

## Epilogue

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### Recommended Citation

Julie A. Koehler & Hannah R. Yoo, *Epilogue*, 5 DePaul J. Art, Tech. & Intell. Prop. L. 239 (1995)  
Available at: <https://via.library.depaul.edu/jatip/vol5/iss1/19>

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## EPILOGUE

### RELIGIOUS SPEECH

The age-old conflict between church and state has once again landed in front of the Supreme Court. But this time a new partner has entered into the foray, the First Amendment. The Supreme Court has agreed to hear a case involving a state university's denial to subsidize a student-run religious publication.

At the University of Virginia more than one hundred student organizations and a dozen publications are subsidized by the university. However, the school has guidelines prohibiting the financing of religious organizations. The case was brought by a Christian student group at the school when the students' request for \$5,900 to publish a magazine discussing "biblical Christianity" was turned down.

In its ruling, the Fourth Circuit acknowledged that the school violated the First Amendment's guarantee of free speech by discriminating between publications on the basis of content. However, the lower court followed Supreme Court precedent in finding that the school was justified in this case by a "compelling interest in maintaining strict separation of church and state."

Several Justices have urged reconsideration of the "entanglement of church and state" precedent. This case will encompass not only the freedom of religious speech, but the Constitutional limits on taxpayer support for religious organizations. Linda Greenhouse, *Justices Agree to Consider if University Should Finance a Student Religious Magazine*, N.Y. TIMES, Nov. 1, 1994 at A13.

*Julie A. Koehler*

### CNN FOUND GUILTY OF CRIMINAL CONTEMPT

CNN has been found guilty of willfully violating a gag order restricting the networks use of taped phone conversations of jailed Panamanian leader Manuel Noriega and his lawyer in 1990. A federal judge gave the Cable News Network a choice: pay a hefty fine or make a public apology and be fined far less. CNN began broadcasting the apology immediately, and was ordered to pay the Federal Government \$85,000 in legal fees.

The calls, which were taped as a matter of routine by the U.S. Bureau of Prisons, were leaked to CNN and aired in segments eleven times over two days. The judge had learned of CNN's possession of the tapes and warned that any use would violate a prior gag order on the trial. However, CNN President Tim Johnson testified that he gave permission to air the tapes citing a journalistic responsibility to expose the government's misconduct for taping Noriega's privileged calls to his attorney. Prosecutors dismissed CNN's defense as absurd and denied having any access to the calls during Noriega's trial.

In weighing the right to a free press against the right to a fair trial, U.S. District Judge William Hoeveler stated, "I am ever mindful of the importance of an essentially unfettered press and the mandates of the First Amendment, but I must also be mindful of the vital importance of compliance with orders of the court." However, a month after CNN aired the tapes, the judge lifted the gag order after deciding that the content of the tapes did not infringe on Noriega's right to a fair trial. *CNN Faces Fine for Violating Judge's Gag Rule*, CHI. TRIB., Nov. 2, 1994 at A4; John Pacenti, *Cable Network Convicted for Violating U.S. Gag Order*, CHI. DAILY L. BULL., Nov. 1, 1994 at A3; *CNN Is Sentenced for Tapes and Makes Public Apology*, N.Y. TIMES, Dec. 20, 1994 at B7.

Julie A. Koehler

#### JOURNALISTIC STALKING

Chicago television commentator Walter Jacobson has been accused of "journalistic stalking" by the presidents of the Chicago and Illinois State bar associations for airing the home telephone number of Illinois Supreme Court Justice James D. Heiple on an evening news broadcast. Heiple was singled out for criticism after the writing the majority opinion in the controversial Baby Richard case. Heiple, writing without dissent, found that the little boy, adopted by a couple as an infant, had to be returned to his biological father after four years of court proceedings.

In his commentary on the Fox Network, Jacobson told the viewers that Heiple was not only evil, "but also dangerous," and was "destroying the lives of our children." Jacobson then urged viewers to call Heiple at home, and displayed the judge's home phone number on screen and read it aloud.

