

LJP LAW JOURNAL PRESS®

[Click here to order](#)

Due Diligence in Business Transactions

by Pauline B. Heller and Melanie L. Fein

Save 25%



Law.com Home Newswire LawJobs CLE Center LawCatalog Our Sites Advertise [Sign Out](#)

An **ALM** Web site

THE AM LAW LITIGATION DAILY

This Site Law.com Network Legal Web

Search the Legal Web [Go >>](#)

[HOME](#) [THE AM LAW DAILY](#) [THE AMERICAN LAWYER](#) [RANKINGS](#) [VIDEOS](#) [MAGAZINE](#) [ADVERTISE](#) [SUBSCRIBE](#) [FREE ACCESS](#) [CONTACT US](#)

Font Size: [+](#) [-](#) [Print](#) [Email](#) [Comment](#) [Reprints & Permissions](#)

Tenth Circuit Revives Collegiate Satirist's Damages Claims Against D.A. Who Authorized Search and Seizure at His House

Advertisement

By Victor Li

July 20, 2010

[Post a Comment](#)

Some people just can't take a joke.

In 2004, a University of Northern Colorado student named Thomas Mink created an online journal in which he poked fun at a prominent professor, Junius Peake, by way of a satirical "editor" Mink dubbed "Junius Puke." Professor Peake was not amused, to say the least. He went to the police to initiate a criminal case against Mink under Colorado's criminal libel law. The Greeley, Colo., district attorney's office unleashed the full force of the law on Mink, authorizing a search and seizure of the home he shared with his mother. The police seized their computer and other materials relating to Mink's website, The Howling Pig.

But it looks like Mink could yet have the last laugh. On Monday, the U.S. Court of Appeals for the Tenth Circuit revived his damages case against the Greeley assistant D.A. who authorized the search warrant. A unanimous three-judge panel decided, in essence, that however sophomoric Mink's humor, no reasonable person could have construed "Junius Puke" as anything but Constitutionally protected satire. [Hat tip: [How Appealing](#).]

Tenth Circuit judge Stephanie Seymour (no, not that Stephanie Seymour) held that Denver federal district court judge Lewis Babcock erred in 2008 when he dismissed Mink's suit against Susan Knox, the prosecutor who issued the affidavit in support of the search warrant. The appellate court held that Knox's qualified prosecutorial immunity (her claim to absolute immunity had been rejected by Tenth Circuit in 2007) did not shield her from liability in this case because a reasonable prosecutor should have known Mink was not engaging in criminal behavior, and, moreover, that the warrant Knox authorized was overly broad, violating the Fourth Amendment's particularity requirement.

The Tenth Circuit panel, which also included Judges Terrence O'Brien and Neil Gorsuch, cited a 1982 precedent, *Pring v. Penthouse*, in reaffirmed the notion that parody, satire, and hyperbole are Constitutionally protected forms of speech, even when the subject of the joke isn't necessarily a public figure.

The Howling Pig entries that inspired the search warrant featured digitally altered photos of Professor Peake, including one featuring him with dark sunglasses and a Hitler mustache, as well as one depicting him as the Demon from the rock band Kiss. The website, which still exists, has replaced Junius Puke with a new "editor," former Colorado Congresswoman Helen Musgrave dressed as Tinky-Winky from "The Teletubbies." (So far, she hasn't asked any authorities to seize Mink's computer.)

Mink is represented, pro bono, by Holland & Hart, which is working with the ACLU on the case. "We were very happy about the ruling," Holland partner Marcy Glenn told us. "This has been long road for my client." Glenn said the case now heads back to the district court for trial. "Technically, [the trial involves] the Fourth Amendment issue, but I'm not sure what there is to try, beyond damages," she said. "The Tenth Circuit decision is very clear that there was no probable cause and that the warrant lacked particularity. Those facts are all essentially undisputed. I don't know how the D.A.'s office could create any trial issues on the fact of a Fourth Amendment violation."

Glenn's co-counsel, Bruce Jones of Holland & Hart, said the Tenth Circuit ruling sends a strong message: "Prosecutors are supposed to serve as a gatekeeper, someone who is supposed to say 'You know, this isn't prosecutable offense. It's not an offense at all,'" he told us.

Knox's attorney, Andrew Ringel of Hall & Evans, declined comment.

Prosecutorial immunity has come under fire as of late. In January, a case involving a civil suit against an assistant district attorney accused of falsifying evidence settled on the eve of oral arguments before the U.S. Supreme Court. This fall, the Justices will hear another prosecutorial immunity case, *Connick v. Thompson*, which considers whether a D.A. can be held liable for failing to properly train assistant prosecutors.

2010 GC Compensation Survey

CORPORATE COUNSEL

lawjobs.com

TOP JOBS
Staff Attorney
Stradley Ronon
District of Columbia

Labor & Employment Associate
Akerman Senterfitt
Miami, Florida

[MORE JOBS >>](#)
[POST A JOB >>](#)

Advertisement

Go now.

2010 GC Compensation Survey

CORPORATE COUNSEL

[Terms and Conditions](#) | [Privacy Policy](#)

[About ALM](#) | [About Law.com](#) | [Customer Support](#) | [Reprints](#)
Copyright 2010. ALM Media Properties, LLC. All rights reserved.

