NOT FOR PUBLICATION- FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PETER ANDERSON,	)	
Plaintiff,	)	Civil No. 1996-118
v.	)	
GOVERNMENT OF THE VIRGIN ISLANDS d/b/a VIRGIN ISLANDS POLICE DEPARTMENT, RAMON DAVILA, KENNETH MAPP, ROBERT SOTO, and ELTON LEWIS,	)	
Defendants.	)	

ATTORNEYS

Lee J. Rohn
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For the plaintiff,

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For the defendants.

MEMORANDUM

Moore, C.J.

I. **INTRODUCTION**

On October 2 and 3, 1996, this Court held an evidentiary

hearing on plaintiff's motion for a preliminary injunction. Plaintiff requested several forms of relief. First, Mr. Anderson asked that the Court issue an injunction ordering that the defendants cease any and all surveillance of himself, and his Attorney, Lee J. Rohn [sometimes "Rohn" or "Attorney Rohn"], which may have been initiated and maintained because of the law suit filed by Attorney Rohn on behalf of Mr. Anderson. Second, Anderson asked that the defendants be ordered not to retaliate against the officers or agents because of their testimony at the hearing.

The defendants denied that any surveillance of Peter Anderson or Lee Rohn was initiated as a response to the lawsuit filed by Attorney Rohn on behalf of Anderson, and requested that the Court reject plaintiff's request for an injunction. The defendants filed a motion to disqualify Attorney Rohn as counsel on the ground that she would be required to give testimony in violation of the Model Rules of Professional Conduct. The defendants also moved to strike certain exhibits included in the plaintiff's motion for injunctive relief on hearsay grounds.

The reasons set forth herein supplement those dictated into the record at the end of the hearing and memorialize the Court's entry of an order granting plaintiff's motion for an

injunction forbidding further surveillance grounded solely on the filing of the lawsuit will be granted.

II. **THE DEFENDANTS' MOTION TO DISQUALIFY**

The defendants filed a motion asking that Attorney Rohn be disqualified under Rule 3.7(a) of the Model Rules of Professional Responsibility,[1] which prohibits an attorney appearing as counsel in a case in which she is likely to be needed as a witness. The defendants further asserted that Rohn was using this case as a pretext to halt legitimate investigation into crime.

The question of personal involvement in a lawsuit by an attorney is not one to be considered lightly. Attorney Rohn's personal involvement in this case may already have added to its complexities and the difficulty it poses, considering her "interviews" with the press even before the hearing on this motion. At the outset of the hearing, however, the Court denied this motion, reasoning that disqualifying Attorney Rohn from representing the plaintiff on the merits would have been to reward the very conduct which was the subject of Mr. Anderson's request for injunctive relief, even considering the

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[1] The Model Rules of Professional Conduct are made applicable to this Court by LRCi 83.2.

danger of Attorney Rohn's personal involvement with the case. Moreover, Ms. Rohn represented that she would not personally be giving any testimony. Since Rohn was not required to be a witness at the hearing, and since granting relief would have condoned attempts of the defendants to affect the judicial process, Attorney Rohn was allowed to appear for Anderson at the hearing. This Court considers her actions after the hearing and efforts to try the case in the media as highly unprofessional and as very likely exacerbated by her close personal involvement with the case. The potential for frustrating the fair and effective resolution of the merits of this case is obvious. Inflammatory remarks from the attorney for one side of a case in litigation can only further skew public perception of an already volatile public matter. This post-hearing conduct of Ms. Rohn is dealt with later in this Memorandum.

