculate it was a record crowd for a Santa Fe High School football game. It was standing-room only on both the home and visitor sides of the field. There was a convoy of news vans with miles of cable and satellites extended way into the September evening sky. It was senior night and I lined up with my classmates and my parents along the track. When they read my name, there was a standing ovation and the applause went on so long and so loudly that we couldn't hear the names of the next couple of students. I'd like to offer my sincere apologies to my classmates and their parents for that should they ever read this.

Now the time had come and Principal Causey came to get me from my seat in the bleachers with the band and escorted me to the press box. The crowd was already on their feet as my name was announced and a new disclaimer was read over the loudspeaker. I am not sure I will ever be able to fully describe the emotions of that moment. With my heart pounding harder than I can remember before or since, I had my chance to speak. I had a piece of paper in my pocket with a quote from Benjamin Franklin and some other remarks in case I froze once they gave me the microphone, but of course completely ignored it. Here are my transcribed remarks from that night:

Welcome to the game tonight. Since a very good judge that was using a lot of wisdom this afternoon ruled that I have freedom of speech tonight, I am going to take it. So, I have chosen to pray to solemnize this game. And, if you want to participate, let's bow our heads and give thanks to the Lord.

Dear Lord, thank you for this evening. Thank you for all the prayers that were lifted up this week for me. I pray that you will bless each and every person here tonight--especially those involved in the game; that they will demonstrate good sportsmanship, Lord, and that we will have safety with all involved. Be with the players--that they will exemplify good behavior as well, Lord. And, just bless this evening, and be with each and every one of us as we go home to our respective places tonight. In Jesus' name I pray; Amen. (Personal email correspondence with Attorney Kelly Coghlan, 12/12/2013).

My first press conference was during the third quarter of the game. That was a surreal experience to say the least. The best part was letting my buddy from the school paper have the first question even though the national and cable media were there. The reporter from NBC was pretty unhappy when my attorney told her she wouldn't get an interview if

my friend Brian didn't get to ask first. A couple of the other newspaper reporters were impressed that he brought a little tape recorder!

Following the first game, the judge extended the restraining order to protect me from punishment for the remainder of the football season. The next home game was homecoming and I had my first protestors. I was definitely experiencing my "15 minutes" of fame and I juggled interviews and speaking engagements for the next 9 months or so. At one point, I was interviewed by Charlie Gibson on Good Morning America. Once I spoke at the same event as former President Gerald Ford and NFL great Reggie White. For my 18th birthday, I went to dinner with my attorney so I could retain him without my parents on the paperwork since I was no longer a minor. A local pastor wrote a booklet about my story. I even received fan mail. Some letters were simply addressed to "Prayer Girl, Santa Fe, TX" and still made it to my house!

Life after Lawsuit

In March of 2000, my family and I traveled to Washington, DC, to hear oral arguments at the Supreme Court for the *Santa Fe v. Doe* appeal. It was a remarkable experience to visit the Supreme Court for the first time and then hear a couple of the justices mention my case from the bench.

Things calmed down a bit after football season was over and Elian Gonzalez took over the headlines. I was able to finish the school year in relative peace. My senior class voted to have me give the invocation at our graduation and asked me to speak at our (privately-sponsored) baccalaureate service. I was the only graduating senior to have a police escort assigned to me.

On June 19, 2000, the Supreme Court handed down their *Santa Fe v. Doe* opinion. The Court sided with Doe, but really only found the school's policy proscribing an invocation and amended policy establishing an electoral process for the "message-giver" were problematic. What was absent was an opinion that the message-giver's speech in itself was unconstitutional. Chief Justice William Rehnquist was one of the three justices to dissent. That dissent found the Court's tone "disturbing" and that the opinion "bristle[d] with hostility to all things religious in public life" (oyez.org, 2000). To my knowledge, the

Supreme Court has never held that it was appropriate for a school to punish a student for religious speech.

I was on my way to camp when I got the call regarding the ruling. My summer plans were interrupted as I turned back to Houston for another press conference.

