

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

WEST VIRGINIA RADIO CORPORATION,

Plaintiff,

vs.

//

Civil Action No. 13-C-468
(Circuit Judge Thomas C. Evans, III)

WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., WEST VIRGINIA MEDIA
HOLDINGS, LLC, ANDREW A. PAYNE, III, DAVID B.
ALVAREZ, ALBERT BRAY CARY, JR., RALPH
BALLARD, RICHARD BALLARD, OLIVER LUCK,
JAMES P. CLEMENTS, and IMG COLLEGE, LLC,

Defendants.

ORDER

(Re: WVU – BOG's "Motion to Prohibit West Virginia Radio Corporation from Disseminating or Publishing Extrajudicial Statements Designed to Prejudice the Proceedings")

Pending is the motion of the Defendant, West Virginia University Board of Governors ("WVU BOG"), made pursuant to the Court's inherent authority and the provisions of the West Virginia Rules of Professional Conduct, for the entry of an Order:

- (1) Prohibiting West Virginia Radio Corporation, its owners, directors, officers and agents, and its General Counsel, MetroNews, or any other John Raese controlled media outlet from publishing or posting any editorial commentary, "open letters", or any other opinion pieces written by any officer, director, agent, employee, or attorney for these entities. [The proposed order] would not preclude the publishing or posting of news stories regarding the general progress or status of the case so long as the story is part of that outlet's regular news cycle;
- (2) Prohibiting J. Robert Gwynne, any other attorney, or person acting on the behalf of, with the assistance of, or at the direction of any attorney representing West Virginia Radio Corporation, MetroNews, or any other John Raese controlled media outlet, from making any extrajudicial statements attacking the credibility, character, or reputation of any witness or

party in this case, or from making any extrajudicial statements disparaging the Defendants regarding the facts and allegations of this case;

(3) Dismissing the above-captioned civil action in the event WVRC, MetroNews or any other John Raese controlled media outlet fails to abide by this Court's ruling concerning the dissemination or publication of extrajudicial statements. *Maldonado v. Ford Motor Co.*, 719 N.W.2d 809 (Mich. 2006)

Defendant Oliver Luck has joined in this motion.

The court has considered the motion and the response thereto filed by the Plaintiff, along with the Reply filed by the moving Defendant. Further, evidentiary hearing and further argument has been waived by all interested parties, and the matter is, therefore, submitted for decision.

STATEMENT OF FACTS

This civil action concerns allegations of corruption, fraud, and misuse of taxpayer monies at West Virginia's flagship university, West Virginia University ("WVU"). See *Verified Supplemental and Amended Complaint*.

Plaintiff West Virginia Radio Corporation (herein "WV Radio" or "WVRC") is in the media business, broadcasting news and other programming across the State of West Virginia. WV Radio has a long history of involvement with WVU, both in broadcasting and production of WVU athletic events as part of the MSN network, and in the general area of reporting on WVU activities across all spectrums, including dissemination of editorials that are, in certain instances, critical of WVU. John R. Raese ("Mr. Raese") is a director and an owner of WV Radio.

Mr. Raese is an owner of several other entities as well. Relevant to this motion, Mr. Raese and his brother own Greer Industries, Inc. and the Morgantown Dominion Post. See

Affidavit of John R. Raese, ¶ 3, attached as Exhibit 1 to Plaintiff's Response. Mr. Raese is also a director and officer of West Virginia Newspaper Publishing Company, which publishes the Morgantown Dominion-Post.

