

No. 09-2701

In the Supreme Court of the United States

ERIC CARTMAN,
PETITIONER

v.

IKE BROFLOVSKI,
RESPONDENT.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT**

**OFFICIAL RECORD OF THE
2009 BURTON D. WECHSLER FIRST AMENDMENT
MOOT COURT COMPETITION**

*Presented by the
American University, Washington College of Law
Moot Court Honor Society*

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF SILVERADO**

IKE BROFLOVSKI,)	
)	
Plaintiff,)	
)	Civil Action No. 1206-09
v.)	
)	
ERIC CARTMAN,)	
)	
Defendant.)	

January 27, 2009

MEMORANDUM AND ORDER

GARRISON, Judge:

On September 20, 2008, Ike Broflovski, Director of Research & Development at Citrus Electronics, Inc. (“Citrus”), filed suit in Superior Court for the State of Silverado against Defendant Eric Cartman, author of the Internet blog, *The Sludge Report*. Plaintiff brought a common law cause of action for defamation, alleging that Defendant published false information on his blog accusing Plaintiff and his company of human rights violations in his oversight of a Citrus manufacturing plant in India.

Defendant removed the case to the United States District Court for the Western District of Silverado on diversity grounds on October 14, 2008, and the parties subsequently engaged in several rounds of discovery. On January 8, 2009, Plaintiff moved for this Court to compel discovery pursuant to Fed. R. Civ. P. 37. In his motion, Plaintiff asks this Court to require that Defendant disclose the identity of an anonymous source claiming to be a Citrus employee who relayed the information on which Defendant based his published allegations.

Defendant filed a reply motion on January 16, 2009. In this motion, Defendant both opposed disclosure and moved for summary judgment. Defendant asserted that: first, as a blogger, he is a journalist protected from compulsory disclosure of his sources under the qualified reporter's privilege found in the First Amendment; and second, because Ike Broflovski is a limited-purpose public figure, Plaintiff was required to prove actual malice to sustain a cause of action—a standard the Plaintiff has failed to meet.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, and has resolved all issues related to personal jurisdiction, standing, and ripeness. For the reasons set forth below, Plaintiff's motion to compel discovery is **DENIED**, and Defendant's motion for summary judgment is **GRANTED**.

BACKGROUND

Kyle Broflovski is the CEO and majority shareholder of Citrus, a *Fortune* 500 consumer electronics company headquartered in Parque del Sur in the coastal state of Silverado. The company began by selling handheld radios and VCRs. After five years, Citrus took off in 1997 with the introduction of a sleek line of high-powered, fully-integrated home computer systems. These systems were effectively virus-proof and sported innovative features like TV tuners and home lighting controls. Citrus quickly rose to the top of the consumer electronics industry, cornering the market in personal computers, televisions, stereo systems, DVD players, and mobile phones. The company's stock price soared, and the company even survived the dot-com bust of the early 2000s on the back of its flagship product, the ePlay portable digital music player, released in 2001. The ePlay, with its trademark silver earphones, quickly became a status symbol among teenagers and twenty-somethings.

In 2006, Kyle hired his 23-year-old brother Ike Broflovski as his new Director of Research & Development, replacing the recently deceased Kenneth McCormick. Ike, who had already earned a Ph.D. from the Massachusetts Institute of Technology, was charged with overseeing the development of the brand new ePlay Touché, which would come equipped with high-definition sound quality, a touch screen, movie playback capabilities, productivity applications, and even satellite radio with a paid subscription. The product promised to permanently entrench the ePlay brand as the premier portable music player on the market. While Ike is shy and does not enter the public limelight, Kyle announced Ike's hiring at the end of a moderately-attended press conference held at Citrus campus on August 7, 2006. Kyle boasted that Citrus was soon going to set the standard in mobile touch screen technology, and added, "I have hired my genius brother Ike to oversee the development of a new line of Citrus products; Ike's a little shy, but one day might just be as famous as I am. Luckily our customers don't care about personalities; they care about quality consumer electronics. So, pay no attention to the man behind the curtain!" Ike was present at the press conference, but made no comments other than to say, "Thank you for the warm welcome, Kyle, and I look forward to pushing Citrus, its employees, and its products to new heights." The Associated Press released a story on the press conference, printed in several newspapers, focusing on Kyle's announcement of a "new and exciting line of products." Ike's hiring and accompanying statement were mentioned in the bottom paragraph of the article.

Since arriving at Citrus, Ike has given no interviews to the press and is rarely seen in public. However, Kyle has gone out of his way on occasion to praise Ike's work in television and magazine interviews. Some employees at Citrus MegaStores throughout

the United States have even taken it upon themselves to wear makeshift “I Like Ike” buttons to celebrate his innovations. Like other executives, Ike’s name is listed on the Citrus website as Director of Research & Development with contact information, including telephone, e-mail, mailing address, and a head shot photograph; no other biographical information is given.

Eric Cartman is the sole proprietor of Cartman’s Computer World, an electronics sales and repair shop located in the neighboring state of Washoe. To supplement his income due to declining business after the opening of a Citrus MegaStore across the street from his strip-mall storefront in Lake Washoe, Cartman became a part-time blogger for profit in June 2005. Every evening, Cartman updates his muckraking blog, *The Sludge Report*, with various news items he finds on the Internet and the headlines of major newspapers; streaming advertisements on the website generate revenue proportional to the daily number of hits the page receives. The blog is operated on a third-party server run by the popular blogging site, Bloggeroo.

Topics on *The Sludge Report* range from celebrity gossip to local and international politics. His blog has a decidedly populist and nationalist tone, and he has a particular disdain for large companies engaging in international trade. Over the course of the past four years, he has reserved his harshest criticism for Kyle Broflovski and Citrus, whom he holds in particular contempt for exporting jobs and engaging in what he has described in the past as “the systematic oppression of the peoples of the Third World,” as well as for nearly driving him out of business.

The Sludge Report has grown increasingly popular and now has an audience of over 100,000 readers. A significant number of these readers began giving Cartman

scoops on protests, scandals in local and state governments, and other information by sending e-mails directly to Cartman at his personal e-mail address, which he provides a link to on the website. Cartman states that all persons who send messages to the address with tips or other information will be treated as confidential sources unless otherwise requested. Neither Cartman nor Bloggeroo have any personal information about the users who send Cartman e-mails unless those users disclose the information to him in their e-mail or through other means.

