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Tuesday, November 9, 2010

[For Every Scholar, There Must Also Be the Occasional Frivolity: Heard Any Good Films?](#)

By: Gary C. Norman, Esq. L.L.M. Candidate 2011

Entertainments, such as the television or the film theatre, are equally of interest to the blind, vision impaired or otherwise disabled individual, even including those matriculated at WCL.

People with sensory-related disabilities receive audio description or video description by way of a secondary audio stream during television broadcasts or at the film theatre. Video description is the audio description of key visual elements in programming, inserted into natural pauses in the audio, to make television programming accessible. In a related fashion, close captioning, available for some twenty years, provides a textual representation of the dialogue communicated in the program.

The Biblical admonition – the Lord Gives on the one hand, and takes away on the other - might be modified, in the context of video description, to reflect that which litigation both gives and takes away.

By way of history, rules adopted by the [Federal Communications Commission](#) in July 2000, [required](#) television stations in top-25 markets that are affiliated with ABC, CBS, NBC, or Fox to provide 50 hours of video description per calendar quarter, either during prime time or on children's programming. Television broadcast stations affiliated or associated with any television network had to pass through video descriptions when the network provides them as long as the station has the technical capability to pass the descriptions through (subject to some technical exceptions). As sensible as these rules would appear, or appeared at the time, the so-called voice of blind or vision impaired persons, the [National Federation of The Blind](#) (NFB) joined the industry to oppose the rules, eventually [winning](#) in federal court at the appellate stage.

In October 2010, President Obama [signed](#) a piece of critical legislation (Public Law 111-260), the Twenty-First Century Communications and Video Accessibility Act. The Act passed because of [bi-partisan support](#), including the leadership of Congressman Markey (D-Mass) and Congressman Barton (R-Tex). The dedicated multi-year advocacy campaign of the [Coalition of Organizations for Accessible Technology](#) is a key reason for the Act's passage. [Title II](#) of the Act provides the requirements for video programming. Section 203 of the Act imposes, among other requirements, a minimum number of hours of audio described shows per week. The Act specifically authorizes the Federal Communications Commission to possess the regulatory authority to impose accessible video programming mandates.

Likewise, an issue essential potentially to life itself, emergency notifications that scroll across the bottom of the screen, may be made accessible because of the Act. Of interest to administrative law students, the enforcement provisions of the Act indicate if, once a complaint has been filed and received, and the Federal Communications Commission fails to undertake action on any of its responsibilities to act on a complaint as specified in the Act, the party who filed the complaint can seek a mandamus action in the United States Court of Appeals of the District of Columbia.

In conclusion, my charge is attending a film. For those who are vision impaired, as consequence of a settlement or settlements, audio described films are available at AMCs.

Post Script

The organ of the people of the NFB, the Braille Monitor, published an article--[Audio Description: Accessory or Accessibility?](#)--that provides a glimpse into the perspective of the NFB as to video description mandates. The article states, "We have never said that audio description is a bad thing as it currently stands. Our concern is that

it be kept in perspective...It is our responsibility to do as much as we can for ourselves and not to grab everything."

I am not sure of the policy stance of the NFB respecting the passage of the Act. The Act seemingly has provisions the NFB supports, accessible emergency notifications, and the Act has provisions the NFB urges is a secondary issue, superfluous to the blind public, video description.

Posted by The Modern American at [11:19 AM](#)

Friday, November 5, 2010

[Navajo Nation Public Interest Groups Send Notice of Suit to NN President](#)

Days after a closely-watched Navajo Nation [election](#), where the first female presidential candidate, Lynda Lovejoy, narrowly lost to incumbent, Ben Shelly, the [Forgotten People](#), a grassroots advocacy organization, issued this announcement:

DOODA DESERT ROCK AND FORGOTTEN PEOPLE JOIN IN NOTICE OF SUIT TO PROTECT THE NAVAJO NATION COURTS

Window Rock, October 30, 2010

Today Elouise Brown, the president of Dooda Desert Rock, and Don Yellowman, the president of The Forgotten People, announced that they have given notice of suit to President Joe Shirley, Jr., Attorney General Louis Denetsosie, and whoever the acting Legislative Counsel may be, to address any attempt to interfere with the independence and integrity of the Navajo Nation court system.

