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# Guarding the Fourth Estate

To effectively describe some of her favorite cases, Guylyn Cummins can't avoid using the "F word."

She gets it out of the way as politely as possible, and quickly moves on. One assumes swearing is not an ordinary part of this poised, articulate attorney's vocabulary. But when it comes to defending her clients on First Amendment issues, Cummins is committed to free speech—no matter how it's expressed.

"It may not always be perfectly beautiful speech," she says, "but if it's not actionable speech, it has to be protected."

With her attractive, polished appearance, Cummins could be a

television anchor. In fact, Cummins' daughter, now 18, once wrote an essay describing how sophisticated she felt as a child walking with her professional mother to elementary school. At the time in second grade, Cummins' daughter compared it to "being followed by the Channel 10 news."

Throughout the past two decades, Cummins, 50, has been extensively involved with the media. As a leading communications attorney, her experience runs the gamut of First Amendment issues from information access to copyright fair use. Even in San Diego, where the media markets are smaller than in Los Angeles or New York, she's carved out an impressive niche.

A partner in Sheppard Mullin's entertainment, media and communications group, Cummins grew up far away from her current digs in the firm's slick 19th-floor downtown offices. In her hometown of Elwood, Neb., population 500, Cummins' early exposure to high-powered legal professionals was

limited. “There was one lawyer to serve our entire county who did everything from criminal prosecutions to Wilson trusts,” she says.

Although her hometown lacked role models in the world of law, Cummins remembers being inspired by “a high school history book with summaries of major Supreme Court cases.” In 1975, when she began undergraduate studies in journalism at the University of Nebraska, her interest in media-related legal issues grew. “My favorite class was Journalism and Law,” she says. “I was excited by cases like the Pentagon Papers, where journalists were making a difference, and their lawyers were making a difference, as well.”

While earning a master’s in journalism at the University of Southern California, Cummins focused on the craft of documentary, working as a teaching assistant for the celebrated documentarian

Joe Saltzman. But during Cummins’ second week at USC, football and love stepped in to alter her course. “I met my husband at a football game where USC tied Stanford, making Nebraska No. 1.” She continues with a grin, “I was very happy that day.”

Almost everyone in her husband’s family was a lawyer—his father started the Los Angeles firm Cummins & White, his two brothers-in-law were attorneys, as was his sister and sister-in-law. Furthermore, when Cummins moved with her husband to San Diego, the only documentary work she could find was in Spanish-language films.

Upon graduating from law school at the University of San Diego in 1985, Cummins found that “the legal environment was changing in San Diego—almost all the big offices were opening branches down here.” A summer internship with Gray Cary Ware & Freidenrich led to a full-time job with the firm.

In a fortunate twist of fate, the new attorney’s first assignment was on a U.S. Supreme Court amicus brief regarding press access to preliminary hearings in the state of California. Along with the Gray Cary team, Cummins found that, historically, more than 50 percent of California’s criminal cases were resolved after the preliminary hearing and before trial. “Our argument was essentially that the preliminary hearing is often the only hearing and therefore the public should have access to that,” she says.

Even though Cummins was immediately hooked on media-related issues, she says a paucity of work existed in that practice area in San Diego. “I noticed that there were a few people who did this kind of work full-time in Los Angeles, New York and Washington, D.C., but in other cities it was really hard. Either the markets weren’t big enough or the media companies were owned-and-operated and had in-house counsel,” she recalls.

During her first years, Cummins did a smattering of litigation. “Meanwhile, I helped out on every First Amendment case I could,” she says. “Those were the exciting issues to me, the stories of the day, much more interesting than doing document production for securities cases.”

As Cummins became a senior lawyer, she started to understand “the lay of the media law land” and eventually she was able to dedicate her practice to the area. She also began to realize the value of her journalism degrees. “I think it’s really important to understand what the Fourth Branch of government does if you’re going to defend it. You have to be a true believer to be a good advocate.”

Being a “true believer” is a quality Cummins shares with longtime client *The San Diego Union-Tribune*. Her relationship with the newspaper’s publisher, the Copley Press, started more than two decades ago during that first amicus brief on which the *Union-Tribune* was one of the signatories. After representing the company on countless occasions,

Cummins says, “I’ve learned from them that it’s really important for an open government to have media entities like the *Union-Tribune* who are willing to continually fight for the public’s right to know.”

Recently, the longtime collaborators brought their fight to the California Supreme Court with a case challenging the San Diego County Civil Service Commission’s closing and sealing of police records. Cummins argued that when an officer challenges a dismissal or sanction, the administrative proceedings regarding that challenge demand disclosure. “If you don’t have access to documents, you don’t have accountability,” she asserts. “In California,

## When the press wants to speak truth to power, Guylyn Cummins makes sure they’re heard by ROSE NISKER PHOTOGRAPHY BY LARRY MARCUS

the police are the most protected of public employees.” Cummins believes public scrutiny of officers is too limited, “in particular, scrutiny of those who’ve engaged in wrongdoing,” she says.

While the California Supreme Court ultimately decided against the *Union-Tribune*’s challenge, Cummins remains undeterred, although she expects an uphill battle. “Before you take on state statutes and argue that they’re unconstitutional, you take a long hard look at them. You have to decide whether it’s worth the fight, because it’s definitely going to be a fight,” she says.

According to Cummins, the battle for First Amendment freedoms has become increasingly difficult during the last decade. “Reporters’ shield laws are a perfect example,” she begins. “When I first started practicing, those laws were almost ironclad. Now every time there’s some kind of government scandal, the shield gets pierced. Does that protection even exist anymore?”

Meanwhile, Cummins has noticed an increase in public cynicism toward the press that she feels contributes to the added challenge in First Amendment work. “I don’t hear as many people praising the press. The public is questioning whether it’s doing something good for society or whether it’s just trying to grab headlines.”

As First Amendment challenges expand, Cummins is heartened to see the younger generation rise to accept those challenges. One of her career highlights involved representing a UCSD freshman in a 1999 case that culminated with a rewrite of the University of California speech code.

The student had placed a strongly worded sign in his window about Israeli Prime Minister Benjamin Netanyahu’s involvement with biological weapons research, and the arrest of former Chilean dictator Augusto Pinochet for crimes against humanity. When he refused to remove the sign, the university issued disciplinary action. Cummins worked with the ACLU to prove that his speech was protected.

“Lots of the other dorm windows had big Budweiser signs displayed or beer party announcements,” she says. “We argued that UC certainly can’t elevate this commercial party speech above political speech.”

The most fulfilling part of the story for Cummins was that “the student got so excited about the legal process that he thought about going to law school to help protect constitutional rights.”

But perhaps Cummins’ proudest achievement is being featured as “role model” in another of her daughter’s essays, this time for a college application. Cummins beams as she recalls her favorite line from the piece: “It says, ‘My mother rocks.’”

For Cummins, that certainly falls under the category of protected speech. ✨