On July 7, 2008, Cartman received an e-mail from one of his sources who he cites as “Professor Chaos.” Cartman knows Professor Chaos personally—including his real name and e-mail address—as they met previously at an electronics tradeshow two years ago. Since then, Cartman has received reliable information from Professor Chaos about the release of various Citrus products and Cartman has used that information in various stories posted on his site. In this e-mail, Professor Chaos alleged that Citrus, at the direction of Ike Broflovski, was engaging in human rights abuses at its manufacturing facility outside of Mumbai, India. Professor Chaos attached a digital photograph of what appeared to be Ike Broflovski walking through the factory with subordinates in tow and yelling at the workers assembling the ePlay Touché. The workers also appeared to be wearing surgical masks and using assembly lines and machines with minimal protective gear.

The next day, July 8, Cartman added a new lead story to *The Sludge Report* with the photograph Professor Chaos sent on the front page under the headline “Citrus Engaging in Acts of Modern-Day Slavery?” Underneath the photograph, Cartman

inserted the following caption: “Ike Broflovski surveys his minions...but where’s the whip, Ike?” The post reads, in pertinent part, as follows:

Fellow comrades and patriots, it appears that the obscene profits generated by the capitalist machine at Citrus Electronics are the fruit of a very poisonous tree. I am the exclusive recipient of a photograph from my dear friend who you know as **Professor Chaos** (a name he chose to protect his identity), who works behind enemy lines at Citrus. The image below may shock you, but one picture can tell more than a thousand words. For those of you who don’t know who this man is, it is none other than Ike Broflovski, the pawn of his evil older brother, Kyle, whose face dominates billboards and commercials across the fruited plain. According to Professor Chaos, the men and women depicted in this photograph often work 16 hours a day, seven days a week, with few breaks. They are forced to work in slave-like conditions to put together what many consider to be little more than cheap status toys with which a bunch of San Francisco hipsters can listen to bad indie music. I wouldn’t be surprised if Ike didn’t have these poor Indians shackled to their stations at night...and I’m only half-joking about that...

The blog concluded:

Some people might consider the image I’m showing you to be too harsh or graphic. They also think I should keep my mouth shut, that I am a danger to democracy. I’ll tell you what, folks. The Broflovskis and their capitalist oppression are a danger to humanity! If the image I am showing you depicts what I think it does, then I’m telling you the truth, Ike Broflovski is nothing but a slave driver! Don’t shoot the messenger. I’m just a harmless, loveable little fuzz-ball with a talent for telling the truth. If the mainstream media won’t do their jobs, then I will!

Within a matter of days, Cartman’s blog entry spread rapidly throughout the “blogosphere,” to the point that it attracted the attention of some in the mainstream press. This attention peaked on August 19, 2008, when Keith McRiley, host of the top-rated cable news show, “The Countdown Factor,” named Ike Broflovski the recipient of his nightly “Most Heinous Individual in the Galaxy” award. McRiley credited Cartman with breaking the news and strongly urged that his large audience boycott Citrus. The next day, Citrus’s stock dropped by 25% and continued to fall in anticipation of declining

sales. Numerous retailers, such as Q-Mart, pulled Citrus products from their shelves. Ike did not address demands by the news media to respond to the allegations save for a message delivered through his attorney, Terrence Phillips, stating, “The photograph posted on that site is a total fabrication, and Ike Broflovski will soon seek civil justice against its authors in a court of law.”

On September 20, 2008, Ike Broflovski filed a defamation suit against Eric Cartman in Silverado Superior Court, claiming that Cartman’s statements were libelous. The complaint also alleged that Cartman’s comments caused Ike to suffer from depression due to threats on his life. Cartman removed the case to this Court on diversity grounds on October 14, 2008.

Discovery produced a number of relevant facts. Broflovski stipulated that he had made a number of visits to Mumbai, though it is not clear whether he actually visited the factory during those visits. Plaintiff also learned that the photograph of Ike Broflovski at the Mumbai factory was likely doctored. A scan of the photograph using Citrus PhotoWorks software revealed that a third party took a photograph of night-shift workers at the Mumbai factory and had superimposed Ike’s image onto it, leaving evidence of forgery discoverable through software, but undetectable to the naked eye. The scan revealed no other digital distortions of the photograph. In addition, Citrus received evidence that Cartman recently installed photo software on his computer similar to Citrus PhotoWorks with similar forgery detection capabilities, and that he has used it on a handful of other photographs that he posted on *The Sludge Report* site. Cartman did not test Professor Chaos’s photo with this software before publishing it.

In order to determine the source of the photograph, the Broflovskis deposed the manager of the Mumbai factory and several of his top engineers. Kyle Broflovski also sent an e-mail to all Citrus employees requesting information on the source of the leak. Their efforts yielded few leads. On December 15, Broflovski submitted to Cartman an interrogatory stating: “Please identify the full name and any contact information, in your possession, of ‘Professor Chaos,’ the alleged source of the photograph posted to your site on July 8, 2008.” On December 29, Cartman replied: “Defendant invokes a qualified privilege under the First Amendment, as a news reporter, against the disclosure of his source.” Broflovski filed his motion with the Court on January 8, 2009, to compel Cartman to reveal the identity of and contact information for Professor Chaos.

On January 16, Cartman filed a motion in opposition to the Broflovskis’ motion to compel discovery and filed a counter motion for summary judgment on the defamation claim, alleging that Broflovski is a public figure and has failed to provide clear and convincing evidence of actual malice.

STANDARD OF REVIEW

Under the Federal Rules of Civil Procedure, a court shall grant summary judgment when, after full discovery, there is no genuine issue of material fact, and the evidence demonstrates that the moving party is thereby entitled to judgment as a matter of law. Fed R. Civ. P. 56. The moving party has the burden of demonstrating the absence of all issues of material fact, a showing of which shall shift the burden to the non-moving party. Fed R. Civ. P. 56(e). A court is required to view all the evidence presented in the light most favorable to the non-moving party and must draw all

reasonable inferences in its favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

ANALYSIS

I. BROFLOVSKI MAY NOT COMPEL DISCLOSURE OF THE IDENTITY OF PROFESSOR CHAOS BECAUSE CARTMAN IS PROTECTED BY A QUALIFIED REPORTER'S PRIVILEGE AGAINST DISCLOSURE OF CONFIDENTIAL SOURCES.