III. **THE DEFENDANTS' MOTION TO STRIKE EXHIBITS**

The defendants also filed a motion to strike the exhibits attached to plaintiff's motion for injunctive relief, because they contained inadmissible hearsay for which plaintiff had failed to supply adequate foundation. The responsibility to determine the admissibility of evidence belongs to the trial

judge, who must exercise discretion under the Federal Rules of Evidence and the existing case law. *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed.2d 144 (1987). When there is no jury, and when dealing with preliminary matters such as the injunctive relief requested by plaintiff, the judge may be more liberal in admitting evidence than would otherwise be the norm before a jury. *See, e.g., Builders Steel Co. v. Commiss'r*, 179 F.2d 377, 379 (8th Cir. 1950); *Securities and Exch. Comm'n v. Glass Marine Indus.,* 194 F. Supp. 879 (D. Del. 1961); *United States v. 396 Corp.*, 264 F.2d 704 (2d Cir.), *cert. denied*, 361 U.S. 817 (1959); *In Gulf States Utils. Co. v. Ecodyne Corp.*, 635 F.2d 517 (5th Cir. 1981). In such non-jury proceedings, it would be inappropriate to exclude such exhibits until they were offered through a witness at the hearing.

Accordingly, the motion was denied, without prejudice to objection when and if the exhibits were offered by the plaintiff. As it turned out, the exhibits were authenticated on the witness stand by individuals who had either prepared them or had personal knowledge of their contents. The proper foundation having been laid by the plaintiff, the exhibits were admitted into evidence and were given the weight the Court found to be appropriate.

IV. **FINDINGS OF THE COURT**

At some time before December 28, 1995, the NSF initiated an investigation of a suspected drug area in the de Chabert housing project. Over two days, December 28-29, 1995, the NSF placed this area under videotape surveillance, during which one Curtis Jacobs, a/k/a "Isis," was observed driving into the scene in a red Jeep Cherokee, getting out and meeting with known drug figures, appearing to puff on a marijuana cigarette, driving off, and returning later. Subsequent to and based on the video surveillance, numerous arrests were made, although Curtis Jacobs was not among those arrested.

The NSF agents suspected that Curtis Jacobs may have been engaged in drug trafficking, and sought to determine who was supplying him with drugs. He was known to the agents as having been convicted in St. Croix in 1993 of possession of cocaine with intent to distribute. (Pl. Ex. 23.) Toward that end, the agents attempted to find out who owned the red Jeep Cherokee Jacobs was seen driving during the video-taped surveillance. Although they knew by late January 1996 that the Jeep belonged to Lee J. Rohn, little evidence was offered of any immediate follow up on this information.

On February 22, 1996, the *St. Croix Avis* reported that

Peter Anderson had filed a suit against the Government of the Virgin Islands and Ramon Davila for various claims related to employment discrimination. (Plaintiff Ex. 5.) The newspaper also reported that Mr. Anderson was represented by Attorney Lee J. Rohn.

Within a few days of the publication of the article in February, Robert Soto, Assistant Director of the NSF ["Soto"], ordered a National Crime Information Computer ["NCIC"] check on Lee J. Rohn. (Pl. Ex. 22.) Internal NSF memorandums introduced at the hearing confirmed the testimony of Achille Tyson, one of the NSF agents involved in the December video surveillance, that Soto assigned Tyson to investigate Mr. Jacobs, which included pursuing the red jeep connection to Lee Rohn. (*E.g.*, Pl. Exs. 13 & 14.) A case file was opened under the name of Lee J. Rohn (Pl. Ex. 13-18.) and surveillance photographs were taken of Rohn's Jeep, of Rohn talking with Anderson outside of the Jeep, and of Anderson's home. (Pl. Exs. 6-12.) The existence of these photos was made known to Soto, who told Tyson "this is great," (Pl. Ex. 21) and according to Tyson, requested further surveillance of Rohn. Tyson elaborated on this at the hearing, testifying Soto told him that this type of surveillance was just what Mr. Davila

wanted.[2] Mr. Anderson received anonymous phone calls that he was under surveillance and eventually received copies of the surveillance photos (Pl. Exs. 6-12), which were surreptitiously and anonymously delivered to his car. Anderson had earlier accidentally come upon information that the police had attempted to get a pen register placed on his home phone. (Pl. Ex. 1.) There was also evidence of concern among the NSF agents of the possibility of wiretapping and the use of pen registers against them. (Pl. Ex. 19.)

