

## *Freedom Newspapers of Texas v. Cantu*

**168 S.W. 3d 847 (Tex. 2005)**

*Justice Brister:*

The former sheriff of Cameron County, Texas brought suit against *The Brownsville Herald* and two former employees alleging that two articles about a candidate debate shortly before the 2000 election were defamatory. The trial court denied the *Herald's* motions for summary judgment and the court of appeals affirmed. Because we conclude there was no evidence of actual malice, we reverse.

On October 4, 2000, shortly before early voting was to begin in the November 2000 general election, several candidates for local office in Cameron County participated in a debate at the Brownsville Public Library. Among them was Conrado M. Cantu, Democratic candidate for Sheriff, and his Republican opponent, Terry Vinson.

An audience member recorded the debate. While the transcript of that recording in the summary judgment record is not entirely complete, all parties agree that as far as it goes it accurately represents what the candidates said. During the course of the debate, the following exchanges occurred:

### **Cantu:**

I am sure you [Vinson] are a good instructor, because you were my instructor in the police academy, but the fact still remains that if he was in Los Fresnos as Chief and sincere, why didn't they select him as chief. . . . It is not easy to go out there and stand in a neighborhood and tell everybody what are your needs, what are your problems. I can do that because *I am bi-cultural, I know the people...*

You have to have the right character to be a sheriff and you have to delegate authority and it does not stop there. *You have to be bi-cultural to understand what is going on in our neighborhoods*, where there is a lot of burglaries, how are you going to relate to these people -- in Spanish -- and make them understand that they need to stop or we are going to put a stop to it in their neighborhoods. How is it going to happen? You have to be able to understand, you have to have grown up here to understand that.

**Vinson:**

Well, when he brings up the bi-cultural, well he is forgetting we have orientals, we have Filipinos, we have Chinese, we got Japanese, we got Chinese, we've got . . . Israelis, we have . . . what is he going to talk to them, you are going to find somebody to do the communicating for you.

“Bi-cultural” is a barrier that is there because people put it there, it shouldn't exist. I don't believe in it. I believe everybody is the same, everybody is treated the same and everybody should be shown the respect. . . .

I am not going to tolerate the compadreism, I am sorry, I am not from this culture, I apologize for that, but I can guarantee you one thing, I will treat everybody the same. . . .

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The *Herald* assigned Brad Pierce to report on the debate. He took notes, but did not record it. The next morning, his article appeared on the front page of the newspaper, under a headline added by the copy desk editor [excerpts provided here]:

**CANTU: NO ANGLO CAN BE SHERIFF OF CAMERON COUNTY  
Election 2000: Dem candidate stresses Hispanic heritage at debate**

No Anglo could ever be sheriff of Cameron County, Conrado Cantu said Wednesday during a debate with his opponent Terry Vinson in the race for the county's top law enforcement office.

“How are you going to relate to these people?” Cantu asked Vinson, stressing that he's up for the job because he's Hispanic and knows the residents.

Cantu repeatedly said he's the better candidate because he's bi-cultural.

“Bi-cultural is a barrier that's there because people put it there,” Vinson replied. “We have a large culture,” but “I believe everyone is the same.”

Vinson said he won't tolerate compadreism and wants to instill honesty and accountability to the office.

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The article concluded with reports of debates between other local candidates. The morning the article appeared, George Cox, then the editor of the newspaper, spoke with Pierce about the article. Pierce told Cox that Cantu had not used the word “Anglo,” but that the substance of the article was accurate. That same morning, Cantu came to the *Herald* offices and told Cox that he objected to the use of the word “Anglo” in the article. He brought an audiotape

of the debate, which Cox declined to review. But Cox did agree to publish a follow-up article, and had Cantu meet with Pierce for an interview to present his side of what occurred.

The next day, October 6, 2000, a second article appeared concerning the debate. [Excerpts provided here]:

## **SHERIFF CANDIDATE SAYS RACIAL ISSUE WASN'T THE POINT** **Election: Cantu says Valley needs bi-cultural candidates**

Constable Conrado Cantu said he wants to set the record straight on comments that he made this week about his opponent in the Cameron County sheriff's race not being the best man for the job because he's not Hispanic.

Democrat Cantu said he never intended to suggest that race is an issue in his campaign, but that he has an advantage over Republican Terry Vinson because he is from the Rio Grande Valley, speaks Spanish and understands the needs of the majority of the public.

"The people of the Rio Grande Valley live in a bi-cultural area," Cantu said, explaining that because he is "bi-cultural," he is the best candidate to represent citizens as Cameron County's top law enforcement officer.