A clear majority of circuits recognize a qualified reporter's privilege, derived from the First Amendment, against the court-compelled disclosure of anonymous sources in the context of civil litigation. Anonymous sources are often necessary to the news-gathering process, and absent assurances that their identities will remain secret, many of these individuals would not otherwise provide relevant information on various topics of serious public interest. In this case, Professor Chaos, allegedly a Citrus employee, disclosed certain information that he was only willing to share because of his ability to safely hide from workplace retaliation. Cartman obtained this information for the purpose of dissemination in a mass media format to inform his readers of a legitimate public issue. He is therefore presumptively protected by a qualified reporter's privilege.

A. The First Amendment implies the existence of a qualified reporter's privilege against the compulsory disclosure of anonymous sources, a privilege generally applicable to bloggers.

Thirty-four states and the District of Columbia have enacted statutes creating a qualified reporter's privilege in the context of civil litigation. *See* James C. Goodale et. al., *Reporter's Privilege*, 952 PLI/Pat 161, 170 (2008). The State of Silverado has, as of this date, not yet enacted such a statute. Though several bills have been introduced in Congress in recent years to create a statutory reporter's privilege at the federal level, none have been enacted. *See, e.g.*, Free Flow of Information Act, H.R. 2102, 110th Cong.

(2007). Thus, this Court must rely on the Constitution in determining the existence of such a privilege.

The genesis of the qualified reporter's privilege in our sister circuits can be found in Justice Powell's concurrence in *Branzburg v. Hayes*, 408 U.S. 665 (1972). In *Branzburg*, the principal petitioner was a Kentucky newspaper reporter who wrote an article describing the activities of local growers and sellers of marijuana. The story was accompanied by a photograph of the reporter's subjects synthesizing hashish. The sources agreed to meet with him only on the condition that their identities be kept strictly anonymous. A grand jury sought a subpoena for the identity of the sources in order to issue a criminal indictment, which the reporter refused on grounds of privilege. The reporter asserted that, as a news reporter, he was protected by a general privilege, implied by the First Amendment, against the revelation of anonymous sources. On appeal, the Supreme Court rejected this line of reasoning, holding that the compelling state interest in obtaining justice in a criminal investigation significantly outweighed any supposed privilege that the reporter may have possessed against revealing his sources. *Id.* at 689.

Justice Powell's concurrence suggests, and this Court agrees, that the scope of the majority's holding does not apply beyond the context of a criminal prosecution, particularly "under circumstances where legitimate First Amendment interests require protection." *Id.* at 710 (Powell, J., concurring). Indeed, the majority itself seemed to suggest that, given appropriate circumstances, some privilege may be invoked against compulsory disclosure. *See id.* at 707-08 (White, J.) (conceding that courts generally may not compel the disruption of a relationship between a news reporter and her sources without good cause). Several circuits have therefore adopted a narrow interpretation of

Branzburg through the use of a presumptive, but qualified, privilege for reporters in civil litigation, where the stakes are generally lower than in a criminal case. Under this interpretation, the qualified reporter's privilege applies where the reporter (1) intends to use information from an anonymous source in the dissemination of news; and (2) such intent existed when the information was obtained. *See Gonzales v. NBC*, 194 F.3d 29, 35 (2d Cir. 1998).

This Court agrees with the majority of circuits and finds that such a privilege does exist, and, therefore, expressly adopt the above two-prong test. The proper next question, of course, is who constitutes a "reporter" or "news gatherer" for the purpose of applying the privilege. The Supreme Court has long held that the freedom of the press contained in the First Amendment is not restricted to traditional institutional media. *See Lovell v. Griffin*, 303 U.S. 444, 452 (1938) ("The liberty of the press is not confined to newspapers and periodicals."). Indeed, the Supreme Court and this Court recognize that the First Amendment applies in the same way to the "lonely pamphleteer" as it does to the mainstream media. *See Branzburg*, 408 U.S. at 704. The First Amendment does not create a hierarchy of journalism; it does not require a regular business or professional license before it will protect a party. In the modern digital media culture, the lonely pamphleteer has traded in pen and paper for the more viral outlets of YouTube, Twitter, and WordPress. As such, a blogger with Internet access and a keyboard is every bit as much the "newsman" as the White House correspondent with camera, microphone, and memo pad, at least as far as the First Amendment is concerned.

Cartman is thus as eligible to assert the qualified reporter's privilege as any reporter for the New York Times or CBS. The evidence also indicates that his collection

of information from Professor Chaos satisfies the two-pronged test. First, the information gathered was sent to an e-mail address Cartman provides for the express purpose of obtaining leads anonymously. It is also clear from the context that Professor Chaos intended the information he sent to be posted on *The Sludge Report*. Cartman also wasted no time in relaying the photograph, with his commentary addendum, to his readers on the site. It was posted within twenty-four hours of its receipt, indicating a clear intent to publish upon gathering the information. From these facts, this Court can only conclude that Cartman gathered the information pertaining to potential human rights abuses at the Mumbai Citrus factory with the intent to utilize that information as a journalist. *Cf. von Bulow v. von Bulow*, 811 F.2d 136, 142-43 (2d Cir. 1987). Thus, he is presumptively entitled to invoke the qualified reporter's privilege.

B. Cartman is protected from compulsory disclosure of Professor Chaos's identity because Broflovski has neither exhausted other means for obtaining his identity nor demonstrated a compelling interest in overriding Cartman's qualified privilege.