WV Radio, Greer Industries, Inc., and the Dominion Post are separate and distinct legal entities that, according to the Plaintiff, are not "actively intertwined." Plaintiff maintains that neither Mr. Raese nor Greer Industries, Inc., on a day-to-day basis, exercises or exerts control over the news or editorial content of WV Radio's publications, postings, or broadcasts or the Dominion Post's publications. See *id.* at ¶¶ 8-9. Similarly, the Dominion Post does not actively communicate with WV Radio concerning WV Radio's operations or media content. *Id.* at ¶ 10. Each of these entities has a separate board, separate corporate headquarters, and operate in fundamentally different business arenas. *Id.* at ¶ 4. WV Radio, as discussed at length in this litigation, is in the online media/radio broadcast business. *Id.* at ¶ 5. Greer Industries, Inc. is primarily involved in the manufacture and distribution of limestone, lime and steel products, operating nationally and internationally. *Id.* at ¶ 6. And the Dominion Post is a traditional daily newspaper publication. *Id.* at ¶ 7. However, WVU BOG has submitted evidence which creates a legitimate dispute as to the extent of control exercised by John R. Raese over the publishing and broadcast activities of WV Radio and/or the Dominion Post.

Mr. Raese is more than simply a local businessman. Mr. Raese has participated in multiple national and statewide elections in West Virginia. See Plaintiff's Response, *Exhibit 1, John R. Raese Affidavit*, ¶ 11. As a candidate, he has crisscrossed West Virginia to meet and speak with voters about national, state, and local issues. *Id.* at ¶ 12. Mr. Raese has appeared on national television broadcasts, including Fox News programming, as well as local television and radio programs. *Id.* at ¶ 13. On these programs and otherwise, Mr.

Raese has frequently commented and provided his perspective on issues of statewide and national importance, including those involving WVU. *Id.* at ¶ 14.

In January of 2013, Mr. Raese began a letter-writing campaign to Defendant James P. Clements and the Defendant WVU BOG on the letterhead of Greer Industries, Inc., probing into the conduct of various WVU employees and officials related to WVU's Third-Tier Media Rights process.

Plaintiff WV Radio maintains that in large measure, the matters set forth in these letters came from statements by Defendant Andrew Payne that referenced confidential information relating to the value of responsive proposals received by WVU in the Third-Tier Media Rights process. See "Oliver Luck Drove Media Rights Contract WVU Chairman Says," Charleston Gazette, Feb. 7, 2013, attached to Plaintiff's Response as Exhibit 2 (Defendant Payne quoted as stating that "[WVU is] getting \$5 million more every year" per its new deal.).

Mr. Raese sent a total of eight (8) letters to the President of West Virginia University and/or members of the WVU BOG before the institution of this action. Mr. Raese's letters were largely concerned with the propriety of WVU's actions in the Third-Tier Media Rights process.. See "Raese Group Questions Ties Between WVU Board Company," Charleston Daily Mail, Feb. 7, 2013, *Id.*, Exhibit 3 (Defendant Andrew Payne, chair of WVU BOG, publicly declared that John Raese "has proved his ass over the years and this is nothing new".)

According to the Plaintiff, Mr. Raese's letter-writing campaign brought to public attention alleged unlawful actions and omissions in WVU's handling of the marketing of its Third-Tier Media Rights. Indeed, although WV Radio takes issue with some of Attorney General Morrissey's recommendations following his investigation, Mr. Raese's letter-writing campaign undoubtedly served as the genesis of the West Virginia Office of Attorney General's Report on WVU's Multimedia Report on WVU's Multimedia Rights (the "Report"), a

Report that illuminates some of the Defendants' alleged, improper actions and omissions. One can argue that absent the actions of Mr. Raese, the purported bad acts and omissions of WVU BOG and other Defendants might never have seen the light of day.

WVU BOG maintains that following the filing of this action, WV Radio Corporation, through Mr. Raese, renewed the letter writing campaign. Raese sent a private letter to Present E. Gordon Gee dated March 13, 2014. See Exhibit 1 to the pending motion. Subsequently, however, Raese published two (2) letters in the Morgantown Dominion-Post under the title of "Open Letters" to the administration of West Virginia University. The most recent series of letters appear under the letterhead of Greer Industries, Inc.; but as has been maintained by WVU BOG in this litigation, WV Radio Corporation and the Dominion-Post are each described on the website of Greer Industries as "one of a diverse network of businesses...managed from headquarters located in Morgantown, West Virginia," which, it is maintained, clearly indicates that the companies are actively intertwined. More significantly, at least one letter, as printed, specifically provides that it is "[p]aid for by WV Radio."

