FIRST AMENDMENT LITIGATOR TO SPEAK AT ANNUAL MEETING IN NEW YORK

Every society throughout history has hammered out a set of rules for controlling speech, in other words, has grappled with the issue of censorship.

Picture a condominium complex. Imagine a resident couple fighting inside their unit on an otherwise quiet Sunday afternoon. Their words become louder and cruder, escalating to profane. Upright neighbors are mortified by the scatological and sexual terms. Children hear the vulgarities.

At the next residents' meeting, neighbors object, not just to the noise, but to the vulgarity. The couple – now reconciled and calm – asserts their rights to use whatever words they choose in talking to one another, even if someone else is scandalized. Freedom, someone's freedom, is going to suffer, whatever the outcome.

Who can tell someone how to speak? Who can speak in ways offensive to listeners? Where is the line drawn? What role does the government have in this dispute? How did cavemen and tribes in grass huts centuries ago solve the problem of unwanted speech?

Bob Corn-Revere, former Chief Counsel to Chairman James H. Quello, Federal Communications Commission, has been struggling intellectually and professionally with questions as fundamental as these for most of his career. Now, as a partner of the Washington, D.C. office of Davis Wright Tremaine, he is in the middle of the turbulence relating to controls on broadcast "indecency" and profane language.

Bob represented CBS Corporation in challenging the $550,000 penalty levied by the Federal Communications Commission (FCC) as a result of the Commission's finding that the 2004 Super Bowl halftime show featuring Janet Jackson and Justin Timberlake was indecent under its rules. On June 29, 2012, the U.S. Supreme Court let stand a 3rd Circuit decision to throw out the $550,000 indecency fine imposed for the airing of the "wardrobe malfunction". Although Chief Justice Roberts agreed with the denial of the

appeal, he grumbled that Timberlake and Jackson "strained the credulity of the public by terming the episode a 'wardrobe malfunction'" and added, "As every school child knows, a picture is worth a thousand words, and CBS broadcast this particular picture to millions of impressionable children."

In a second case before the Supreme Court this year, Bob also represented CBS Corporation in a consolidated appeal challenging the FCC's application of broadcast indecency rules to "fleeting expletives" in live awards shows and brief nudity in the program *NYPD Blue*. On June 21, 2012, the U.S. Supreme Court held that FCC decisions targeting "fleeting" broadcasts of allegedly indecent material were unconstitutional under the Due Process Clause.

To round out his June, Bob enjoyed a decision on the last day of the Court's announcement of decisions in *United States v. Alvarez,* in which he had submitted an amicus brief on behalf of the Reporters Committee for Freedom of the Press and twenty-three media organizations urging the Supreme Court to hold that the Stolen Valor Act violates the First Amendment and that the government should not be empowered to be the arbiter of truth. Alvarez was a candidate for minor office in California when he falsely claimed he had won the Medal of Honor. The Supreme Court cited Corn-Revere's amicus brief and held that the Stolen Valor Act was unconstitutional, nullifying the criminal conviction under that Act.

Quite the month! Overshadowed, of course, by the fact that two of the decisions came out on the same day as, or the day after, the Court's ruling on the Affordable Care Act. Borrowing a media phrase, it was not a slow news day! But Bob, a former journalist with a master's degree in communications, understands that as well as anyone. He took it in stride.

One of his cases in 2003, however, was not like any other. That was the year Bob received a call from Governor Pataki's office in New York about his petition, pro bono, to the Governor for a posthumous pardon for Lenny Bruce. Bruce, a groundbreaking comedian, had been convicted in 1964 of violating a New York state obscenity law for three stand-up performances at a Greenwich Village coffeehouse. Rather than serve a prison term, Bruce lit out for California, but died soon thereafter. In his petition on behalf of Bruce and his family, Bob said, "Bruce's raw, free-form comedic style. ... covered a wide range of topics, including racism, organized religion, homosexuality and social conventions about the use of language.... [A] pardon >>

It is a violation of federal law to air obscene programming at any time. It is also a violation of federal law to air indecent programming or profane language on non-cable channels during certain hours, but one profane word (beginning with "F") is proscribed at all times on those channels.

The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities."

would be an important reaffirmation of the basic principles upon which a free society is based." The Governor agreed, granting the first posthumous pardon in the State of New York.

The passion of Bob's words in the Bruce petition may shed some light on the origins of his name. He started out in Illinois as just Bob Corn. Then he married his great love, Sigrid Fry, today an accomplished scholar, a former Director of Bioethics Studies at the Cato Institute and an expert in the field of Bioethics and Health Policy. Both kept their own surnames. But as kids arrived, Bob and Sigrid wanted them to have a common last name. "Whether you call yourself Corn-Fry or Fry-Corn, it sounds like something off a menu. So, we decided to give the kids a new last name, which we legally added to our names." And what name did they choose? Why, after studying names at the Library of Congress, Revere was just the thing! An early crier for this nation's freedom, a rebel and a man of passion. So now he's Corn-Revere, Sigrid is Fry-Revere and the four children are just the Reveres.

Bob is not afraid of being unconventional. He has been heard to say, "Anyone who is afraid of representing an unpopular view should consider another line of work." And he lives that creed even when close to home. He was lead counsel, again pro bono, in a case about the libraries in his own county in Virginia. In *Mainstream Loudoun v. Board of Trustees of the Loudoun County Public Library* plaintiffs prevailed in the first case to hold that mandatory content filtering of public library Internet terminals violates the First Amendment. "I live there and my kids use those libraries. It doesn't help our children to tell them the First Amendment doesn't apply in libraries."

But how would Corn-Revere come out on the condominium crisis posed at the beginning of this piece? The vulgar couple versus the outraged families, some with tender-eared children? Hard to predict. Some insight can be gained from his comments about testimony he was called upon to give before Congress on the Internet and the Fourth Amendment. He said that it was much more complicated than arguing in court, citing the multitude of emotional factors. But he added, "A lot of people, when they talk about the issue, talk about how they approach it as parents. Now, I'm a parent, but I don't confuse my role as a parent with what I think the law is."

And his cases prove it. In addition to those discussed, he has been involved in:

United States v. Stevens
Co-counsel for respondent in case challenging the constitutionality of a federal law prohibiting depictions of "animal cruelty." The Court ruled 8-1 that the law violates the First Amendment.

United States v. Playboy Entertainment Group, Inc.
Lead counsel for Playboy Entertainment Group in a successful challenge to a provision of the Telecommunications Act of 1996 that restricted Playboy Television. This case established that cable television networks are fully protected by the First Amendment.

Ashcroft v. ACLU
Submitted an amicus brief in case challenging the constitutionality of the Child Online Protection Act. The Supreme Court held that the Act violates the First Amendment.

Reno v. ACLU
Submitted an amicus brief for Playboy Enterprises, Inc. in case challenging the constitutionality of the Communications Decency Act. The Supreme Court held that the Act violates the First Amendment, and that the Internet receives full constitutional protection.

Berger v. City of Seattle
Counsel for appellant in successful First Amendment challenge to restrictions on use of the public forum in the Seattle Center, a multipurpose cultural and entertainment venue.

Fellows of the College will have the opportunity to hear Corn-Revere give an inside view of some of the latest disputes regarding free speech, indecency, wardrobe malfunctions, fleeting naked bottoms, and maybe even the Do Not Call Registry at the Annual Conference in New York in October. ■

GARY BOSTWICK,
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Gary L. Bostwick was inducted in 1997. He is the Chair of the Emil Gumpert Award Committee and focuses his Los Angeles, California, practice on First Amendment and media issues.