Upon consideration of this and other evidence presented at the hearing, the Court found that the defendants had engaged in surveillance of Peter Anderson and Lee Rohn as a direct result of the lawsuit Mr. Anderson filed. The Court noted that the initial efforts to determine the ownership of the red Jeep and Mr. Jacobs' connection to it were properly based upon reasonable suspicion arising from information received in an ongoing criminal investigation of drug activity. By late February 1996, however, what may have started as a proper investigation was converted and perverted into an effort to "dig up dirt" on Rohn and her client in response to the lawsuit. It is simply too large a coincidence

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[2] Although there was some confusion among the witnesses, the Director, J. Derrick Hill, testified that the Narcotic Strike Force ["NSF"] is a separate agency under the Office of the Governor and that he reports directly to defendant Ramon Davila as the Virgin Islands' "Drug Czar."

that the NCIC check performed on Lee J. Rohn was requested on February 23, 1996, the day after the story about the filing of Anderson's lawsuit against the defendants appeared in the newspaper. It also defies logic that the photos of Peter Anderson's house were taken "by mistake," as the defendants would have us believe. According to the defense, agents involved were told to photograph Lee Rohn's house, which was supposedly necessary as part of this ongoing investigation. It is far too improbable to believe that Agent Tyson did not know where Peter Anderson lived, and by another amazing coincidence, took pictures of Anderson's house when he was intending to photograph Rohn's house. Agent Tyson, of course, testified that he was doing exactly what Soto instructed when he photographed Anderson's home.

The defendants attempted to legitimize their surveillance of Attorney Rohn on the basis of their supposedly ongoing investigation of Curtis Jacobs and in an attempt to find Mr. Jacobs' supplier. Defendants' witnesses repeatedly stated that they were investigating the vehicle in which he had been videotaped. However, Soto and the NSF agents knew in January that the vehicle Mr. Jacobs had been driving belonged to Lee Rohn. It was no coincidence on February 23, 1996, the day after the story of Mr. Anderson's lawsuit was reported, that

Soto and the NSF chose to act on their knowledge that the Jeep Cherokee was registered to Attorney Rohn. The defendants' witnesses testified that the purpose of the investigation was to uncover Curtis Jacobs' supplier. This is not credible, however, because there is no open NSF case file under the name of Curtis Jacobs. The only evidence presented of an open NSF case file containing information and reports regarding the December surveillance and Curtis Jacobs was the one under the name of Lee Rohn. The defense argument that the investigation and surveillance of Lee J. Rohn was undertaken to gain information relating to Curtis Jacobs and his supposed supplier is simply without any credibility.

The defendants conceded that there was no legitimate reason to place Peter Anderson under surveillance. In essence, then, defendants consented to the entry of an injunction against further surveillance of Mr. Anderson. At best, the evidence showed that the surveillance of Rohn may have begun as a marginally proper investigation of criminal activity. At worst, it was a vindictive and abusive use of law enforcement power in an effort to intimidate and manipulate the judicial process. Even when viewed in a light most favorable to the defendants, there is no basis on this record for the surveillance of Attorney Rohn to continue, and important

reasons for the surveillance to stop.

V. **STANDARD FOR A PRELIMINARY INJUNCTION**

After showing that the activity complained of was actually occurring, the plaintiff must meet certain standards in order to be granted injunctive relief, since injunctive relief is considered an extraordinary remedy. *Turner Broadcasting Systems, Inc. v. Federal Communications Commission*, 507 U.S. 1301 (1993). The plaintiff must meet four general requirements. The moving party must:

> (A) produce evidence sufficient to convince the court that in the absence of relief he will suffer irreparable injury;
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> (B) show a likelihood of success on the merits;
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> (C) demonstrate that granting relief will not result in greater harm to the defendants; and
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> (D) establish that granting the relief will be in the public interest.