The two most recent letters sent by Mr. Raese are alleged by WVU BOG to have crossed the line into personal character attacks on some of the central witnesses and parties in this case, primarily Oliver Luck.

The first letter (dated April 22, 2014) is titled "Who do you trust, Turnbull or Luck?" See Exhibit 2 to the pending motion ("the first letter"). It was addressed to President E. Gordon Gee and was also published in the Dominion Post on April 23, 2014. The letter was also uploaded and posted on the *MetroNews* website under the pretext of a "news" article titled "Raese weighs-in on Craig Turnbull firing." See *Id.*, Exhibit 3. *MetroNews* is a "d/b/a" of Plaintiff WV Radio Corporation.

On June 5, 2014, the Dominion-Post and *MetroNews* published another “open letter” from Mr. Raese to President Gee, entitled “Rules of the University.” See pending motion, Exhibit 4 (“the second letter”) and Exhibit 5. The letter was printed again in the Sunday edition of the Dominion-Post on June 8, 2013.

WVU BOG alleges that these letters are based on assumptions and innuendo. It is said that the letters are extremely personal and concern in large measure the character or credibility of individuals associated with the WVU BOG, particularly Athletic Director Oliver Luck, as well as issues squarely at the heart of this litigation. WVU BOG maintains that the letters are obviously designed to materially prejudice the proceedings before this Court, as demonstrated by the re-publication of the second letter in the Sunday Dominion Post in order to maximize exposure. Otherwise, according to WVU BOG, Mr. Raese would have privately sent these letters to President Gee, as he has done in the past.

WV Radio admits that it ultimately initiated suit (in June, 2013), and that Mr. Raese did, again, orchestrate, disseminate, and publish, on Greer Industries, Inc. letterhead, the letters appended to the pending motion. WV Radio maintains that these letters are based in fact, not innuendo, and often merely cite to excerpts from articles or information already in the public domain. See Raese Letter to Gordon Gee dated April 22, 2014, to the response of WV Radio to the motion, as Exhibit 4 (referencing, among others: (1) a June 14, 2010 Charleston Gazette article; (2) a Chronicle of Higher Education article, and (3) a publicly available Conciliation Agreement issued by the West Virginia Ethics Commission).

WV Radio paid for the publication of at least one of Mr. Raese’s letters in the Dominion Post newspaper.

It would also appear from the submissions that Mr. Raese is not the only participant or party in this litigation that is making public statements relating either to the subject

matter of the litigation or to parties in the case. On or about June 1, 2014, Defendant Oliver Luck met with Drew Rubenstein of the Dominion-Post for an interview, and the Dominion-Post published the attached article in its Sunday edition. See "Change Marks 4 Years of His Administration," Dominion-Post, June 1, 2014, attached to Plaintiff WV Radio Corporation's response to the pending motion, as Exhibit 5. In addressing a variety of topics related to WVU Athletics, Defendant Oliver Luck made the following statements: (1) "I think anyone who is detracting from the university and taking pot shots is not helping the cause, they're just damaging the reputation of the state;" and (2) "listen, our state takes hits all the time, and that's why it's important that people all get on board and support what the university is trying to do." *Id.*

According to Plaintiff, Mr. Raese's June 5, 2014, letter was written in direct response to Mr. Luck's critical comments published in the Dominion-Post. See *Id.*, Exhibit 6 "Raese Letter Titled 'Rules of the University,' " dated June 5, 2014, (stating that "I read with interest the interviews with Oliver Luck in the Dominion Post on June 1 and 2 wherein Mr. Luck, after nearly a year of refusing to discuss and issues related to WVU Athletics with any local media, makes a plea for everyone to get behind him and support his programs without ever questioning his methods or the way he operates. This to me is a form of arrogance with which I am unfamiliar in the history of Mountaineer Athletics. As such, I wanted to follow up."). When viewed in context, it is apparent that the public dialogue between those supporting the current WVU athletic administration, including Mr. Luck, and those opposed, including Mr. Raese, continues.