CBA President Richard C. Prendergast and ISBA President David A. Decker described Jacobson's actions as "overstepping the line between reasonable commentary and reckless behavior," and "engaging in journalistic stalking." Nationally syndicated columnist Mike Royko of the Chicago Tribune called Jacobson's actions "malicious." "Emotionally urging people to phone was obvious harassment, an attempt by the anchorman to punish Judge Heiple . . . [and] could easily be taken as an invitation for some wacko to do something about it." Carol McHugh Sanders, *TV Comment Called "Journalistic Stalking,"* CHI. DAILY L. BULL., Feb. 3, 1995 at A1; Mike Royko, *Unthinkable Deed Just Part of Show*, CHI. TRIB., Feb. 2, 1995, at A3.

Julie A. Koehler

#### CHECKBOOK JOURNALISM

Two statutes banning potential witnesses and jurors from selling their stories to the press have been challenged in federal court by the California First Amendment Coalition. The bills were prompted by developments in the O.J. Simpson double murder case, where several potential witnesses have admitted to selling their stories to tabloids, casting doubts on their credibility.

Under the law, which went into effect on Jan. 1, 1995, potential witnesses and jurors are barred from selling their stories for a set period of time. News reporters are also subject to civil and criminal misdemeanor penalties for offering or paying compensation of any kind to possible witnesses in a criminal case. Violators face a \$1000 fine and six months in jail.

The Coalition admitted that these payments may cause problems, but insisted that they are still covered by the First Amendment. "The state is eager to outlaw checkbook journalism, which has yet to be shown as anything more than a rare embarrassment to prosecutors." However, Cary Rudman, legal counsel for bill sponsor Willie Brown (D-San Francisco), claims that "[t]he First Amendment is not absolute. This piece of legislation doesn't stop someone from speaking to the press, it stops someone from being paid to speak to the press." Jim Doyle, *Ban on Pay to News Sources Is Attacked: 1st Amendment Group Calls It Unconstitutional*, S.F. CHRON., Feb. 8, 1995 at A4.

Julie A. Koehler

#### BASTILLE OPERA BATTLE

The Paris Court ruled that the Paris Opera management did not have the right to appoint another musical director in place of Myung Whun Chung, current director of Paris Opera. Chung's contract which gives him complete artistic control and a salary of eight million francs (\$1.5 million) does not expire until August 2000. However, the new director-designate of the Paris Opera, Hugues Gall, sought to dismiss Chung on the ground that he was being overpaid. Chung was dismissed after he refused to renegotiate his contract.

Chung poses a threat to the Paris opera who is reportedly operating with a 45 million-franc (\$8.5 million) deficit. The history of the government-run Bastille Opera reveals that French politics underlay Chung's dismissal as it did with the previous musical directors. One major consequence of this action was the South Korean government's threat to withdraw a multi-million-dollar contract with the Anglo-French company GEC-Alsthom for the manufacture of TGV trains. The Koreans view the treatment to Chung as a "national affront," according to Seoul's daily *Dong-ho libo*. Faced with this threat and other sanctions by the court, the opera management settled out of court for a reported 7 to 10 million francs (around \$1.3 to \$1.8 million) in compensatory damages. Richard Covington, *Paris Opera Bids Adieu to Music Director; Bitter Chung Becomes Embroiled in Politics at Embattled Bastille*, NEWSDAY, Sept. 21, 1994, Part II at 7.

Hannah R. Yoo

#### MUSICVIDEO WEB PROBED

A proposed music cable channel involving Warner Music Group, Sony Music, EMI Music, Polygram and Ticketmaster is being investigated by the U.S. Justice Department for antitrust violations. A Polygram spokesman stated that they were in compliance with all applicable law. A possible result of this investigation may have pushed the domestic launch of the channel from the fourth quarter of 1994 to the first quarter of 1995. However, Time Warner Music Group chairman Rob-

ert Morgado stated that the delays were the result of limited channel capacity on cable systems.