Olmeda & Llanos v. Schneider, 889 F. Supp. 228, 231 (1995) (citing *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 931 (1975); *ECCRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987); *SI Handling Systems, Inc. v. Heisley,* 753 F.2d 1244, 1254 (3d Cir. 1985)). All of these factors are balanced with regard to a final decision, and the strength of any one factor may affect the showing with regard to another. *Marxe v. Jackson*,

833 F.2d 1121, 1128 (3d Cir. 1987).

A. **Irreparable Injury**

A clear showing of irreparable injury is a necessity in obtaining injunctive relief. *Marxe v. Jackson*, 833 F.2d at 1128 (citing *Moteles v. University of Pennsylvania*, 730 F.2d 913 (3d Cir.), *cert. denied,* 469 U.S. 855 (1984); *A.O. Smith Corp. v. F.T.C.,* 530 F.2d 515, 525 (3d Cir. 1986)). The injury must be one of such a nature that money alone could not remedy it. *Olmeda & Llanos,* 889 F. Supp. at 231. "It is well established that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Olmeda & Llanos,* 889 F. Supp. at 231 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The mere assertion of a First Amendment claim is not sufficient to establish irreparable injury. Instead, the plaintiff must show a chilling restraint on free expression which was purposefully implemented by the defendants. *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965); *Wooley v. Maynard*, 430 U.S. 705 (1977).

The facts surrounding the claims in plaintiff's motion for injunctive relief are even more egregious than those at issue in *Olmeda & Llanos*, a case dealing largely with deprivation of First Amendment rights of freedom of association. Mr. Anderson's motion, however, alleges not only

the deprivation of First Amendment rights, but also the denial of due process rights, in that the defendants' actions were intended to curtail Anderson's access to the courts. By placing both plaintiff and his attorney under surveillance in order 'to dig up dirt,' the defendants attempted to interfere with or prevent Anderson from pursuing his lawsuit under the rules of the judicial system. Plaintiff's right of access to the courts was clearly infringed when his attorney of choice was placed under surveillance for the purpose of hindering her efforts on behalf of her client. Such an abuse of law enforcement power is an attempted deprivation of Anderson's right to Due Process under the Fifth Amendment. Since Mr. Anderson established that he has been deprived of his First Amendment and Due Process rights[3], he met his burden in showing irreparable injury.

B. **Likelihood of Success on the Merits**

The Court's decision in *Olmeda & Llanos* is also instructive on this requirement:

> Through 42 U.S.C. § 1983, Congress sought to give a remedy to parties deprived of constitutional rights,

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[3] The First Amendment, the Fifth Amendment (except the right to be charged by grand jury) and the second sentence of section one of the Fourteenth Amendment are made applicable to the Virgin Islands by the Revised Organic Act of 1954 § 3; 48 U.S.C. § 1561. The Revised Organic Act of 1954 is found at 48 U.S.C §§ 1541-1645 (1995), *reprinted in* V.I. CODE ANN., Historical Documents, 73-177 (codified as amended) (1995) ["Revised Organic Act"].

> privileges and immunities by an official's abuse of his position. *Hafer v. Melo*, 502 U.S. 21, 27-29 (1991); *Monroe v. Pape*, 365 U.S. 167, 172, (1961). Under the proof scheme established by the U.S. Supreme Court for such actions, a plaintiff must first carry the initial burden of establishing a prima facie case. This requires a plaintiff to come forward with evidence that constitutionally protected conduct was a substantial or motivating factor in his discharge. *See*, *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977).

Olmeda & Llanos, 880 F. Supp. at 233.

From the evidence established at the hearing, this Court found that the plaintiff has established more than a prima facie case. The evidence showed that the surveillance of Mr. Anderson and Attorney Rohn was pursued by the NSF agents as a response to the filing of the lawsuit. Freedom of association and unobstructed access to the courts are rights which are protected by the First, Fifth and Fourteenth Amendments to the United States Constitution. Since Mr. Anderson established that his constitutionally protected conduct was a substantial and motivating factor in the defendants' actions against him, he has shown actual success in proving the merits of the allegations of his motion, not merely a likelihood of success in proving his claims of discrimination at trial.[4] Such

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[4] Normally, in proving a likelihood of success on the merits, the plaintiff must show a probability of success on the ultimate merits of the case as alleged in the complaint. In this case, however, the motion for a preliminary injunction was based upon actions apart from, and arising subsequent to, those which motivated Mr. Anderson to file his complaint. As such, this motion for injunctive relief could be considered a separate 'trial

success of proof on the merits is to be weighed along with the balance of harms and the public interest factors. *Constructors Ass'n v. Kreps*, 573 F.2d 811 (3d Cir. 1978). When these factors are considered as well, the case for enjoining the defendants' surveillance activities becomes even more compelling.