Even where a reporter can invoke a qualified privilege against revealing sources, such a privilege does not constitute blanket protection against compelled disclosure in all cases. The privilege is qualified, not absolute. The privilege may be overcome by an affirmative showing by the party moving to compel disclosure that (1) the evidence sought is clearly relevant to the litigation; (2) there exists a compelling interest in obtaining the information that sufficiently outweighs the invocation of the privilege (i.e., it is absolutely necessary to maintain the claim); and (3) the party has exhausted all other means reasonably available to obtain the information. *See Zerilli v. Smith*, 656 F.2d 705, 713-14 (D.C. Cir. 1981); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977). This qualification of the reporter's privilege recognizes the balance between First

Amendment press freedoms and the need for litigants to have access to all available evidence. This includes instances where the person invoking the privilege is the defendant in a defamation suit. In such instances, the claim of the plaintiff is often that the defendant deviated from the applicable standard of care in relying on an untrustworthy source. *See Carey v. Hume*, 492 F.2d 631, 637 (D.C. Cir. 1974).

However, it must be noted that one's status as a defendant in a defamation suit does not automatically override the invocation of the privilege. *See Cervantes v. Time, Inc.*, 464 F.2d 986, 993 (8th Cir. 1972). It may give greater weight to the plaintiff's motion to compel, but it does not conclude the matter in favor of the plaintiff.

In this case, this Court concludes that Broflovski failed to meet his burden of piercing Cartman's qualified privilege as a disseminator of news. This Court agrees with Broflovski that the information sought from Cartman is potentially relevant to the issue of fault in the defamation claim. The identity of Professor Chaos, to which Cartman has knowledge, could indicate whether or not Professor Chaos is actually a Citrus employee, his job title, whether he has access to the Mumbai facility, and perhaps other relevant information. This information could lead to discovery of further evidence indicative of his reliability or trustworthiness as a source. As discussed above, unreliability of sources is a useful method of proving a failure to observe the proper standard of care.

Unreliability of the source, however, is but one method of proving fault in a defamation claim. Other relevant information might include whether the defendant performed due diligence in verifying his source's claim, or whether the defendant actively sought to corroborate the first source. Thus, while the identity of the source may be relevant to the claim, it is not always absolutely essential. Furthermore, the

Broflovskis conducted only a cursory internal investigation of their own staff to attempt to identify Professor Chaos. If the photograph did indeed depict the Mumbai factory, then Citrus could quite easily have reviewed its own internal records to see who had access to the facility or could have performed a sweep of the company's e-mail servers in an attempt to discover if the photograph originated from any of its own user accounts. Yet the record suggests that Citrus has not done so. Its failure to exhaust its own resources, which may provide the evidence it is requesting, requires that this Court deny its motion to compel discovery.

II. CARTMAN IS ENTITLED TO SUMMARY JUDGMENT IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE THAT HE INTENTIONALLY OR RECKLESSLY MADE FALSE AND DEFAMATORY STATEMENTS AGAINST BROFLOVSKI.

In any case brought before a federal court by way of diversity jurisdiction, the court applies the substantive law of the forum state.¹ *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). Defamation, whether it exists in the form of the written (libel) or spoken (slander) word, is a common law cause of action sounding in tort. Thus, while the First Amendment sets a floor for the standard of care required in defamation actions, the action itself lies in the state's common law. The Silverado Supreme Court has adopted a standard for defamation that mirrors the language of the Second Restatement of Torts. In order to establish a cause of action for libel or slander, the plaintiff bears the burden of

¹ It should be noted at the outset that Cartman concedes that, in this instance, he is an original "content provider" within the meaning of the term under the Communications Decency Act ("CDA"). 47 U.S.C. § 230(c)(1) (2000). Rather than simply serving as a conduit of the information provided by Professor Chaos, Cartman has actively added his own commentary to the photograph and has thus become a content provider of his own. The only information provided by Professor Chaos that made its way to *The Sludge Report* was the photograph. All commentary was itself provided by Cartman. Therefore, he is not entitled to immunity from defamation claims under § 230 of the CDA. *Cf. Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003) (citing 47 U.S.C. § 230(c)(1)) (noting that when a party adds their own content to create an original message from information provided by a third party, the former constitutes an "information content provider" and is not entitled to immunity from defamation suits).

proving “(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting to at least negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” Restatement (Second) of Torts § 558 (1977).

In cases where the plaintiff is a private citizen, a showing of simple negligence is sufficient to support a cause of action for defamation. *Id.* § 580B. However, the First Amendment imposes a higher threshold for plaintiffs who are either public officials (i.e., those who are duly elected or appointed to public office, including candidates or nominees for public office) or “public figures” (i.e., people who have, by occupation or circumstance, attained a certain degree of fame or notoriety in the community). *See generally N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964). A public figure must demonstrate not only that the defendant’s third-party communication was unprivileged, false, and defamatory, but also that the defendant did so with “actual malice.” *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 160 (1967). Actual malice, for the purposes of a defamation claim, consists of either a knowing and intentional defamation of the plaintiff, or a defamatory statement made with reckless disregard for the actual truth of the matter asserted.

A. Broflovski is a limited-purpose public figure and, therefore, his defamation claim must be reviewed under an actual malice standard.

Broflovski asserts that, because he is not a public figure, the appropriate standard of fault in proving a cause of action against Cartman is a simple negligence standard. Broflovski relies on the rule of *Gertz v. Welch*, where the Supreme Court held that a plaintiff who “had achieved no general fame or notoriety” could not be considered a

public figure and, therefore, defamatory statements against him were afforded no First Amendment protection beyond the requirement of proving ordinary negligence. *See* 418 U.S. 323, 351-52 (1974) (holding that a private citizen with leadership positions in local civic groups, absent voluntary action placing himself in the public eye, was not a general purpose public figure). It is true, as the D.C. Circuit has put it, that the definition of a public figure for defamation purposes is often synonymous with a “celebrity” or household name. *See Waldbaum v. Fairchild Publ’ns, Inc.*, 627 F.2d 1287, 1292 (D.C. Cir. 1980). However, this Court does not conclude that the boundary stops there. The Supreme Court expounded in *Gertz* that the concept of a public figure is malleable within the particular context of the defamatory remarks alleged, giving rise to the possibility that one who is not a general-purpose public figure may become a public figure for a limited purpose or matter of public controversy. 418 U.S. at 352.

