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Bruce Strauch

The Citadel, strauchb@citadel.edu

Bryan M. Carson

Western Kentucky University, bryan.carson@wku.edu

Jack Montgomery

Western Kentucky University, jack.montgomery@wku.edu

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LEGAL ISSUES



Section Editors: **Bruce Strauch** (The Citadel) <strauchb@citadel.edu>
Bryan M. Carson, J.D., M.I.L.S. (Western Kentucky University) <bryan.carson@wku.edu>
Jack Montgomery (Western Kentucky University) <jack.montgomery@wku.edu>

Cases of Note — La-La Land and the Anti-SLAPP Statute

Column Editor: **Bruce Strauch** (The Citadel) <strauchb@citadel.edu>

John Doe v. Gangland Productions, Inc; A&E Television Networks, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 2013 U.S. App. LEXIS 19102.

Defendant **Gangland Productions** takes TV viewers up close and personal with America's most vicious street gangs and law enforcement's valiant battles to barely contain them. In their search for low-life horror stories, they decided to take a look at a white supremacist gang called "Public Enemy Number 1" or "PEN1 Death Squad." This last bit of creativity is derived from their devotion to an anarcho-punk/deathrock band "Rudimentary Peni."

And that comes from the lead guitarist having learned that the clitoris is a rudimentary penis. Said guitarist is a fan of H.P. Lovecraft and has personally spent time in mental institutions.

Well, the show certainly sounds like fun. Meth-freak killers covered in jailhouse swastikas and invocations to Odin.

Plaintiff **John Doe** (although what the point of concealing his identity is now beats me) was a police informer induced to talk to the **Gangland** producer. **Doe** had never been a member of said gang of drooling, stone-killer Nazis, but he had been a childhood friend of **Scott Miller**, a co-founder of the fun-loving group. And, wouldn't you know, **Miller** had been "allegedly" murdered by them.

And now we get a nice question of fact. **Doe** says he wore a hat and bandana as he entered the interview room and insisted his life wouldn't be worth a dare-I-say plug nickel if his identity got out. He said **Producer** induced him to remove the garb, promising his face would be concealed by the production process.

Producer asserts **Doe** wore nothing, and was shown on the monitor how he would appear. He also provided photos of himself displaying his artistic gang tattoos. He further signed a release that permitted the revelation of his identity and "...acknowledges that revealing Participant's real name and identity in the Program may be dangerous for Participant and may result in bodily harm or death to Participant."

Sure. That makes sense. They were paying him Hollywood moolah.

Doe claims he signed a document he was told was "just a receipt" for his \$300 payment.

That's all?

He said he is dyslexic and illiterate.

Why do I have no trouble believing that?

That he had his girlfriend with him, but she was not allowed to read the document because it was just a receipt. And he never got a copy of what he signed.



Whether he signed or not, why did they do this to him? Were they looking for a sequel when he was rubbed out?

And Now For His Fifteen Minutes of Fame

The show aired on the History Channel. Some of the Public Enemy charmers talked about their penchant for savage violence and their excessive drug consumption. Their faces were obscured. Then **Doe's** face appeared in utter detail along with his nickname.

The episode dealt with the sudden demise of co-founder **Scott Miller** who had been unwise enough to be interviewed on TV.

Um, just like this? Well, sort of.

His face had been covered, but he was easily identified by his tattoos and personal traits.

Yes, the meth-twitch and those permanent SS flashes inked on your throat are kind of a give-away.

And **Doe**, with his face revealed and his nickname aired, chatted about murder, identity theft, and the meth commerce.

And I'm sure he about had a cow while watching the show.

And so — Presumably from a Hidden Location — Doe filed suit.

And it was the predictable tortsy stuff: (1) appropriation of likeness; (2) public disclosure of private fact; (3) false promise; (4) negligent infliction of emotional distress; (5) intentional infliction of same. He says he was evicted from his apartment and barraged with death threats. He is no longer employable as a snitch, and he's had a whole bunch of emotional distress.

Gangland Productions filed an anti-SLAPP motion which was denied and then appealed.

Anti-SLAPP

We previously encountered anti-SLAPP (Strategic Lawsuit Against Public Participation) in this exciting column in a last-soaked **Paris Hilton** lawsuit. It's a California statute designed to protect free speech against ruinous frivolous lawsuits. But **Paris'** suit had merit

because **Hallmark** had shamelessly exploited her image without payment of the requisite big bucks. *Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2010).

Documentary TV shows are just the sort of free speech exercise in connection with an issue of public interest it's meant for.

And there's no point in going through the three, densely-packed pages of legal jabber establishing that. And Gangland has met their initial burden under anti-SLAPP.

But that doesn't mean that TV can't be sued for libel, invasion of privacy, etc. In the second phase of the analysis, they look at whether the suit is frivolous, or to the contrary, **Doe** has a likelihood of winning. *Wilson v. Parker, Covert & Chidester*, 28 Cal. 4th 811, 821 (2002).

The Release

At this stage of the suit, the effect of the release is not determined. He signed it, but he can demonstrate fraud in the execution if he can show he did not know what he was signing. *Vill. Northridge Homeowners Ass'n v. State Farm Fire & Cas. Co.*, 50 Cal. 4th 913, 921 (2010). And at best being able to read a sign for beer is a pretty classic demonstration. Along with being brain dead.

Public Disclosure of Private Facts

Well, his identity was certainly disclosed to the public. **Gangland** does not dispute that connecting a person "with a violent gang, if done involuntarily, may be offensive and objectionable to the reasonable person."

I know that's just the legal jargon, but it's almost like they're trying to be funny.

Intentional Infliction of Emotional Distress

If they lied to him and then exposed his face, that sure does seem kind of extreme and outrageous and the sort of thing that would cause severe emotional distress.

False Promise

This is nothing more than fraud, which goes back to the release issue.

AND the Ninth Circuit held that anti-SLAPP applies, but TV can't go around willy-nilly handing people over to PEN1 Death Squads and remanded the case for **Doe** to make his case.

If he lives that long. 🐻