C. **Balance of Hardship**

In this case, the defendants have represented, mainly through NSF Assistant Director Soto, that there was and is no surveillance of any kind of Mr. Anderson, and that there was and is no surveillance of his attorney, Lee J. Rohn, because of her role in the lawsuit. There was also testimony from Director Hill that the 'investigation' which prompted the surveillance of Rohn's vehicle has been suspended as a result of this action. Since defendants assert that they have not conducted any surveillance of Peter Anderson or Lee J. Rohn as a result of this lawsuit, there can be no hardship to the Government or the other defendants resulting from an order to stop doing what they say they are not and have not been

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on the merits,' as opposed to a preliminary granting of relief which will later be proved at a trial on the merits of the complaint. For this reason, when discussing the likelihood of success on the merits in this Memorandum, the Court is construing "merits" to mean the circumstances surrounding the surveillance of Mr. Anderson and Attorney Rohn, not the circumstances of the underlying employment discrimination claims in the complaint.

doing.[5] On the other hand, the evidence shows that such surveillance had been and was being conducted, so the harm to Mr. Anderson if relief is not granted severely outweighs the lack of harm to the Government if relief is granted. For these reasons, the balance of hardship weighs heavily in Mr. Anderson's favor.

D. **The Public Interest**

Whether the public interest would be furthered or injured by an injunction is a factor to be given considerable weight. *Yakus v. U.S.*, 321 U.S. 414 (1944); *U.S. v. Ingersoll-Rand Co.*, 320 F.2d 509 (3d Cir. 1963). In this case, it is in the public interest to grant the injunctive relief Mr. Anderson seeks. To obstruct citizens' rights under the First Amendment and Due Process Clauses of the Fifth and Fourteenth Amendments clearly goes against the public interest. *Olmeda & Llanos,* 889

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[5] Counsel for the defendants took the curious position during argument at the end of the evidentiary hearing that even though the defendants were not engaged in the activity against which relief was sought, injunctive relief should not be granted. This position was based in part on the notion that a stigma would be placed on the defendants by the granting of relief, even though they contended that the injunction would have no practical effect on them since the defendants were not engaging in the activity which the injunction would forbid. Since the Court finds that such surveillance was engaged in by the defendants, and because the effect of such a stigma pales in comparison to the effect of the infringement of Mr. Anderson's constitutional rights, as discussed in the text, *supra*, defense counsel's argument is without merit. Moreover, two days of embarrassment to the defendants might have been avoided had defendants' counsel agreed to no future surveillance of plaintiff and his attorney due to the lawsuit, after the Court at the start of the hearing required the plaintiff to state precisely what relief was being requested.

F. Supp. at 233. Free and effective access to the court system is a value which is manifestly in the public interest. While an effective police force is also in the public interest, the prohibition granted by this Court will not affect the legitimate functions of the Virgin Islands law enforcement officials because it is limited to one specific investigation, which the defendants claim they did not conduct. As upholding constitutional rights and freedoms is strongly in the interest of all members of the public, the plaintiff has met his burden in regard to this factor, especially in view of the very narrow scope of the relief granted.

VI. **THE SCOPE OF RELIEF**

Since Mr. Anderson has satisfied the necessary requirements, his motion for injunctive relief will be granted. In so doing this Court is fully cognizant that the principle of the separation of powers applies in the Territory. Contrary to the wishes of Attorney Rohn as reported in *The Daily News*, this Court has no intention of usurping the authority of the Virgin Islands Police Department and other federal and local law enforcement agencies to conduct lawful investigations. Rather, the Court's ruling in this case halted one specific instance of unlawful investigative activity,

namely the surveillance of Mr. Peter Anderson and his Attorney Lee J. Rohn, undertaken in an effort to hinder and frustrate Anderson's lawsuit against the defendants.[6] The Court has ordered that the defendants cease all surveillance begun for the purpose of hindering Mr. Anderson's access to the courts.