It does not necessarily appear from what has been presented that Mr. Raese's purpose in the letter-writing efforts described herein is to prejudice the jury pool by making

disparaging comments about Oliver Luck or other Defendants. It is speculative to conclude that this was his sole or primary purpose.

It may be said that his purpose was solely or primarily to bring to the attention of the WVU President and the public what is perceived to be problems and shortcomings of the Defendants in the administration of the affairs of WVU, a public entity supported (in part at least) by taxpayer funds. WVU BOG's argues that publishing the letters in the Dominion-Post show that Mr. Raese is attempting to prejudice potential jurors, but the court does not agree with this conclusion. It is just as likely that Mr. Raese is attempting simply to inform the public about matters of public interest taking place in WVU's Athletic Department.

In May, 2014, between the publication of the two most recent Raese letters, Plaintiff WV Radio indicated to the court that it was waiving its right to trial by jury in this litigation. It is WVU BOG that demands trial by Jury, which is its right. This is noted merely because it appears inconsistent with the allegation that the letters of Mr. Raese were published for the purpose of materially prejudicing the jury pool.

The court, however, is not at all confident that the intent with which these letters have been written is of critical importance. It appears that the effect of the publication of the letters is the crucial question presented to the court.

Defendant WVU BOG further requests an order that also enjoins attorney and General Counsel J. Robert Gwynne from making (directly or through any other person) any extrajudicial statements attacking the credibility, character, or reputation of any witness or party in this case. It appears that the letters signed by Mr. Raese that are the subject of the motion were prepared with the assistance of Mr. Gwynne. Mr. Gwynne also verified the Verified Supplemental and Amended Complaint filed by the Plaintiff. Mr. Gwynne, who is not an attorney of record in this litigation, was involved in the crafting these letters, and WVU

BOG argues that this implicates the provisions of Rule 3.6 of the *Rules of Professional Conduct*. The Rule provides in pertinent part:

(a) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

[or]

....

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial

Further, Mr. Gwynne's drafting of these letters for another person is specifically addressed by Rule 8.4(a) of the Rules of Professional Conduct. Under this rule:

Rule. 8.4 Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

This rule prohibits an attorney from using extrajudicial statements to unduly influence the legal system and prejudice the integrity of a judicial proceeding. As the Comment to Rule 3.6 states, "[p]reserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved." Without this important rule, "[t]he result would be the practical

nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence.”

Regarding the subject matter of the two letters, one must first start with an understanding that Oliver Luck, a named Defendant in this case, is currently a public official. He continues to perform the duties of the WVU Athletic Director. He has many duties other than involvement in the marketing of the media rights of WVU. The performance of his official duties as Athletic Director are not immune from public comment, simply because a lawsuit has been filed against him and WVU BOG.

The letters written since the commencement of the litigation in 2013 do not appear to be necessarily directed to the circumstances, events and facts alleged the Verified Supplemental and Amended Complaint filed by the Plaintiff. Mostly, the letters are critical of the Defendant Luck in relation to events that arose subsequent to the commencement of the litigation in June, 2013.

It is said that these letters amount to a personal character attack on Oliver Luck, and to an extent, the court agrees with this position. However, it must be said that the “attacks” largely relate to alleged incompetence and what appears to be an alleged lack of loyalty to WVU (by supposedly seeking employment elsewhere).

The character attack is contained in the first letter from Mr. Raese to Dr. Gee (and the public) where Dr. Gee is asked to consider that Oliver Luck violated legal and ethical duties in the termination of Coach Turnbull, since he had done exactly that in performance of other duties.¹ This is another way of saying that Oliver Luck acts illegally and unethically

¹ • “Time and time again, Oliver Luck has been found to have breached his legal or ethical obligations. It is not a leap-in fact, it’s likely prudent – to assume that he has done so here.” (First letter)(See WVU BOG motion, page 3)

in the performance of his public duties. So, in addition to constituting an attack on Mr. Luck's reputation for competency to perform his public duties, the letter to this extent is an attack on the character of Defendant Oliver Luck.

