The Lunaris Caeruleus Caseus Journal: 3

February 27, 2013 By Jay Vithalani

This is the third of seven sections.

I realize that I could have condensed and disposed, as it were, all of this blue-cheese-moon stuff with a simple 300-word, half-hour-effort, blog post: Truth wins out! Jefferys is vindicated! Farber the Loser loses! Beefy quotes from court transcripts and interviews, links to sources -- and be done with it. But the case, though obscure in one way, is also an important one, and raises some fundamental indeed foundational concerns. Keeping that in mind, I wanted to make what I think are a couple of pertinent connections, and also to put some narrative flesh on the bare bony facts of the case and its two (welcome) verdicts.

First things first: there's the matter of scope and detail. I'm not a lawyer but I can muddle my way through some legalese if need be. That having been said, I'm hardly well-versed in New York State's legal structure, or the composition and hierarchy of its courts, or the specific procedures to be followed in a libel case such as this one, or the appointment and terms (not to mention the individual temperaments and reputations) of judges and justices. But over the last few days I've learned, even if only at a superficial level, something about all those matters -- because they matter to the case at hand, and mattered (and might still matter), anxiously and painfully one would imagine, for Richard Jefferys.

If I've inflicted pain upon myself (I haven't) and also on those of you still reading (I hope I haven't) by doing some high-speed research and writing; if I have, adventitiously perhaps, invoked *Snyder v. Phelps* and battles over the teaching of evolution; and if I've summarized the legal process at greater length than strictly necessary ... Well, let's do some vicarious and metaphorical shoe-swapping: imagine what Jefferys must have endured for nearly four years: these words, and the time, are a trickle merely and a blink of an eye in comparison. (One could argue then, yes I know: why not write 10,000 or 100,000 words etc -- but let's not go *there*, to *that* place of particularly tedious tediousness.) Imagine the shock and pain, the steep learning curve, the quotidian hassles, the nagging doubt (however small) that it ain't over till it's over. His long-awaited victory, and its implications, deserve better than simply the "summary judgment" of relief. They deserve, rather, the light of being thrown into stark relief, and more commemoration -- some day by someone better than the present writer.

Second, the question of censorship. It's important to remember that no one was censoring, and no is planning to censor, Celia Farber. Plaintiffs, when they sue because of their loony, and mortally -- sub-lunarily -- dangerous beliefs, can spin the narrative, as politicians do -- "I'm suing only because they're bullies and they're trying to shut me up! I'm David and they, the mean and spiteful boys who want to control everything, are Goliath!" The retort, as Bart Simpson might put it: "Au contraire, mon frère!" Nothing of the sort. Farber's suit, in fact, was an intimidatory tactic: don't you, or anybody else, call me out or I'll sue your underpaid ass. There's a grimly delightful acronym for this sort of legal shenanigan: SLAPP: Strategic Lawsuits Against Public Participation. It is SLAPP-filers who intend to silence critics, and it is SLAPP-happy people and corporations (also people now, legally speaking, of course) who are the ones that, directly and indirectly, promote a kind of censorship. In recognition of the harm that these lawsuits do to civil society and public discourse, 28 states, including New York, have some form of "statutory protection" against being SLAPPed around (though the wording of the statutes, and the scope of protection offered, varies widely).

From Wikipedia (though there are dozens of other sites on the subject needless to say, some highly technical, some with a great many examples, some with advice on how to proceed if you've been SLAPPed), a good opening and explanation: "A strategic lawsuit against public participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition." And, with emphasis added for the next sentence: "*The typical SLAPP plaintiff does not normally expect to win the lawsuit*. The plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism. A SLAPP may also intimidate others from participating in the debate...The difficulty is that plaintiffs do not present themselves to the Court admitting that their intent is to censor, intimidate or silence their critics."

Next on: Celia Farber can go on spewing her lies for all eternity; she has that right. But does she, or should she?

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