In granting this relief, the Court has not precluded the Police Department or the NSF from conducting legitimate investigations into ongoing criminal activity of anyone, including Lee J. Rohn and Peter Anderson. In view of the evidence of past improper activities directed at plaintiff and his attorney, however, any local law enforcement agency which believes it has lawful grounds to investigate either Rohn or Anderson will be required to obtain this Court's approval upon an ex parte showing of such legitimate factual bases before such an investigation may be undertaken. Obviously, such information must be different from and in addition to that disclosed in the course of this hearing and must be sufficient to present reasonable suspicion to justify further investigation. By requiring any local Virgin Islands law enforcement agency to obtain this Court's approval before

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[6] This Court also has no intention to expand the scope of Anderson's lawsuit to encompass overseeing the operations of the Police Department or NSF, or of imposing criminal liability on the defendants, as has been suggested in Rohn's comments to the press. Mr. Anderson's case is a civil action for money damages against the defendants, and these are the only claims which are before the Court.

opening such an investigation, Mr. Anderson's rights to pursue his lawsuit will be preserved. Further this requirement will protect the defendants from complaints from plaintiff and his counsel that they may have violated this Court's order if such investigations were to be undertaken without this Court's prior approval.

In the same vein, this Court has no interest in preventing the Police Department and the NSF from conducting legitimate disciplinary proceedings and making such personnel decisions as may be justified. We recognize that such law enforcement agencies are paramilitary organizations in which a high level of order and discipline are essential. The evidence presented shows that there may well have been 'leaks' in the Police Department or the NSF. The Court will not be drawn into any factional warfare within those agencies. We recognize that an internal investigation and disciplinary actions may well be necessary and appropriate, and also that the scope of the investigation may include certain actions which relate to activities which were the subject of testimony given by officers and agents on behalf of the plaintiff at the evidentiary hearing. The Court is confident, however, that the Government, the Police Department, and the NSF will be able to conduct thoughtfully and carefully whatever legitimate

investigatory and disciplinary actions may prove appropriate and necessary. The Court is similarly confident that there are adequate mechanisms in place to assure that any personnel actions, including transfers for the needs of the organization and disciplinary actions, are for legitimate means. Obviously, any personnel or disciplinary actions proved to have been taken against individuals **in retaliation** for giving testimony, or in an attempt to influence any future testimony, will be dealt with severely by this Court.

VII. **FAIR TRIAL ISSUES**

Even at this early stage, the Court is already faced with concerns about the ability of all parties to conduct this litigation in a fair and professional manner. This case is rife with sensitive political issues which are of great public interest. Compounding the difficulties posed by any case of such widespread public interest are the dangers associated with Attorney Rohn's repeated and inflammatory statements to the press, both print and radio.[7] The Court considers such

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[7] While plaintiff's counsel spoke to the press before the hearing on the request for a preliminary injunction, Ms. Rohn's statements made thereafter have expanded greatly, in number, length and in their invective against the defendants and the current administration. The Court notes particularly Attorney Rohn's threats to put Mr. Davila in jail (radio station WVWI, Friday and Saturday, October 4 and 5, 1996) and promises of "hundreds and hundreds of thousands of dollars in damages" which will result if the Governor does not fire defendant Davila. (Interview of Lee J. Rohn with Lee

conduct by a member of the bar to be highly unprofessional, primarily because it threatens the ability of the Court to ensure a fair trial to all parties. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.6 (1983). As is stated in the Preamble to the Model Rules, a "lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." MODEL RULES OF PROFESSIONAL CONDUCT Preamble: A Lawyer's Responsibilities, Paragraph 1. The Court will carefully examine the range of appropriate responses for dealing with Ms. Rohn's conduct and assuring that it does not continue into the future.

The Supreme Court and the Court of Appeals for the Third Circuit have recognized that in certain circumstances, a 'gag order' placed on litigants and counsel in an ongoing matter may be necessary and appropriate to ensure a fair trial. Although the Sixth Amendment[8] right to trial by jury is expressly applicable only to criminal matters, the Supreme Court has recognized that the right to a fair trial is no less

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Carl on WSTA radio on October 8, 1996.) To make such inflammatory statements to an already highly-sensitized public has the potential to skew the opinions of the public, thereby making it more difficult to choose a fair and impartial jury from among the very limited pool of jurors available on St. Croix or St. Thomas and St. John.