“We take this opportunity to file a protective notice,” said Elouise Brown, “because we are being alerted of moves to remove the Chief Justice, change the Judiciary Committee procedures for removal hearings, and otherwise obstruct justice and the rule of law.” Don Yellowman added: “It is about time that the powers that be understood that there is a separation of powers in the Navajo Nation and it means something. The Navajo Nation judicial system secured the right of individuals such as me and Elouise to get into court, and the right of our grassroots organizations to be heard, so we felt we must act.”

The notice says that the plaintiffs intend to act on behalf of Navajos who want access to a fair and impartial court system, and attorney James W. Zion proposes to enter the suit on behalf of clients. The notice states a broad range of claims designed to anticipate any attack on the judicial system, and it puts the Navajo Nation on notice that the plaintiffs will claim as much protection for the court system as the law allows.

Brown and Yellowman jointly noted that the Navajo Nation Bill of Rights guarantees an independent and fair court system as part of the due process right of access to the courts. “No matter what the legislative lawyers say, the Council cannot abolish the court system,” they said, “and we give warning that we will not tolerate legislative interference in the functioning of the court system.”

Below is the notice of suit:

The Honorable Joe Shirley, Jr., President of the Navajo Nation
Louis Denetsosie, Esq., Attorney General of the Navajo Nation
The Acting Legislative Counsel of the Navajo Nation

PLEASE TAKE NOTICE, pursuant to 1 N.N.C. § 555(A) (2005), that the within-named public interest organizations and individuals, on their own behalf and on behalf of a class consisting of members of the public who wish due process access to a fair and impartial judicial system and who are beneficiaries of public properties and monies of the Navajo Nation, desire to institute suit against the Navajo Nation, certain of its officers and public officials, employees or agents, and notice is provided as follows:

Prospective Plaintiffs

The prospective plaintiffs are Dooda Desert Rock, a grassroots Navajo public interest organization; Elouise Brown, a Navajo individual and president of Dooda Desert Rock; The Forgotten People, a grassroots Navajo

public interest organization; Don Yellowman, a Navajo individual and president of The Forgotten People; and James W. Zion, a member of the Navajo Nation Bar Association and lawyer for Navajo litigants in the Navajo Nation judicial system. They sue as entities and individuals for themselves and members of the Navajo Nation public who wish access to a just and fair Navajo Nation judicial system and the protection of public properties and monies.

Prospective Defendants

The prospective defendants include the Navajo Nation, the Navajo Nation Council, Judiciary Committee, Budget and Finance Committee, other committees of the Navajo Nation Council, the Controller of the Navajo Nation (for his management of Navajo Nation monies and funds), individuals in public office or acting under color of public office, and John and Jane Doe, being the fictitious names of other persons or entities whose identities and roles in this matter are as of yet unknown.

Nature of Claims

This action will be brought to protect the rights of all plaintiffs and the plaintiff class and to secure rights to due process of law by access to a judicial system that is just and fair; assure the separation of powers of Navajo Nation government for proper checks and balances; take all actions necessary to prevent the removal of sitting justices or judges, the impeachment of sitting justices or judges, or any other adverse action against justices or judges, or judicial employees, including amendments to Judiciary Committee procedures not supported by the separation of powers; assure the integrity of the judicial selection and evaluation process; and to protect the property and monies of the Navajo Nation by removing or impairing justices or judges as the guardians of such property and monies. Claims will also be based on fundamental principles of good governance, the *naachid* process, *hazho'ogo*, and The Fundamental Laws, including provisions on leadership, the judicial function and governance. If, for any reason, actors attempt to improperly interfere with the plaintiffs or their counsel through the Navajo Nation Bar Association, action will be taken against it or its officers or employees.

Relief Sought

The plaintiffs will seek full relief to secure the above claims, including prospective injunctive relief, full equitable relief, mandamus, prohibition and *nalyeeh* to protect the judicial system and its justices and judges, as indicated. The plaintiffs will seek appropriate relief to enjoin any act to change, amend, terminate personnel, or eliminate or modify funding, including inadequate funding, of the Judicial Branch of the Navajo Nation until such time as its future is secure under new legislative and executive leadership. The plaintiffs will also seek their costs and attorney fees.

We'll see what comes of it.

Posted by The Modern American at [2:05 PM](#)