The question of who may be defined as a public figure for a limited purpose is one of first impression in this Circuit. Needless to say, it is nearly impossible to establish a bright-line rule delineating what constitutes a limited-purpose public figure in every circumstance. Other circuits, however, provide an appropriate framework for this standard. Under the three-pronged test adopted by a plurality of circuits, a defendant is a limited-purpose public figure if (1) the relevant controversy is a matter of public concern; (2) the plaintiff plays more than a “trivial or tangential” role in the controversy; and (3) the defendant’s allegedly defamatory remarks are relevant to the public controversy. *See Silvester v. Am. Broad. Cos.*, 839 F.2d 1491, 1494 (11th Cir. 1988); *Trotter v. Jack Anderson Enters., Inc.*, 818 F.2d 431, 433-34 (5th Cir. 1987); *Waldbaum*, 627 F.2d at 1296-98.

While a minority of courts, namely the Third and Ninth Circuits, have adopted a simplified version of this standard, this Court declines to do so. The minority view merely requires (1) the existence of a matter of public concern or controversy; and (2) a factual determination of the extent of the plaintiff's participation in that matter. *See McDowell v. Paiewonsky*, 769 F.2d 942, 948 (3d Cir. 1985); *Partington v. Bugliosi*, 825 F. Supp. 906, 917 (D. Haw. 1993) (quoting *Gertz*, 418 U.S. at 352), *aff'd.*, 56 F.3d 1147 (9th Cir. 1995).

Matters of public concern are defined broadly and include not only those matters of an intrinsically public nature (e.g., corruption in public office), but also a wide range of matters that, either isolated or in the aggregate, are a cause for legitimate social commentary. This includes, *inter alia*, issues of an otherwise private nature involving potential costs to taxpayers, corruption of public morals, or possible criminal activity. As long as the plaintiff is directly involved in the issue of public concern and the defendant's remarks were geared toward plaintiff's participation as such, then the plaintiff may be considered a public figure in that circumstance. Under this standard, a variety of individuals and groups may be considered public figures within a given context: a corporate CEO ousted for allegedly causing his company to lose significant sums of money; players and managers of the relatively obscure sport of jai alai alleged to have participated in a broad-based gambling scheme; and a manager of a Guatemalan bottling plant accused of inciting anti-union violence. *See Waldbaum*, 627 F.2d at 1298; *Silvester*, 839 F.2d at 1494; *Trotter*, 818 F.2d at 436.

This Court adopts the plurality test, as it seems the most reasonable and sensible option to protect against the chilling effects associated with the proliferation of

defamation suits against legitimate formations of public opinion. Cartman concedes, and this Court agrees, that Broflovski is not a general-purpose public figure. Unlike his brother, he has not voluntarily injected himself into the public limelight for all occasions and purposes. Nonetheless, Ike is clearly a limited-purpose public figure. If the incitement of violence at a small factory in Guatemala is a matter of public concern, then the possible use of slave labor at a factory producing the most popular consumer electronics devices in the United States is unquestionably a matter of public concern. Furthermore, as Director of Research & Development for Citrus, Broflovski plays an affirmative role in this controversy due to his influence over Citrus's internal workings and the process he oversees. The connection between the photograph Cartman posted on *The Sludge Report*, in addition to his added commentary, and the possibility of human rights abuses in the Citrus factory is clear. That his image was superimposed on the photo is not conclusive of the matter. It has been stipulated that the photo depicts the Citrus factory at Mumbai, and Citrus company records indicate that Broflovski has traveled to Mumbai, presumably to visit the factory. Thus, under the plurality standard, he is a limited purpose public figure, and is required to prove clear and convincing evidence of actual malice to sustain a cause of action for defamation.

B. Cartman is not liable under an actual malice standard because he did not knowingly or recklessly disseminate false information about Broflovski.

The First Amendment requires that, at a minimum, a defendant accused of defaming a plaintiff who is a public figure, whether of a general or limited purpose, demonstrate, with clear and convincing evidence, actual malice in the publication of false information about the plaintiff. *See Gertz*, 418 U.S. at 331-32. It should be noted that the

term “actual malice” does not refer primarily to any personal animus the defendant may hold against the plaintiff. Rather, this standard of care roughly encompasses the intent and gross negligence standard of tort. Proof of actual malice requires clear and convincing evidence that the dissemination of false information was either (1) knowing and intentional; or (2) that the defendant did so with reckless disregard for the falsity of the matter asserted. *See N.Y. Times Co.*, 376 U.S. at 279-80. In other words, if the defendant knew that he was spreading false information or entertained serious doubts as to its truthfulness, the requirement for proving actual malice is satisfied. *Id.* A simple failure to verify information, particularly where the speaker has a bona fide belief in its accuracy, is plainly insufficient to establish actual malice, and falls far short of the requirement for clear and convincing evidence. *See St. Amant v. Thompson*, 390 U.S. 727, 733 (1968) (citing *N.Y. Times Co.*, 376 U.S. at 287-88).

It should be noted that a prerequisite for the actual malice standard is the actual falsehood of the published information. *Cf.* Restatement (Second) of Torts § 580A. Further, truth is an absolute defense to any claim of defamation. *Id.* § 581A. Here, it is not clear from the record whether the information about Broflovski’s alleged participation in overseas human rights abuses is true or false. On the one hand, evidence obtained through discovery indicates that the published photograph had been doctored, and that Broflovski’s image had been superimposed. On the other hand, evidence of Broflovski’s visits to India and other accusations of possible human rights violations committed by Citrus tend to be probative for truth that he may be involved in something of the sort.

For our purposes, it is not necessary to establish falsehood. Even assuming that the photograph and allegations were total fabrications, the record does not indicate any real intent on Cartman's part to defame Broflovski, nor is there anything approaching clear and convincing evidence that he did so recklessly. Nothing in the record indicates that Cartman knew the information he was spreading was false or that it could be false. In fact, Cartman's subjective antagonism against Citrus and the Broflovski brothers coupled with his general distrust of corporations suggests that he fully believed that the information Professor Chaos delivered to him was true. This constitutes evidence of a bona fide belief on Cartman's part in the truth of what he spoke, and thus precludes the possibility of actual malice. Considering the evidence on record, then, it is this Court's determination that Ike Broflovski has failed to advance clear and convincing evidence of actual malice on the part of Eric Cartman in the publication of the photograph or commentary. The absence of evidence of actual malice precludes this Court from ruling in favor of a public figure in a defamation claim, and, therefore grant summary judgment in favor of Eric Cartman.