[8] The Sixth Amendment also applies in the Virgin Islands by virtue of the Revised Organic Act of 1954 § 3; 48 U.S.C. § 1561.

important in a civil proceeding. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978); *Craig v. Harney*, 331 U.S. 367 (1947). Fairness in jury trials, both criminal and civil, is a vital constitutional right. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976).

The Third Circuit Court of Appeals has articulated standards for evaluating whether a 'gag order,' a prior restraint on speech, is appropriate. The factors to be considered are (a) the nature and extent of pretrial news coverage; (b) whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and (c) how effectively a restraining order would operate to prevent the threatened danger. *Bailey v. Systems Innovation, Inc.*, 852 F.2d 93, 99 (3d Cir. 1988) (citing *Nebraska Press Ass'n*, 427 U.S. at 562). The trial court is required to make factual findings on these elements to determine if a gag order is necessary to ensure a fair trial. The courts must also consider alternative methods for remedying excessive and prejudicial pretrial reports, including postponement of the trial and change of venue. *Bailey*, 852 F.2d at 100. Disqualification of counsel might also be a remedy in these circumstances.

It goes without saying that the likelihood of a fair

trial diminishes with each inflammatory statement of counsel which is reported by the print and electronic media. This case is highly charged, with ramifications for virtually every resident of the Virgin Islands. The chances of finding an impartial jury dwindle if this case continues to be tried in the press, which may require this Court to take extraordinary measures to assure a fair trial to all parties and the community. Since no such action will be taken until plaintiff's counsel has been given the opportunity to explain and justify her conduct, the parties will be invited to brief the question before the Court holds a hearing.

ENTERED this 16th day of October, 1996.

For the Court

_____/s/_____
Thomas K. Moore
Chief Judge

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

PETER ANDERSON,	)	
	)	
Plaintiff,	)	Civil No. 1996-118
	)	
v.	)	
	)	
GOVERNMENT OF THE VIRGIN ISLANDS d/b/a VIRGIN ISLANDS POLICE DEPARTMENT, RAMON DAVILA, KENNETH MAPP, ROBERT SOTO, and ELTON LEWIS,	)	
	)	
Defendants.	)	

ORDER

For the reasons set forth in the accompanying memorandum, it is hereby

ORDERED that Defendants' motion for disqualification of Attorney Rohn is **DENIED.** It is also

ORDERED that Defendants' motion to strike exhibits is **DENIED.**

It is further

ORDERED that Plaintiff's motion for injunctive relief is **GRANTED**, and Defendants are **ORDERED TO CEASE ALL SURVEILLANCE EFFORTS AGAINST PETER ANDERSON AND LEE J. ROHN** unless and until they seek and obtain approval from this Court, based upon an

appropriate and sufficient showing that reasonable suspicion or probable cause exists for such an investigation. It is also

ORDERED that defendants will search for and forthwith turn over to the Court any existing photographs or negatives taken of Peter Anderson or Lee J. Rohn as part of the NSF surveillance. Any documents in the possession of the defendants related to the surveillance of Peter Anderson or Lee J. Rohn will also be turned over to the Court forthwith. It is further

ORDERED that defendants are hereby placed on notice that any retaliation against witnesses for giving testimony before the Court will be dealt with severely by the Court. The parties are also

INVITED to submit briefs on the issues surrounding fair trial concerns and the types of alternatives which may be available, including gag orders. Any such briefs shall be filed by Friday, Oct. 25, 1996, with any briefs in response to be filed Friday, Nov. 1, 1996.

ENTERED this 16th day of October, 1996.

For the Court

_____/s/_____
Thomas K. Moore
Chief Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____
Deputy Clerk

cc: Lee J. Rohn, Esq.
Kerry E. Drue, Esq. (GERS Bldg, St. Thomas)
Ernest F. Batenga, Esq. (Toro Bldg., St. Croix)
Magistrate Judge Barnard
Mrs. Jackson