

**First Amendment Issues
Massachusetts School of Law
Final Examination
December 18th, 2001
Professor Paul Auffermann**

Waldo and Reba both attend State University ("SU"), a state owned institution. Waldo has produced a number of "Wanted by the FBI" posters showing a picture of Reba, an Afghan-American woman. The poster prominently displays the words "No better than a whore!" under Reba's picture and describes the crimes of many Afghan terrorists without specifically attributing them to Reba. Reba is prominent in the local Afghan-American community and writes a column for the local newspaper, WeakNews.

Waldo, in order to show his support for the US, appears on the SU campus wearing a George Bush mask and hangs the posters on the exterior walls of buildings and distributes them personally to students at the student lounge. He tells a friend that "all Afghans should go back where they came from" and that he hopes Reba will "get what she deserves".

In response, Reba secretly makes 200 copies of a 1,000 word unpublished article on racial tolerance written by the editor of WeakNews. She substitutes her name for the name of the author and sells the copies for \$1.00 each at the SU book store.

In order to make money for her social causes, Reba purchases bulk quantities of cigarettes from US producers and advertises them in local newspapers as "Afgan Gold", showing pictures of tobacco being grown in fields of southern Afghanistan.

Waldo has secretly taped a phone conversation involving Reba and a friend in which Reba states that the September 11 attack on the US "should really wake up Uncle Sam", and he provides the tape to Rust, a prominent radio talk show host. The tape includes an explicit description of Reba's fantasies involving sexual activity with a high school freshman. Rust announces that he intends to play the entire tape on his show. Reba attempts to obtain an injunction against performance of the tape. (Note: also consider the rights and liabilities of the parties in the event the tape is played on the air).

SU has required Waldo to contribute \$100 to support a pro Afghan-American group on campus and write a one page article explaining the need for ethnic toleration, for publication in the school newspaper.

Applicable statutes and regulations:

State Statute #1

State General Laws c. 272, s. 53 provides "persons who with offensive and disorderly acts or language accost or annoy persons of the opposite sex, lewd, wanton and lascivious persons in speech or behavior, idle and disorderly persons, disturbers of the peace, keepers of noisy and disorderly houses, and persons guilty of indecent exposure may be punished by imprisonment in a jail or house of correction for not more than six months or by a fine of not more than \$200, or by both such fine and imprisonment".

State Statute #2

A state statute bars any person from "wearing any public place any mask, hood or device whereby any portion of face is so covered as to conceal the identity of the wearer". The statute has exceptions for "national holiday costumes", masks worn for occupational safety, masquerade balls, civil defense drills, or "protection from the elements or while participating in a winter sport".

State Statute #3

The state bans cigarette advertising in publications except for ads containing only print, with no pictures or graphics.

Federal Statute #1

Congress has enacted a federal statute requiring commercial radio and television broadcasters to verify that any audio or video recording played on the air has been lawfully obtained by the source.

Federal Statute #2

Federal law bars the secret interception of electronic communications between individuals, including telephone calls. The law also bars individuals from intentionally disclosing "the contents of any covered communications, knowing or having reason to know" that the communication was illegally intercepted, even if the individual wasn't the one to intercept. Violators may be sued by those whose conversations are revealed.

SU Regulation

SU regulations, effective as of September 12, 2001, prohibit the distribution on campus or posting of materials on campus buildings of any materials relating in any way to Afghan-American citizens, in order to promote harmony among students.

DISCUSSION:

Please evaluate the rights and liabilities of Waldo, Reba and SU, including a discussion of the validity of applicable laws and regulations. Consider also common law and statutory principals discussed in class. You should discuss any likely conflicts between governmental interests and individual rights, consistent with the cases studied this semester. Explain how any defects in the above statutes or regulations could be overcome.