CONCLUSION

For the foregoing reasons, Plaintiff's motion to compel discovery is **DENIED** and Defendant's motion for summary judgment is **GRANTED**.

It is so ordered.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT**

IKE BROFLOVSKI,)	
)	
Appellant,)	
)	Action No. 481-5162-342
v.)	
)	
ERIC CARTMAN,)	
)	
Appellee.)	

May 14, 2009

MEMORANDUM AND ORDER

Before Judge Marsh, Judge Testaberger, and Chief Judge Mackay, Circuit Judges.

MACKAY, C.J.:

This panel is charged with reviewing the decision of the United States District Court for the Western District of Silverado, which simultaneously denied Appellant’s motion to compel discovery under Fed. R. Civ. P. 37 and granted Appellee’s motion for summary judgment pursuant to Fed. R. Civ. P. 56. On September 20, 2008, Ike Broflovski, a resident of the State of Silverado, Director of Research & Development at Citrus Electronics (“Citrus”), and younger brother of Citrus CEO Kyle Broflovski, filed a common law defamation action for damages to his reputation against Eric Cartman, author of *The Sludge Report* and resident of the neighboring state of Washoe. Appellee removed the case to Silverado District Court on diversity grounds on October 14, 2008. On January 8, 2009, Appellant filed a motion to compel discovery of the identity of an anonymous source alleged to have supplied Appellee with the information he relied upon in his allegedly defamatory remarks. On January 16, 2009, Appellee filed a reply motion

in opposition to Appellant's motion and introduced his own motion for summary judgment. On January 27, the District Court denied Appellant's motion to compel discovery and granted Appellee's motion for summary judgment.

Appellant Broflovski filed a timely notice of appeal on February 5, 2009. This Circuit Court has jurisdiction over the appeal pursuant to 29 U.S.C. § 1291. The facts as stated in the District Court's opinion are hereby incorporated by reference. Appellant asks us to consider two questions. First, we must determine whether the First Amendment implicitly recognizes a qualified reporter's privilege and, if so, whether that privilege applies to Cartman so as to protect against discovery of the identity of his source, "Professor Chaos." Second, we must determine whether Broflovski is a public figure for the purpose of this litigation and whether he has produced enough evidence, to withstand a motion for summary judgment.

STANDARD OF REVIEW

Ordinarily, an appeal of a ruling on a Rule 37 motion to compel discovery is subject to a deferential abuse of discretion standard. However, the determination of the existence of a privilege asserted under Rule 26(b)(5) is a question of law. Therefore, we review any claim of privilege as a mixed question of law and fact subject to *de novo* review. See *In re Grand Jury Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992). Similarly, a review of a grant of summary judgment on appeal is also subject to *de novo* review. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

As a matter of first impression in the Fifteenth Circuit, we conclude that the First Amendment does not recognize a qualified reporter's privilege against the disclosure of sources. We also determine that Broflovski is not a public figure for defamation

purposes, that the appropriate standard of care is that of common law negligence, and that a reasonable fact finder could conclude that Cartman was negligent.

ANALYSIS

I. THE DISTRICT COURT ERRED IN RULING THAT ERIC CARTMAN, AS A JOURNALIST, MAY ASSERT A QUALIFIED REPORTER'S PRIVILEGE AGAINST DISCLOSURE OF HIS CONFIDENTIAL SOURCES.

A. The First Amendment creates no presumptive qualified reporter's privilege.

The District Court below held that Cartman's assertion of a "reporter's privilege" in response to an interrogatory was proper. The District Court's ruling rests upon a narrow reading of *Branzburg v. Hayes*, which limits its holding to a finding that there is no constitutionally based reporter's privilege in criminal cases. 408 U.S. 665 (1972). Indeed, other circuits recognizing the existence of such a privilege have principally relied on a similar interpretation. This Court does not agree.

A plain reading of *Branzburg* forecloses the idea of a reporter's privilege inherent in the First Amendment. While Justice White, for the Court, readily conceded the importance of the free flow of information for the preservation of democracy and basic freedoms, he understood, as we do today, that not every incidental burdening of the press results in a violation of First Amendment rights. *Id.* at 682. Laws passed for the preservation of the basic public interest, be they criminal or civil in nature, must be enforced equally against the layman and the newsman alike. *See id.* at 683 (citing *Associated Press v. NLRB*, 301 U.S. 103, 132-33 (1937)). A qualified reporter's privilege, Justice White recognized, would form out of whole cloth an unjustifiable immunity for an ambiguous class of people on the basis of an indeterminable intent

standard, creating a significant obstacle to achieving justice in the courts. *Id.* at 695. Courts historically rejected the idea of any presumptive privilege for reporters, even in civil suits. *See, e.g., Garland v. Torre*, 259 F.2d 545, 549-50 (2d Cir. 1958), *cert. denied*, 358 U.S. 910 (1958). This is a corollary to the notion that the news media has no special right of access to information not otherwise available to the general public. *See N.Y. Times Co. v. United States*, 403 U.S. 713, 728-30 (1971) (Stewart, J., concurring). This is what is meant when it is said that the “lonely pamphleteer” is no different than a major publisher. *Branzburg*, 408 U.S. at 704.

Nevertheless, many of our sister circuits have ignored sound jurisprudence and built castles of privilege on the foundation of dicta and select lines from Justice Powell’s concurrence in *Branzburg*. By contrast, the Sixth and Seventh Circuits correctly refused to recognize any presumptive privilege under the First Amendment. *See McKevitt v. Pallasch*, 339 F.3d 530, 533 (7th Cir. 2003); *In re Grand Jury Proceedings*, 810 F.2d 580, 584 (6th Cir. 1987). Rather than erecting a novel constitutional barrier to the discovery of relevant evidence in the course of litigation, the duty of the federal courts should be to protect against potential abuses of discovery and to police against harassment and unduly burdensome requests. *See In re Grand Jury Proceedings*, 810 F.2d at 589. This restrictive role does not mean that courts must rubber-stamp all but the most egregious of offenses. Indeed, this Court recognizes that in *Branzburg*, a journalist who is pressed for confidential information by a grand jury acting in bad faith is not without remedy, and can move to block discovery on grounds of harassment. 408 U.S. at 707-08.