This Defendant is said to surely be a witness in the trial of this case, so his credibility as a witness will be an issue. "Credibility" of a witness means how truthful is the witness and how convincing is the testimony of the witness. Witness credibility is almost always a critical part of a trial. Public attacks on the character of a witness before trial can result in material prejudice of the pool of persons that will make up the Jury in the case.

Whether the statements and allegations regarding the character and actions of Defendant Oliver Luck are true or not true is of no moment in deciding the pending motion. Questions relating to Oliver Luck's credibility as a witness, however, is to be determined by a Jury during the trial process, as opposed to in the media.

The WVU BOG maintains that publishing "open letters" which attack the character and credibility of opposing parties is very likely to affect the impartiality of the trial process, particularly in a community like Monongalia County, which is served by only one newspaper, the Dominion Post, and has no local television media. This is especially true, according to WVU BOG, when the party making the extrajudicial statements is, itself, a media outlet and the publication is made in a newspaper which is a sister company with common ownership and control.

It must be noted that West Virginia University, and its affiliate hospitals and other programs, employ thousands of persons in the Monongalia County region of West Virginia. The breadth of the activities of WVU and its affiliates likely touches almost every family in Monongalia County.

No evidence has been presented relating to the impact or possible prejudice that Mr. Raese's letters have had, or Defendant Oliver Luck's statements have had,² upon the Monongalia County, W. Va. jury pool.

CONCLUSIONS OF LAW

In West Virginia, courts have the inherent authority to protect the integrity of the judicial process and the fairness of a proceeding. See Syl. Pt. 3, *State ex rel. Richmond Am. Homes of W. Va. v. Sanders*, 226 W. Va. 103, 697 S.E.2d 139 (2010)(court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction).

As the United States Supreme Court notes, "[t]he theory of our trial system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *Skilling v. United States*, 561 U.S. 358, 378, 130 S. Ct. 2896, 2913 (2010); see also *Bridges v. California*, 314 U.S. 252, 271, 62 S. Ct. 190, 208 (1941), which stated:

The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper. But we cannot start with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment.

² There is also no evidence relating to public statements made by Andrew Payne, WVU BOG chair.

The duty of the court to use its authority to protect the integrity of the trial process is subject to certain limitations. One is the First Amendment³ to the U. S. Constitution, applicable to all of the states, and this court, through the Fourteenth Amendment.

"It is clear that even a short-lived 'gag' order in a case of widespread concern to the community constitutes a substantial prior restraint and causes irreparable injury to First Amendment interests as long as it remains in effect." *Capital Cities Media, Inc. v. Judge Toole*, 463 U.S. 1303, 1304 (1983)(freedom of the press claims).

"Any prior restraint on expression comes...with a 'heavy presumption' against its constitutional validity." *Org. For A Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). WVU BOG thus carries a heavy burden of showing justification for the imposition of such a restraint.

In litigation addressing First Amendment issues, a court has an obligation to "make an independent examination of the whole record" to ensure that "the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984).

The guarantees afforded by the First Amendment, however, are not absolute. The U. S. Supreme Court recognizes that under certain circumstances, the First Amendment rights of parties and attorneys in litigation may be subordinated to other interests in criminal and civil trials.

In *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S. Ct. 2720, 115 L.Ed.2d 888 (1991), the Court considered an attack on a Nevada Supreme Court rule prohibiting any attorney from making extrajudicial comments to the media that the attorney knew or should

³ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press;"

have known would “have a substantial likelihood of materially prejudicing an adjudicative proceeding.” *Gentile*, 111 S.Ct. at 2723. The majority of the *Gentile* Court stated that prior precedent “rather plainly indicate[d] that the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in *Nebraska Press*,” *Id.* at 2744. The legal validity of the rule was sustained by the court.

