

MEMORANDUM

Attorney-Client Communication
Privileged and Confidential

May 28, 1996

To: David G. Marwell
Executive Director

From: T. Jeremy Gunn
General Counsel

Subject: Copyright Claim Asserted by Gaylord Broadcasting Company

At approximately 3:00 this afternoon, I was called by Jerry Mills of the law firm of Baker & Botts. Mr. Mills stated that he represents Gaylord Broadcasting Company, the owner of KTVT, a Dallas CBS affiliate.

He stated that it was Gaylord's position that it has a copyright interest in the tape that CBS intends to air tonight and that it was Gaylord's position that the Review Board should not distribute copies of the tape to anyone. He promised to send a letter to that effect (which was received at approximately 4:36 (D.C. time)).

I immediately called Art Goldberg at the Department of Justice to solicit his advice regarding whom I should contact at DOJ. He recommended that I call Vito DiPietro, which I did.

After explaining the facts as I understood them, Mr. DiPietro advised against the Review Board's distributing copies of the tapes tonight. He said that the claim raised many "sticky" issues, and that he was not able to provide any comfort for the Board's release of the tapes. I said that if the decision were made to release the tapes, would he make any recommendations as to how they should be released. He said that he would recommend that the tapes be released only if the person receiving the tapes were to sign a hold harmless agreement to the benefit of the Board.

I reported this information to you. I also told you that, as General Counsel, I cannot give an opinion to you stating that the ARRB could release the tapes without incurring liability. I further stated that it would take a significant amount of legal research before I could give you a considered judgment on this question. Based upon the information now available to me, I believe that the Review Board is incurring some legal risk that could be avoided by not releasing the tapes.

The safest approach would be not to release the tapes. A somewhat less safe course would be to

require anyone picking up the tape to sign a hold harmless agreement. Another course, if the first two are not adopted, would be to distribute a copy of the Baker & Botts letter along with the tape so that the purchasers of the tapes are aware of the copyright claims.

I am also aware of other constraints facing you in making your decision (including commitments that have been made to others about release of the tapes) and representations made by CBS News that their affiliate had decided to withdraw the claim.