Chris Patterson, a youth basketball coach and Cantu supporter, said he believes the constable was simply misunderstood. "I didn't hear it that way. I don't think it was a bad intent. He was talking about bi-cultural," Patterson said. Claiming that he said no Anglo could ever be sheriff "wasn't a fair representation" of Cantu's comments, Patterson added, "and its [sic] definitely not what he stands for."

However, Vinson maintains that Cantu's statements that he cannot connect with Hispanics just because he's not native to the Valley are inappropriate.

"It was my impression that because of my heritage, I was incapable of communicating or relating with the Hispanic culture," Vinson said. "What is that, if it's not a racial statement? He was singling me out and that was wrong, I was quite offended."

In a county that's more than 90 percent Hispanic, "he does have a point," independent voter Henry Gonzalez said, "but they're all kinds of people in the Valley, not just Hispanics." Cantu said some of his strengths are the fact that he grew up in South Texas and can relate to the problems of all people, regardless of whether they live in Cameron Park or Valley International Country Club.

"I did not say that an Anglo could not be sheriff," he said, but rather that, by being bi-cultural, he has a better opportunity to resolve conflicts and protect neighborhoods.

However, Tracy Larimore, who said he was leaning toward voting for Cantu until Wednesday night, said, "Does that mean that he can understand the Anglo race, and if that's so, how come Vinson can't understand the Hispanic race?"

"I clearly heard that the only person who could be sheriff is an Hispanic," Larimore said. "Frankly, I think he was caught off guard. I think he meant what he said and now he's taking flack over it. He would have been far better not saying a word."

However, Patterson said anyone who knows Cantu is sure that he would never say anything discriminatory. He's only known the constable for a short while, but finds him to be a

generous, caring person who's deeply interested in the well being of the county's youth.

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Cantu ultimately won the election. Nine months after taking office, he sued the *Herald* for defamation. The *Herald* filed motions for summary judgment, which the trial court denied. We granted the *Herald's* petition for review.

To recover for defamation, a public official like Cantu must prove that the *Herald* published a false and defamatory statement with actual malice. At the summary judgment stage, the *Herald* can negate actual malice as a matter of law by proving that it did not publish the articles at issue with knowledge of falsity or reckless disregard for the truth.

The *Herald's* motions for summary judgment included affidavits from its publisher, copy desk editor, Pierce, and Cox, each averring he had no knowledge of any inaccuracies in the articles before publication or any reason to doubt their accuracy. Neither Cantu nor the court of appeals suggest these affidavits were insufficient to meet the applicable summary judgment standards.

Jurors of course would not be required to accept the truth of these affidavits. But the possibility that a jury might disbelieve them is not evidence supporting the contrary. The *Herald* having produced some evidence that it acted without malice, the burden shifted to Cantu to produce some contrary evidence to avoid summary judgment. The court of appeals held that Cantu had done so, pointing to circumstantial evidence suggesting actual malice. To that evidence we now turn.

From the day the articles appeared through oral arguments in this Court, Cantu's primary complaint is that he never used the words attributed to him by the *Herald* in its initial headline and first sentence. The *Herald* concedes this is true. The court of appeals concluded this was

some evidence of malice, as “Pierce attended the debate and heard the candidate’s comments, and knew that Cantu did not say that ‘No Anglo can be sheriff of Cameron County.’”

But unlike the court of appeals, the *Herald* did not put this last phrase in quotation marks. While some of Cantu’s statements at the debate were placed in quotation marks, this one was not. Cantu discounts this distinction, arguing the colon used in the headline is the “equivalent” of quotation marks.

In *Masson v. New Yorker Magazine, Inc.*, the United States Supreme Court held that placing a reporter’s words in a speaker’s mouth may be evidence of malice in some circumstances. But the Court rejected the notion that every alteration of a speaker’s words was some evidence of actual malice. The Court noted that reporters who rely on notes must often reconstruct a speaker’s statements, and even those who rely on recordings can print statements verbatim “in only rare circumstances” due to space limitations and editorial judgments. Instead, the Court held that an altered statement could constitute some evidence of actual malice if a reasonable reader could understand the passage as the speaker’s actual words (not a paraphrase), and the alteration was material.

In this case, three rather apparent clues would lead a reasonable reader to conclude the *Herald* was interpreting Cantu’s remarks rather than quoting them verbatim. First, such a reader would note that quotation marks were placed around eight of Cantu’s statements in the first article, but not the one at issue.

Second, a reasonable reader could not miss the pattern of the articles, in which a summary of what each candidate said appears in one paragraph, followed by one or two paragraphs of explicit quotations to support the summary. In this context, a reasonable reader would understand the first headline and sentence to be a paraphrase of Cantu’s remarks, with his

actual statements following in quotations.

Finally, while both articles were allegedly defamatory, the *Herald's* second article reported Cantu's response that "I did not say that an Anglo could not be sheriff." Nothing in the follow-up article contradicts that claim. To the contrary, the report that "some observers believe" Cantu had made "discriminating remarks" at the debate clarified that the issue was the implicit rather than explicit meaning of what he said.