If the Framers planted within the First Amendment the seeds of a burgeoning journalist’s privilege, it would be peculiar, since it has traditionally been the responsibility of the states to create these privileges. *See* James Thomas Tucker & Stephen Wermiel, *Enacting a Reasonable Federal Shield Law: A Reply to Professors Clymer and Eliason*, 57 Am. U. L. Rev. 1291, 1297-98 (2008). As the District Court notes, thirty-four states and the District of Columbia have, as of this date, enacted statutory “shield laws” protecting reporters against disclosure of their sources. *See* James C. Goodale et. al., *Reporter’s Privilege*, 952 PLI/Pat 161, 170 (2008). That the State of Silverado has not enacted such a privilege does not justify a bending of the First Amendment to create one. The District Court also takes notice, as we do, that Congress has attempted—and failed—to enact a federal shield law for reporters by statute, a tacit admission that the privilege cannot be derived from the First Amendment alone. *See* Free Flow of Information Act, H.R. 2102, 110th Cong. (2007). Furthermore, a reporter may utilize discovery tools available in the Federal Rules of Civil Procedure to protect himself, including Fed. R. Civ. P. 26(c), which allows a court to bar discovery that is unduly cumulative, onerous, or wasteful, or where the discovering party has not exhausted all other means available to obtain the information.

Given the above, we conclude that there is no general qualified reporter’s privilege under the First Amendment of which Cartman may avail himself.

B. Cartman’s interest in maintaining the confidentiality of his anonymous source is outweighed by Broflovski’s need for the evidence to prove the fault element of the defamation claim.

Even if we were to assume, *arguendo*, that the First Amendment does create a qualified reporter’s privilege, it would not protect Cartman. Here, Cartman is not only a

subject of discovery, but also a party to the litigation, and the only person who has knowledge of the true identity of Professor Chaos. Thus, either under a general consideration of whether the request for disclosure was reasonable under the circumstances, or under any of the conjunctive tests constructed by our sister circuits who recognize the privilege, the District Court erred in ruling that Cartman's First Amendment right outweighed Broflovski's interests in remedying the damages he has alleged to have suffered as a result of Cartman's statements.

A defendant in a libel suit is a decidedly different creature than other parties and non-parties who may be required to disclose a confidential source of information, particularly where that confidential source is the one who has provided the defendant the ammunition with which to defame. *See Carey v. Hume*, 492 F.2d 631, 637 (D.C. Cir. 1974). Although we agree with the District Court that a journalist who is party to a defamation action is not automatically required to disclose his sources, it is presumed in most cases that the libellee has a justifiable need for the information the libellant possesses. *See Cervantes v. Time, Inc.*, 464 F.2d 986, 994 (1972). The source of information upon which defamatory comments are based is of paramount relevance to the level of care a defendant exercised in making those comments. Specifically, the identity of the source will in most cases provide some evidence of his relative trustworthiness. *See Carey*, 492 F.2d at 637. If the source is found to be highly disreputable, and a defendant did not take any significant steps to corroborate the information received, then such evidence is highly probative of at least simple negligence, if not recklessness.

In this case, the District Court asks Broflovski to do too much. To require him to filter through thousands upon thousands of corporate e-mails, to interrogate every Citrus

employee, to check every nook and cranny of the Mumbai factory to see who had access, is a fool's errand. It is a futile quest to find a needle in a haystack. Furthermore, as will be discussed, we must not conflate Ike's powers at Citrus with those of his brother, Kyle. While it is true that Kyle wields significant authority over Citrus, we cannot impute to Ike, as Director of Research & Development, every human relations power within the company simply because of his blood ties to the CEO. Citrus is not a litigant in this suit. We would not require someone of Ike's limited status within the company who was not a blood relative of the CEO to utilize the corporate structure to "shake out" the identity of the would-be whistleblower. Neither shall we in this instance.

In light of the foregoing, we must reverse the District Court's denial, on the grounds of privilege, of Broflovski's motion to compel discovery.

II. THE DISTRICT COURT ERRED IN GRANTING CARTMAN'S MOTION FOR SUMMARY JUDGMENT BECAUSE BROFLOVSKI IS NOT A PUBLIC FIGURE AND A JURY COULD REASONABLY CONCLUDE THAT CARTMAN'S STATEMENTS WERE NEGLIGENT AND DEFAMATORY.

We must remember, in ruling on a motion for summary judgment, that all facts in the record must be assessed in the light most favorable to the non-moving party. Fed. R. Civ. P. 56(e). If there exists any possibility that a reasonable jury could conclude that the non-moving party would prevail in the claim, then the moving party is not entitled to judgment as a matter of law and a district court must deny his motion for summary judgment. *Id.*

In this instance, we are concerned only with Broflovski's status and the accompanying standard of fault for defamation claims against him; we leave for the trial court the determination of all other elements of the cause of action. In light of the

following, we conclude that a reasonable jury could find that Broflovski was a private person and that Cartman was negligent in defaming him, and we therefore reverse the District Court's grant of summary judgment.

A. Broflovski is not a limited-purpose public figure because he has not voluntarily injected himself into a pre-existing public controversy.

The doctrine of the public figure, with its genesis in *New York Times Co. v. Sullivan* and *Curtis Publ'g Co. v. Butts*, is designed to preserve and protect the free flow of information necessary for an informed conversation on the affairs of the day. 388 U.S. 130 (1967); 376 U.S. 254 (1964). It is inevitable, in the course of reporting about prominent people, that the press will commit errors that result in economic or reputational damages to the more famous among us. To subject reporters to the constant threat of suit any time they make a mistake would deter publication on a broad range of issues, effectively chilling the First Amendment.

It must be noted, however, that the public figure doctrine is not an excuse to thrust the unsuspecting private citizen into the spotlight for the media to destroy his or her reputation with impunity. In this respect, the doctrine of the limited-purpose public figure may be abused by deeming any person directly involved in a matter of tangential public relevance to be fair game for the publication of false and damaging statements. The public figure doctrine is meant to elevate the standard of fault for those who *voluntarily* thrust themselves into the public fire, not for those who are merely standing too close to them when they burn ablaze. *See generally Time, Inc. v. Firestone*, 424 U.S. 448 (1976) (ruling that the wife of the wealthy owner of the Firestone tire corporation was not a public figure simply because she entered into judicial divorce proceedings or held press conferences to respond to questions).