Because *Santa Fe v. Doe* had now run its course, my attorney pursued my own case in the Federal Court. Thankfully, I got a reprieve as I left home for the University of Arkansas at the same time. In mid-2005, after two rounds back and forth with the 5th Circuit Court of Appeals, I quietly won my case. I received \$1.00 as compensation for the school's violation of my First Amendment rights since I chose not to sue for damages.

I would love to say that school districts have learned from my case and subsequent lawsuits regarding the rights of students for free speech and free exercise, but that has sadly not been the case. In the spring of 2007, I joined the families of several other litigants from around the state of Texas to testify to the Texas Legislature on behalf of the Religious Viewpoint Anti-Discrimination Act. This bill "clarifie[d] a student's right to religious expression in school and create[d] a model policy for district adoption" (governor.state.tx.us, 2007). Our efforts prevailed and the bill became law in the state of Texas in May of 2007, to take effect for the 2007-2008 school year. Similar laws have been passed in a few states and by some individual school districts and so far none have succumbed to a Constitutional challenge. (kellycoghlan.com; HB 3678, 2007).

Moving Forward

It has been a bittersweet journey reliving and telling my story for this panel. It would be so wonderful to say my lawsuit made such a major impact that Texas (and other) public school students feel comfortable expressing themselves on school projects and at school events regardless of religious viewpoint. This has only been partially true. There have been some victories, however. Passing the act in the Texas Legislature was a good start. My lawsuit has given both my attorney and me several opportunities, like I'm having today, to have a platform from which to bring attention to the issue. Even now, I am working on my master's project examining opportunities and skills for secondary students to effectively engage in controversial speech in the classroom. May we continue to heed the words of

Archbishop Desmond Tutu and “improve [our] argument(s) and not simply raise [our] voice(s)” for the sake of this precious right.

References

- Associated Press. (1991). Teen Resigns Pre-Game Duties amid Debate over Football Prayer. Amarillo Globe-News. Retrieved December 3, 2013 from http://amarillo.com/stories/082799/tex_teen.shtml
- Ballot Question: Should Texas students be allowed to pray at football games? (2000). *Corpus Christi Caller-Times*. Retrieved November 21, 2013, from <http://web.caller.com/2000/march/13/today/contribu/2363.html>
- Carney, D. (2008). Amicus Curiae. *Tech Law Journal*. Retrieved December 3, 2013, from <http://www.techlawjournal.com/glossary/legal/amicus.htm>
- Coghlan, Kelly. Governor Signs Bill. *The Coghlan Law Firm*. Retrieved January 16, 2014 from <http://www.christianattorney.com>
- Gov. Perry Signs Religious Viewpoint Anti-Discrimination Act. (2007) Press Release, *Office of The Governor Rick Perry*. Retrieved January 16, 2014, from <http://governor.state.tx.us/news/press-release/2218/>
- Jones v. Clear Creek Ind. School District (n.d.). Retrieved November 21, 2013, from http://www.leagle.com/decision/19921940977F2d963_11804
- Santa Fe Independent School Dist. V. Doe (n.d.). Retrieved November 21, 2013, from http://www.oyez.org/cases/1990-1999/1999/1999_99_62/
- Santa Fe, Texas Demographics (n.d.). Retrieved November 21, 2013, from http://en.wikipedia.org/wiki/Santa_Fe,_Texas#Demographics
- Santa Fe, Texas (n.d.). Retrieved November 21, 2013, from <http://www.city-data.com/city/Santa-Fe-Texas.html>
- Santa Fe, TX (n.d.). Retrieved November 21, 2013, from <http://www.ci.santa-fe.tx.us/>
- Transcript of the Act (n.d.). Retrieved January 16, 2014, from <http://kellycoghlan.com/>
- United States Courts (n.d.). Retrieved December 3, 2012, from <http://www.ca5.uscourts.gov/opinions/pub/03/03-41096-cv0.wpd.pdf>