

## COM 440/POL S 461 Assignment Two – Spring 2016

Please study the case problem below, read the facts carefully, refer to Lessons 3 and 4, the discussion forums, and the textbook's readings, and then answer each question completely, applying the correct legal rules. You do not need to do any outside research or cite any legal precedents in your answers.

### Case Hypothetical

This case problem begins with the judge's decision in Assignment 1 to deny the city prosecutor's request to shut down the website, GloriaSantosforCongress.com, for its lies, deception and character assassination. Following the legal precedent in *Near v. Minnesota*, the judge determined that prior restraint would be unconstitutional and that the correct legal remedy would be to sue for defamation if Santos believed that her reputation was damaged by the website's contents. Santos, however, decided not to pursue legal action immediately because, at the time, she was too busy campaigning for the congressional seat and she didn't want to give the anti-Santos website any additional publicity.

Happy with the judge's decision, George Smith, creator of the anti-Santos website, persuaded the publisher of SeattlePolitics.com, a reputable online local news website, to post the following piece as a guest blog under Smith's name.

I just learned that the city prosecutor tried to persuade a local judge to shut down my website criticizing anti-business crusader Gloria Santos who is running for the Congress. How outrageous! How anti-American! There's nothing more patriotic than criticizing people in power – or who want to be in power. Wisely, the judge refused to censor me -- he knows the Constitution -- but this attempt at censorship just proves my point that it would be a disaster if Santos were elected to Congress.

As promised, I've been researching her background, looking through some police records and talking to her acquaintances—some who didn't want to be identified. I even tried to interview Santos but she refused my calls and never answered my e-mails. Did you know that Santos was born in Mexico? Did you know that she was arrested and charged with drug possession when she was in high school? Somehow she got admitted into the University of Washington and quickly became involved in left-wing politics—rarely studying or going to class. In fact, one of her classmates told me that she plagiarized her senior thesis. Is this the type of dishonest, law-breaking person we want in Congress? Of course not!

In reality, Gloria Santos was born in Washington State. She was arrested and charged with drug possession when she was in high school, but the charges were later dropped after she successfully completed a drug rehab program. Few people knew about her drug problem, and she has never discussed this part of her past in public. She did plagiarize one class assignment as a first-year student at UW but, after confidential disciplinary action, she became a model student and graduated with distinction from UW. She then

earned a law degree from UW, and, for the last 20 years, has successfully practiced immigration law in Seattle and has served on many nonprofit boards helping refugees in the area.

Santos is outraged by Smith's guest blog posted on SeattlePolitics.com, and when she lost the election, she decides to file a libel lawsuit and two invasion-of-privacy lawsuits (publication of private information and appropriation) against Smith and the internet service provider (ISP) that manages the technical aspects of SeattlePolitics.com. Santos believes the defendants are responsible for severely damaging her reputation and for invading her personal privacy for commercial purposes, costing her the election and the respect of some of her professional colleagues.

1. Would Santos be able to prove the first three elements of libel – publication, identification and defamation – against Smith and the ISP? Please evaluate each of the elements and identify any defamatory comments in your answer. (15 pts)
2. Would Santos be responsible for proving the fourth element of libel – falsity – or would the defendants be responsible for proving truth? Could this element of libel be met? (10 pts)
3. Would Santos be considered a public official, an all-purpose public figure, a limited-purpose public figure, or a private person in terms of this libel lawsuit? Please explain. (10 pts)
4. What is the likelihood that Santos would be able to win her libel suit? First, identify the correct fault requirement as determined by her plaintiff status and then apply the legal rules and any media defenses that would be applicable before stating your conclusion. (25 pts)

Now, let's consider the privacy lawsuits.

5. What is the likelihood that Santos would be able to win her publication-of-private-information lawsuit? Please explain. (20 pts)
6. What is the likelihood that Santos would be able to win her appropriation lawsuit? Please explain. (20 pts)

**When you finish the assignment, please upload your Word document to the website and verify that it's there. Be sure to save a copy for your records.**

**Due Date: Wednesday, April 27, at 11:59 p.m., PT**

If you can't meet this deadline, you must e-mail me before the assignment is due and ask for an extension. This rule applies even if you or a family member are ill or have computer problems. Otherwise, there will be an automatic penalty of .5 for every 24 hours late. For example, a 4.0 grade would drop to a 3.5 if the assignment is submitted five minutes after the deadline and to a 3.0 if it is submitted 24 hours and five minutes late.

**Note:** This assignment is worth 15 percent of your course grade.