

PUBLIC CITIZEN LITIGATION GROUP

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June 28, 2005

James M. Flynn, Clerk
Appellate Division Clerk's Office
Hughes Justice Complex
25 West Market Street
P.O. Box 006
Trenton, NJ 08625-0006

Dear Mr. Flynn:

Re: *Uhrmann et al. v. Guenther et al*
Docket No. AM-688-04-T2
Motion No. M-005458-04.

On behalf of Public Citizen and the American Civil Liberties Union Foundation of New Jersey, we write to inform the court that we are currently making arrangements to represent the plaintiffs-appellants, solely in connection with this appeal, should leave to appeal be granted. In the alternative, we would be prepared to present the views of Public Citizen and the American Civil Liberties Union Foundation of New Jersey as amici curiae on the important issues that the case presents.

Public Citizen and the American Civil Liberties Union of New Jersey have significant concerns about the civil liberties issues raised by the motions for leave to appeal from the order requiring plaintiffs to deliver the hard drives of their computers for inspection by the defendants, and for a stay pending appeal of any requirement that such hard drives be produced. We question the propriety of the order from two different perspectives.

The first is that the order seems to make an end-run around the requirement that a party meet a four-part legal, evidentiary, and equitable balancing test before being permitted to identify anonymous Internet speakers. Public Citizen and the American Civil Liberties Union Foundation of New Jersey were amici curiae in *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (N.J. App. 2001, the case in which this standard was established. *See also Donato v. Moldow*, 374 N.J. Super. 475, 865 A.2d 711 (App. Div. 2005) (court cites, with apparent approval, trial court refusal to countenance similar end-run on *Dendrite*). Defendants here have not alleged that the particular communications, whose authors they wish to identify, are legally actionable, nor have they produced any evidence to support legal claims based on those statements. Their only justification for seeking to identify the authors is a vague claim that such identification is needed to test the credibility of the plaintiffs, but defendants' papers below do not appear to demonstrate that the credibility of the plaintiffs is genuinely at issue in connection



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with this action, which alleges misspending of public funds in breach of public officials' fiduciary duties.

Wholly apart from the *Dendrite* issues, the hard drive disclosure order raises serious free speech and privacy issues. In the course of discovery, a party is normally required to provide relevant information, and there is a normal presumption that persons will respond honestly and completely to discovery requests by providing all relevant and non-privileged information in their possession. A party is not required to open up his entire file system, or indeed his entire home, for inspection by his adversary based on an assumption that the response to ordinary discovery requests may be less than complete. Yet that is precisely analogous to the order that was issued here, based on nothing more than defendants' expression of suspicion that plaintiffs might not provide a complete response, and that defendants would need to examine plaintiffs' computers in order ensure that all such information was provided. And, given the sorts of materials that most people store on their personal computers, it would set a dangerous precedent if a party to a lawsuit could, without a showing of substantial need or threatened destruction of evidence, require his adversary to offer up his personal computer for inspection and copying.

The only justification put forward by defendants' counsel for seeking the hard drive, which reported that his professional responsibility to his clients required him to seek such information to test their credibility, could be advanced in every case. If this is the law, then the price of filing a lawsuit is to make all of the information stored on one's computer available to the scrutiny of an adversary who could have his own reasons for wanting that information. That is a stiff price to pay for exercising the right to petition the court for redress of grievances.

Given the significant privacy and free speech implications in the appeal that plaintiffs seek to bring before this Court, should leave to appeal be granted, undersigned counsel, along with ACLU Cooperating Attorney Richard Ravin, will immediately file a Notice of Appearance and plaintiffs will no longer be proceeding pro se.

Sincerely yours,



Paul Alan Levy



Edward Barocas

cc: Ronald Heymann, Esquire