As such, we reject the plurality rule the District Court applied and adopt the rule promulgated by the Second Circuit. For a plaintiff in a defamation suit to be considered a limited-purpose public figure, he must (1) “successfully invite public attention” prior to the remarks litigated; (2) “voluntarily inject” himself into the relevant public controversy; (3) take on a “position of prominence” within the public controversy; and (4) maintain regular and continuing access to the media in order to combat the defamatory remarks. *Lerman v. Flynt Distrib. Co.*, 745 F.2d 123, 136-37 (2d Cir. 1984). Cartman has failed to satisfy any of these prongs with respect to Broflovski.

The limited public attention that Broflovski received prior to Cartman’s publication of the photograph and comments is insufficient to satisfy the first prong. Indeed, there is no evidence that Broflovski affirmatively invited any attention to himself at all. Simply occupying a position of high influence within a prominent company is insufficient to qualify one as a public figure. *See Tavoulaareas v. Piro*, 817 F.2d 762, 773 (D.C. Cir. 1987). The only affirmative public acts of Broflovski’s in the record are his brief statements at a modestly attended press conference and the posting of his picture and contact information on the Citrus web site, all of which is standard business practice, not the act of an individual seeking to draw public attention to himself. The source of most of Broflovski’s fame is the “I Like Ike” buttons worn by Citrus employees. There is no evidence that he promoted those buttons; they were the result of a voluntary “fan cult” of Citrus employees and customers.

If Broflovski did not invite attention to himself prior to the controversy at hand, then he clearly did not voluntarily inject himself into the controversy, maintain any place of prominence therein, or maintain continuing access to the media during the controversy.

Broflovski issued no direct statements to the press; his attorney did so on his behalf, and exercise of the common law right of reply does not render one a public figure for defamation purposes. *See Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1559-60 (4th Cir. 1994). Broflovski withdrew from public attention and remained secluded after the release of the story in at issue. If the wife of a wealthy tire magnate who conducts a public press conference is not determined to have voluntarily drawn media attention to herself, then a reclusive Director of Research & Development who fades from the public eye surely isn't either.

Therefore, we conclude that Ike Broflovski is strictly a private figure for the purposes of this litigation.

B. Cartman should be denied summary judgment because a reasonable finder of fact could conclude that he was negligent in his publication of the photograph and accompanying commentary.

Having concluded that Broflovski is not a public figure for the purposes of this litigation, we now address whether a reasonable jury could conclude that Cartman was negligent in his publication of the photograph and commentary. We conclude that there is sufficient evidence for a finding of negligence and, thus, summary judgment for Cartman should not have been granted.

Here, it is necessary that we apply the common law standard for defamation adopted by the courts of the State of Silverado. Silverado's standard for defamation, and fault in defamation, is identical with the standard enunciated in the Second Restatement of Torts. As in other torts, the standard for negligence in a defamation action is whether the defendant acted as a reasonably prudent person in the circumstances. Restatement (Second) of Torts § 580(B). In assessing negligence, a fact finder will look to the context

of the communication, including whether the topic at hand is urgent or “hot news,” efforts to corroborate sources, independent investigation into the truth of the matter and other relevant facts. *Id.* § 580(B) cmt. c.

It is clear from the record that the alleged human rights violations by Citrus in Mumbai were not, by definition, “hot news.” While we recognize that such violations, if true, are important topics of discussion, they are not per se “hot news” unless there is an urgent need to relay such information to the public in a timely manner. *Cf. Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 521 (1991) (holding that a reporter not working under a tight deadline was not handling “hot news”). Here, it is difficult to see how the average American possesses an immediate need to know of potential use of slave labor by Citrus on the other side of the globe. Such information might be fodder for a long-term investigative report or documentary, but not necessarily a breaking headline. *Cf. Bressler v. Fortune Magazine*, 971 F.2d 1226, 1233 (6th Cir. 1992) (determining that a magazine that relied upon a variety of corroborated sources was not liable for defamation in reporting allegations of a cover-up of safety violations by officials at the Tennessee Valley Authority). As the news did not qualify as “hot news,” receipt of the photograph did not require immediate action from Cartman. Instead, receipt of alleged proof of such serious allegations clearly warranted follow-up investigations to determine their veracity. *Cf. Masson*, 501 U.S. at 521. The record also indicates that Cartman has regular access to software capable of detecting forgeries in digital photographs. A proprietor of a computer store with such technology at his disposal certainly could have taken the time to scan the photo before publication. Furthermore, Cartman’s direct allegations against Broflovski via his commentary reflect that, given his personal

animosity toward Citrus and the Broflovskis, Cartman recklessly jumped to hasty conclusions about the meaning of the photograph, that Broflovski is indeed a “slave driver.”

Given the facts above, the issue of fault in the defamation claim cannot be automatically resolved in favor of Eric Cartman. We therefore conclude that the district court’s grant of summary judgment was in error and reverse accordingly.

CONCLUSION

In light of the foregoing, we **REVERSE** the decisions of the District Court on both issues on appeal and **REMAND** for further proceedings consistent with this opinion.

It is so ordered.

No. 09-2701

In the Supreme Court of the United States

October Term, 2009

ERIC CARTMAN,

Petitioner,

v.

IKE BROFLOVSKI,

Respondent.

August 24, 2009

The petition for a writ of certiorari to the United States Court of Appeals for the Fifteenth Circuit is granted, limited to the following questions:

I. Whether Eric Cartman is protected by a qualified reporter's privilege against court-compelled disclosure of the identity of an anonymous source in an online defamation claim.

A. Whether the First Amendment creates a qualified reporter's privilege against the court-compelled discovery of sources.

B. If A is answered in the affirmative, whether Eric Cartman qualifies as a reporter for the purposes of this defamation suit and is, therefore, entitled to shield the identity of his anonymous source.

II. Whether Eric Cartman, author of the Internet blog *The Sludge Report*, should be held liable on an actual malice standard in an online defamation claim brought by Ike Broflovski on the grounds that Broflovski is a limited-purpose public figure.