Based on the entire context of the articles Cantu claims were defamatory, we hold that a reasonable reader would have understood the *Herald's* reports to be a paraphrase or interpretation of Cantu's remarks. Accordingly, proof that he did not make the exact remark attributed to him, standing alone, is no evidence of actual malice.

Of course, deliberately attributing a statement to a public figure that the latter never made may be defamatory whether or not it is in quotation marks. But a deliberate alteration of the words uttered by a plaintiff does not equate with knowledge of falsity unless the alteration results in a material change in the meaning conveyed by the statement.

Cantu argues that the *Herald* made a deliberate and material change in meaning when it converted his remarks about his bilingual and bicultural attributes into remarks about racial and ethnic ones. For summary judgment purposes, we assume the truth of Cantu's assertion that he intended only the former. Further, we agree with Cantu that reasonable jurors could conclude from the *Herald's* report that he was accused of intending the latter, and that the difference between the two is material.

But evidence that the *Herald's* report was mistaken, even negligently so, is no evidence of actual malice. Cantu must present some evidence that the *Herald* misinterpreted his remarks on purpose, or in circumstances so improbable that only a reckless publisher would have made

the mistake.

Cantu's remarks at the debate bristled with ambiguities. Cantu argues that his comments had nothing to do with race, as anyone can be both bilingual and bicultural. But the context here was a debate in which Cantu was distinguishing himself from his opponent. Cantu conceded at his deposition that he knew his opponent was not Hispanic, but did not know whether he spoke Spanish; at the least, this might suggest he was using "bilingual" to indicate the former rather than latter. And Cantu does not explain why his opponent was not "bicultural," despite claiming many more years of experience in law enforcement in the Rio Grande valley than Cantu.

It is apparent from his response that Cantu's opponent certainly thought the remarks had something to do with race or ethnicity. While an opponent's interpretation cannot make Cantu's remarks ambiguous, it is noteworthy that Cantu never corrected his opponent's misinterpretation during the remainder of their debate.

Similarly ambiguous is Cantu's explanation from the day after the debate until now that he was merely referring to place of birth, native language, and understanding for "the needs of the majority." While place of birth and native language are not necessarily indicative of racial or ethnic attributes, courts have recognized they can be used as surrogates for them.

While Cantu never used the explicit words stated in the *Herald's* initial article, the standard is whether that summary was a rational interpretation of what he said. Pleas for ethnic solidarity or racial prejudice are not always made in explicit terms. To permit the sophisticated ethnic plea while condemning those that are open and unabashed would simply reward counsel for ingenuity in packaging. Holding that headlines like the one here are actionable unless candidates make an explicit ethnic plea would reward candidates who make implicit ones by punishing the press for reporting on it.

This is not to say that every claim by a candidate to local community ties could be rationally interpreted as a racial plea. In a democratic republic, candidates distance themselves from local voters at their peril. Moreover, identification between voters and their representatives can help assure that republican institutions reflect the people whom they serve.

But the context here “bristled” with substantially more. The difference in the candidates’ ethnic backgrounds were apparently obvious to those who attended the debate, and as we have noted the terms Cantu used to distinguish himself are similar to those sometimes used for ulterior purposes. Further, while the record does not reflect the composition of the audience at the debate, the wider audience is a matter of record -- according to the U.S. Census taken in the year of the election, 84.3% of Cameron County residents were persons of Hispanic or Latino origin. If Cantu’s only purpose was to emphasize his community ties, he could have chosen less ambiguous terms.

While it would be up to a jury to decide what Cantu meant, the Constitution requires us to decide whether the *Herald* articles were a rational interpretation of what he actually said. In this case, there is no factual dispute as to what that was. Based on the entire context of the debate, we hold that the *Herald*’s articles were a rational interpretation of Cantu’s remarks at the debate. Accordingly, the articles standing alone were not evidence of actual malice.

The summary judgment record before us establishes as a matter of law that the *Herald*’s reporter thought he was reporting the gist of what Cantu said. Accordingly, any error in the *Herald*’s articles evidences at most negligence, not actual malice. We reverse the court of appeals’ judgment.

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## Points for Discussion

1. Do you believe that the *Herald's* original article was an accurate reflection of what Cantu has said? Was Cantu speaking in “code” when he suggested that his being “bi-cultural” made him especially qualified? Do you think he really meant you just have to be Hispanic to govern effectively in Cameron County?

2. What about the follow-up article in the Herald? How much was the newspaper’s stance bolstered by their having found audience members who (like their own reporter?) believed that Cantu was really, to borrow a phrase from the O. J. Simpson trial, “playing the race card?”

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