



Your Legal Counsel

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Thoughts on “Law in the Limelight”

Law is in the limelight nearly every day. Whether it is the front page, the business page, local news or even the sports page, there is something legal – or “illegal” – going on. Legal issues are everywhere: Microsoft and Oracle and the U.S. Government are at it in Judge Vaughn Walker’s federal courtroom in San Francisco over who gets Peoplesoft; Martha Stewart (a good example of why one should not *voluntarily* talk to government investigators) is the subject of daily commentary on the business pages; the BALCO drug case and all the issues regarding possible illegal substances used by athletes are on the front pages and the sports pages covering the Tour de France. Moreover, the Olympics in Athens are about to begin, where celebrated athletes, including the Bay Area’s Barry Bonds shall compete. Issues regarding the possible use of illegal substances will invariably be discussed by the media in the course of covering the Olympics. And, of course, there is Kobe Bryant’s rape case, Michael Jackson’s criminal prosecution for alleged offenses involving juveniles, and the Scott Peterson “double murder” trial.

From time to time, even the U.S. or California Supreme Courts become popular news sources. The U.S. Supreme Court’s last term saw several cases of great interest to the public, including issues pertaining to federal preemption involving HMO’s and the always ongoing dispute over “Miranda Warning” requirements. The California Supreme Court was faced with the same sex marriage issue this year. That decision, not yet handed down, is not expected to resolve the key issue of whether a same sex marriage is constitutionally protected.

The public airing of legal matters is not new. One of the first examples of a “celebrity lawsuit” is *fairly* recent history – The “Scopes Trial.” The *Scopes* case involved the criminal prosecution, in 1925, in Dayton, Tennessee, of a high school biology teacher who taught the theory of evolution. The teacher, John T. Scopes (1900-1970), was accused of having violated the Butler Act, a Tennessee law that forbade the teaching of the theory of evolution in public schools because it contradicted the account of creation in the Bible. The trial received worldwide publicity and was conducted in a “circus-like” atmosphere. The press dubbed it the “Monkey Trial” because, according to popular belief, evolution meant that humans were descended from monkeys.

Clarence Darrow, one of America’s leading criminal lawyers, appeared for the defense, and former U.S. Secretary of State William Jennings Bryan, a Fundamentalist and three-time presidential candidate, who was hired by the ACLU, was the prosecutor. The defense argued for the scientific validity of evolution and claimed that the Butler Act was unconstitutional. The defense, however, did not deny that Scopes had broken the law. Scopes was convicted and fined \$100, but the verdict was later

reversed on technical grounds by the Tennessee Supreme Court. The case came to a dramatic conclusion after eight days of trial when Darrow was allowed to call his adversary, Bryan, to the stand as an expert witness on the Bible (yes, Darrow got to cross-examine his adversary, which would likely not be allowed today). Bryan almost collapsed on the stand and, in fact, died six days after the verdict was announced after gorging his already obese self. Despite the verdict, the trial was seen as a victory for evolution, since Darrow, in cross-examining Bryan, succeeded in pointing out several serious inconsistencies in Fundamentalist belief.

Laws against the teaching of evolution were upheld for another 40 years until the Supreme Court of the United States, in a 1968 decision in the case *Epperson v. Arkansas*, ruled that such laws were an unconstitutional violation of the legally required separation of church and state. The Butler Act went down *in smoke*.

The case eventually was made into the movie “Inherit the Wind,” with Spencer Tracy as Clarence Darrow (the names were changed to others in the movie) and Frederick March as William Jennings Bryan and released in 1960 (after a Broadway version). It is one of the first examples of the courtroom supplying the setting and story for a movie. Gene Kelly was also in the movie in one of his only non-singing roles, but his character was an “add on” – a role as a purely fictitious newspaperman.

These cases are obviously of public interest; otherwise the media would not follow them so closely nor publish them so frequently and widely. Sometimes, however, the media aspect gets out of line, as was recently reported about the *Peterson* case, where the media hoopla surrounding the San Mateo Courthouse was “circus-like.” Such a chaotic atmosphere appears to have calmed down to the point where the Chronicle now has a set area in the paper for reporting on the *Peterson* case, which is akin to “bulletin board” reporting. It appears that the public is not as interested in the trial as a whole as it is in the trial’s result. That result will make headline news and will likely invite lots of media commentary on the competence of the lawyers and how that may have affected the outcome.

My point here is that these high profile matters, whether involving business issues, celebrity figures or just interesting cases are matters for the media to report on and cover. Overall, my sense is that the media is trying to do a good job of describing these cases, their general subject matter and their developments so that the public has a better understanding of such cases. There are some exceptions, however, such as the public displays that Michael Jackson conducted outside the courthouse in Santa Barbara – which eventually the judge stopped, threatening “Jackson’s Team” with contempt of court citations if such did not stop. “Jackson’s Team,” accordingly, did cease to engage in such public displays. If only Judge Ito in the “OJ” case had been so bold. He lost control of his case – something a judge should never let happen – and it was a lesson for all trial judges. Since the “O.J.” trial, it appears that courts and judges have taken great pains to control what goes on, even to the media’s discontent.

In some cases, judges have ruled that cameras (video and photographic) were not allowed in the courtroom. This is done to protect the witnesses and the integrity of the proceedings. The judge in the

Kobe Bryant case appears to have kept the media hype down considerably by issuing “gag orders,” disallowing cameras in the courtroom, and controlling the proceedings. Good for that judge. I don’t mean to suggest that the media should not report on one case, but because of the issues, and subject matter, allowing cameras or full access to the proceedings would be highly prejudicial to the proceedings and the parties in my view. True, this is a “sensational” case to the media and public. However, this does not mean that information about one case should be gathered in a “sensational” manner.

In California, there are special Court Rules governing photographing, recording and broadcasting in court, which in its preamble states: “The judiciary is responsible for ensuring the fair and equal administration of justice. The judiciary adjudicates controversies, both civil and criminal, in accordance with established legal procedures in the calmness and solemnity of the courtroom. Photographing, recording, and broadcasting of courtroom proceedings may be permitted as circumscribed in this rule if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected.” The rule gives trial judges appropriate discretion to control pre-trial and trial process using terms such as “dignity,” “fair and equal,” “calmness,” and “solemnity” to ensure that the proceedings are conducted without any impairment to the process or the parties. There are delineated criteria for the court to determine if there should be media coverage at all, the first of which is the “[i]mportance of maintaining public trust and confidence in the judicial system.”

Despite arguments that the First Amendment and other constitutional rights are involved, which give the public, through the media, a “right to know” and perhaps “see” what is going on as it is unfolding, the court’s primary obligation in determining how a case of public interest should be reported on by the media is to the parties involved and the process itself. The circus comes to town once a year and should never take place in or around a courtroom.

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