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PERSPECTIVE

The other Rodney King case

By Jordan Segall and Steven Perry

Twenty-five years ago today, in the early morning of March 3, 1991, a plumber named George Holliday was awakened by police sirens and the sound of a helicopter hovering over his San Fernando Valley apartment. Holliday grabbed the Sony camcorder he had purchased a few weeks earlier, walked out on his small balcony and began to record a tape that, in the words of U.S. District Judge Irving Hill, “sparked a great national debate” and led at least indirectly to the worst riots in Los Angeles history.

Holliday’s videotape of Los Angeles police officers beating Rodney King has an indelible place in American historical memory. Less well remembered is that the tape also sparked a lawsuit against CNN, Turner Broadcasting, KTLA, NBC, ABC and CBS for copyright infringement. But the suit was itself a landmark event, for Hill became the first judge to rule explicitly that the First Amendment provides an independent defense to a copyright infringement claim. Hill’s opinion has rarely been cited in cases or academic commentaries, in large part because it was delivered from the bench, and the transcript was never

published in F. Supp. or on Westlaw or Lexis. That oversight was recently corrected. See *Holliday v. CNN*, 1993 WL 13952964 and 13952864 (C.D. Cal. 1993); 1993 U.S. Dist. LEXIS 21123.

Anyone who lived in Los Angeles in the early 1990s saw portions of Holliday’s footage of the King beating over and over and over again. The principal questions presented by Holliday’s copyright lawsuit were whether those broadcasts (and national broadcasts by some of the defendants) violated the Copyright Act. As explained below, Hill held, in granting summary judgment to all of the defendants, that: (1) Holliday had licensed the footage to each defendant; (2) Holliday was estopped by his conduct from asserting an infringement claim; (3) each defendant’s use of the footage was protected by the fair use doctrine; and (4) regardless of whether any or all of the first three grounds existed, the First Amendment precluded a copyright infringement claim against the defendants.

THE CHRONOLOGY (As Described by Judge Hill)

Thirty-six hours after taping the King beating, Holliday called local television station KTLA and asked a news manager if she would like to see a tape of a man “being arrested”



New York Times

The late Rodney King on the Sunset Strip in L.A. in 2004.

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in front of Holliday’s apartment. Holliday brought the tape to the station, and KTLA publicly aired portions of it for the first time on its 10:00 p.m. news broadcast that night.

CNN, eager to air the tape nationally, secured a copy from KTLA and offered Holliday \$150 for the right to broadcast it, which he accepted. Inquiries from ABC and CBS followed; Holliday told them to obtain copies from KTLA, but neither demanded any payment nor objected to wider dissemination. KTLA,

reluctant to yield the tape up to its competitors, offered Holliday an additional \$500 in exchange for exclusive rights to the tape. Holliday accepted KTLA’s offer, but then also took another \$500 from NBC in exchange for permission to broadcast and duplicate the tape.

In a taped interview at the KTLA station a few days later, Holliday conceded that he had sold KTLA the unlimited right to use the tape — including the right to authorize other broadcasters to air it. Nevertheless, Holliday eventually hired an attorney, who immediately registered Holliday’s copyright in the tape and began sending cease-and-desist letters. Holliday then filed suit for copyright infringement against six networks. After extensive discovery,

Rodney King and the First Amendment

each defendant moved for summary judgment, and on June 10, 1993, the parties gathered in Hill's courtroom for a hearing.

JUDGE HILL'S OPINION

Hill delivered his tentative opinion from the bench from 9:30 in the morning until approximately 3:30 in the afternoon, with a break for lunch. He began with a comprehensive account of the relevant facts and then previewed his tentative judgment that each defendant's motion should be granted, on four alternative grounds.

Hill first found no genuine dispute that Holliday had consented to each defendant station using the tape. The evidence was particularly overwhelming with respect to KTLA, thanks to Holliday's twice accepting checks from the station and admitting on tape that he had licensed his footage to KTLA. For many of the same reasons, Hill then held that Holliday was independently estopped from asserting claims for copyright infringement against any of the networks because Holliday had led them to believe they had permission to broadcast the footage.

Third, Hill held that the defendants' use of Holliday's tape was fair, noting that the fair use provision in the Copyright Act expressly includes news reporting as one of its

purposes, that the tape undoubtedly reflected a matter of high public concern (the "subject of police treatment of minorities in America's cities"), and that Holliday, an amateur videographer testing a new camcorder, received "more than the customary price" for his material from KTLA and NBC.

These factors made it "intolerable" to vest Holliday with the power to block the tape's wide public dissemination.

Grounds (1) through (3) had traversed familiar territory in copyright cases. After filling more than 100 transcript pages, Hill then tackled a more novel question: Did the First Amendment independently preclude Holliday's copyright claim? Hill observed that both Nimmer's copyright treatise and the 9th U.S. Circuit Court of Appeals had hinted that when a visual work is "necessary to democratic discussion," the First Amendment demanded that copyright protection give way to unfettered speech. Hill also acknowledged that any First Amendment defense to a Copyright Act claim should be confined to "very exceptional" and "very vital" graphic works "where words cannot serve the democratic purposes." Hill pointed to two facts that

showed that the King tape satisfied this high standard. First, like the Zapruder film or Ronald Haeberle's photographs of the My Lai massacre, Holliday's searing images offered the public insight into a matter of grave public importance that no amount of written reporting could match. Second, Holliday's film was sui generis; not only was there no other recording of the King beating, the Holliday tape had "dramatized in actual motion pictures, apparently for the first time in our history, what has been a consistent civic, moral and governmental problem for decades: the alleged mistreatment of minorities in our urban areas by the police." These factors made it "intolerable" to vest Holliday with the power to block the tape's wide public dissemination.

Hill resumed the hearing on June 11, 1993, and, after hearing lengthy argument, adopted his tentative ruling. That same day, Hill issued a brief order that granted the defendants' motions for summary judgment and incorporated the entire two-day transcript by reference.

CONCLUSION

In January 1994, the New York Law Journal mused that Hill's opinion "may have a greater impact on American law than the incendiary criminal trials which stemmed from the incident." Charles

Sanders, "From the Zapruder Film to the Rodney King Video: Twenty-five Years of Photography, Fair Use and the First Amendment," N.Y.L.J., at p. 6 (Jan. 21, 1994). Alas, it was not to be. Although Hill had implored the 9th Circuit to "separately consider" his First Amendment analysis, the lawsuit settled before the 9th Circuit could weigh in. And because the 200+ pages of hearing transcript were unpublished (until last month) and not available to courts and scholars, the opinion was virtually unknown to the legions of commentators who have written about the interplay between the Copyright Act and the First Amendment. Perhaps that will now change.

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