This consortium has affected others in this field. Tele-Communication Inc. has threatened to join this new consortium to combat the antitrust suit brought against him by Viacom, who owns MTV. MTV has the most to lose from this consortium since the four labels provide MTV with about two-thirds of its videos. MTV is unsure what kind of licensing fees it will have to pay if this consortium is allowed to exist. MTV has already been forced to negotiate European rights of video clips from these four labels from Video Performance Ltd., a copyright collection agency. MTV has already challenged this action as violative of the European Community antitrust laws. The EC's investigative authorities are expected to make a ruling on these charges shortly. Adam Sandler, *Musicvid Web Probed*, DAILY VARIETY, July 22, 1994, (News) at 1.

Hannah R. Yoo

#### ILLEGAL MTV

MTV signed a five-year rebroadcasting contract with the Turkish company Prime Holding in September of 1993. Turkish law bans the rebroadcasting of foreign stations on open access television. However, MTV continues to transmit its music channel in Turkey through Prime Holding, believing that "as a nonpolitical broadcaster, [it] will be allowed to continue showing programs 'because the law is only directed against channels which are seen as anti-Turkish'." Although Turkey's Broadcasting Commission is evenly composed of liberals and conservatives, it is unclear how even the liberals will decide this matter. The fear is that an exception made for MTV would result in a legal challenge from other broadcasters. Adrian Higgs, *New Law Makes MTV Europe 'Technically Illegal' in Turkey*, BILLBOARD, June 11, 1994, (Int'l) at 42.

Hannah R. Yoo

#### SLOPPY JOE V. SLOPPY JOHN

Sloppy Joe's International Inc. of Key West, Florida is threatening to sue John Susor, the owner of Sloppy John's Majuffer's Bar for trademark infringement unless Susor immediately discontinues using the "Sloppy John's" logo. Sloppy John's is a local establishment in Clearwater, Florida that has been in business for over 30 years. The corporate headquarters of Sloppy Joe's thinks that the picture of Susor inside "Sloppy John's" logo is too similar to the picture of Ernest Hemingway, who is pictured in the "Sloppy Joe's" logo. Historians state that Hemingway was a frequent visitor at Sloppy Joe's.

An attorney for Sloppy Joe's accused Susor of intentionally and deceptively "copying and using a design simulation of his client's design." Susor was demanded to discontinue use of the design, submit for approval whatever new name and trademark he decided to use at Sloppy John's, and to destroy all items bearing the "Sloppy John's" insignia. Sloppy Joe's is hoping to settle this matter

with Susor without filing suit. Amelia Shores, *Sloppy Battles Sloppy in Fight over Trademark*, CLEARWATER TIMES, May 26, 1994, at 6.

*Hannah R. Yoo*

#### VIDEO GAMES RATING SYSTEM

Video games may be the new subject of a universal ratings system. This comes after increased violence in computer games such as High Tech Interactive's *Mortal Kombat*. Strong social and congressional pressures have resulted in Senators Joseph Lieberman (D-Connecticut) and Herb Kohl (K-Wisconsin) introducing the Video Game Rating Act of 1994. Through this act, a bipartisan Interactive Entertainment Rating Commission will work with the video game industry to develop a voluntary rating system. Jamie Schwing, legal counsel for Senator Kohl, stated that the industry establishing its own ratings may be the best route since "First Amendment concerns are paramount." She also stated that "we are not censoring or banning any game. We are trying to set up a system that protects kids and gives information to parents and consumers." However, if the commission finds the industry proposal insufficient, the commission will formulate its own mandatory advisory guidelines for video games, which also includes computers, arcades, and home video entertainment systems. To head off the proposed legislation, Acclaim, Atari, Electronic Arts, Nintendo, Philips, Sega, and 3Do have formed the Interactive Entertainment Industry Rating System Committee to develop an industry-wide ratings system for new releases. Software developers have already begun to label games with consumer advisories. Melissa J. Perenson, *Warning: Parental Discretion Advised; Violence in Computer Games*, 13 PC MAG., April 12, 1994, No. 7 at 30.

*Hannah R. Yoo*

