

THE SHIRLEY SHERROD COMPLAINT AGAINST ANDREW BREITBART

✘ As many readers already know, Shirley Sherrod has filed a lawsuit against Andrew Breitbart over his statements, and the doctored and manipulated video he published, that resulted in her to losing her job at the US Department of Agriculture. Although Ms. Sherrod was not technically fired by the Obama Administration, she was ordered to resign immediately. Ms. Sherrod promised in late July of 2010 that she would sue Breitbart, and now she has done so, with the added ironic addition of effecting service of the summons and complaint on him at the Conservative Political Action Conference (CPAC).

What no one has seen yet is the actual complaint filed in the matter. Here it is in all its 42 page glory.

The first thing you will note is that the complaint is filed against not just Andrew Breitbart, but Breitbart associate, writer and putative producer of BreitbartTV, Larry O'Connor, as well as the "John Doe" from Georgia Breitbart claims originally forwarded the video.

The second thing you will note is the complaint is framed in terms of "defamation, false light and intentional infliction of emotional distress" and was filed in the District of Columbia Superior Court. The choice of DC Superior Court is fascinating; at first glance, it appears the complaint could have been filed either in Georgia District or DC District federal courts, perhaps even a Georgia state court (although that seems more problematic). Why exactly did the plaintiff choose DC Superior Court? I have already made inquiry of Ms. Sherrod's attorney on this question but, until a formal answer is received, I think it a safe assumption they considered it the most favorable

venue for convenience, procedure and potential jury composition. And I think that is pretty smart lawyering by the way.

The complaint is long, and very well composed, but the gist of the case is contained here:

3. Although the defamatory blog post authored by Defendant Breitbart purported to show “video proof” that Mrs. Sherrod exhibited “racism” in the performance of her USDA job responsibilities, the short two-minute thirty-six (2:36) second video clip that Defendants embedded in the blog post as alleged “proof” of this defamatory accusation was, in truth, an edited excerpt from a much longer speech by Mrs. Sherrod that demonstrated exactly the opposite. In sharp contrast to the deliberately false depiction that Defendants presented in the defamatory blog post, the unabridged speech describes how, in 1986, working for a non-profit group that helped poor farmers, Mrs. Sherrod provided concern and service to a white farmer who, without her help, would almost certainly have lost his farm in rural Georgia.

4. Specifically, Defendants defamed Mrs. Sherrod by editing and publishing an intentionally false and misleading clip of Mrs. Sherrod’s speech and added the following statements as a narrative to the clip:

- “Mrs. Sherrod admits that in her federally appointed position, overseeing over a billion dollars ... She discriminates against people due to their race.”
- Mrs. Sherrod’s speech is “video evidence of racism coming from a federal appointee and NAACP award recipient.”
- “[T]his federally appointed executive bureaucrat lays out in stark detail,

that her federal duties are managed through the prism of race and class distinctions.”

- “In the first video, Sherrod describes how she racially discriminates against a white farmer.”
- Her speech is a “racist tale.”

To this day, Defendant Breitbart publishes these exact same defamatory statements on his

website despite his admitted knowledge of the truth. Indeed, he has subsequently stated that he “could care less about Shirley Sherrod,” underscoring that Mrs. Sherrod’s reputation was, at the very least, expected and acceptable collateral damage to his agenda.

<http://video.foxnews.com/v/4288023/racial-double-standard-in-white-house>.

5. As a direct result of the highly-charged internet media environment, where misleading video segments and defamatory accusations can “go viral” and spread to a global audience in a matter of seconds, the defamatory blog post about Mrs. Sherrod – and the deceptive video segments that accompanied it – did extensive and irreparable harm to Mrs. Sherrod and her reputation.

Now, that is the basis of the claim in the introductory portion of the complaint. Far beyond simple notice pleading, however, the complaint paints a wonderful picture and story of who Shirley Sherrod is, where she came from, what she has done and how hers has been a life interrupted by the malevolent actions of Andrew Breitbart et. al. Part and parcel of this is the damning specificity with which the “actual malice” is laid out and that a case for punitive damages is included.

The complaint is also notable for the specificity with which it describes Breitbart's continuing defamatory acts subsequent to the original publication, including on Twitter. The Twitter inclusion will be interesting as there has not yet been much definitive litigation on the use of that medium as a defamatory vehicle, but there is no reason for it to be different than any other electronic medium, which has been litigated.

Lastly, the complaint is telling for *just who* Shirley Sherrod's attorneys are, and it is a very significant point. There are a team of four attorneys at the DC office of Kirkland & Ellis, Thomas Clare, Michael Jones and Beth Williams with the lead being one Thomas D. Yannucci. And who is Tom Yannucci? Glad you asked. He is, if not *the preeminent*, one of the most preeminent plaintiffs defamation attorneys in the United States. From a September/October 2000 Columbia Journalism Review article:

In-house lawyers at top news organizations describe him as "extremely aggressive," "very effective," a straight shooter, and someone who, more than any other plaintiffs' lawyer, "strikes fear in news organizations' hearts."

It is not hyperbole. Yannucci is the attorney who embarrassed and gutted NBC's Dateline on the fraudulent GM exploding gas tank story and who obtained a page one above the fold retraction from Gannett Newspapers and the Cincinnati Enquirer, and reportedly \$18 million dollars, in the Chiquita Brands story. The CJR story on Mr. Yannucci is excellent and gives a very good feel for just how accomplished he is at his trade.

Shirley Sherrod is quite a woman, and she has come to the dance locked and loaded and with a very compelling story. Andrew Breitbart better strap in, it could be a bumpy ride.