“Although litigants do not surrender their First Amendment rights at the courthouse door, those rights may be subordinated to other interests that arise in the context of both civil and criminal trials.” *Marceaux v. Lafayette City-Parish Consol. Gov’t*, 731 F.3d 488, 492 (5th Cir. 2013). One such interest is “ensuring fair trials and avoiding a ‘circus atmosphere’ or ‘chaos’ that can be occasioned by unfettered aggression on the part of one or both sides in litigation.” *Id.* Another interest is that “[o]ur system of justice properly requires that civil litigants be assured the right to a fair trial [because the] very purpose of a court system is to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.” *Hirschkop v. Snead*, 594 F.2d 356, 373 (4th Cir. 1979).

In *United States v. Brown*, 218 F.3d. 415 (5th Cir. 2000), a criminal case brought against an individual who was a prominent Louisiana political figure, for various charges relating to the brokering of an alleged “sham” settlement of a threatened lawsuit by the State of Louisiana against the president of a failed automobile insurance company. In a news conference shortly after the indictment was issued, Brown declared his innocence as well as his belief that he was the victim of a “political drive-by shooting” at the hands of “an out-of-control prosecutor.” The court held that the district court’s “gag order” on trial participants, based on substantial likelihood that extrajudicial commentary will undermine a

fair trial, was constitutionally valid, under a claim that it violated Defendant's First Amendment rights.

Because a "gag" or "suppression" order is a prior restraint on speech, the party seeking the order must demonstrate that (1) there is a reasonable likelihood that a party will be denied a fair trial without proscribing certain extrajudicial statements; and (2) that the relief sought is narrowly tailored to achieve that interest. See *In re Russell*, 726 F.2d 1007, 1010 (4th Cir. 1984)(criminal case). Additionally, because there is a distinction between "participants in the litigation and strangers to it . . . gag orders on trial participants are evaluated under a less stringent standard than gag orders on the press." *United States v. Brown*, 218 F.3d 415, 425 (5th Cir. 2000). In instances where "the court's overriding interest is in preserving a fair trial and the potential prejudice caused by extrajudicial commentary does not significantly depend on the status of the speaker as a lawyer or party," a court may direct the gag order at both the party and its attorney. *Id.* at 428.

For the reasons assigned by the Plaintiff, certainly the relief sought by the Defendant WVU BOG is not "narrowly tailored to achieve [the] interest" that it seeks to protect, i.e., being denied a fair trial because of extrajudicial statements made by John Raese.

More significantly, there is an absence of evidence before the court relating to the prejudicial impact, if any, of the publication of these letters upon the potential pool of jurors in Monongalia County. There are no affidavits nor the results of any survey submitted in support of the motion nor is there testimonial evidence, whether from a fact witness or an expert witness, proffered in support of the motion.⁴ As a result of an absence of evidence,

⁴ This type of evidence is commonly presented in the Circuit Courts in support of a change of venue for the trial of a criminal case, where it is alleged that pretrial publicity is such that a present hostile sentiment exists against an accused exists such that a fair trial may not be had in the county of the indictment.

the court is left to speculation, conjecture and surmise as to the prejudicial effect, if any, of these letters on the Monongalia County, W. Va. jury pool.

On this record,⁵ the court is of the opinion that the more appropriate manner in which to assess the prejudicial impact upon the jury pool from such letters, if any, is through *voir dire*. The court also has the jurisdiction to transfer the venue for the trial of this case to any other circuit court in the same Business Court Region as Monongalia County, W. Va. should the court be unable to seat a fair, impartial and disinterested jury in this case.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore ORDERED that the "Motion to Prohibit West Virginia Radio Corporation from Disseminating or Publishing Extrajudicial Statements Designed to Prejudice the Proceedings," joined in by Defendant Oliver Luck, be and the same is hereby denied and overruled. Exception to the ruling by WVU BOG and Defendant Luck is noted and saved.

The Clerk shall deliver a true and correct copy of this order to the attorneys of record for each party.

All of which is ORDERED, accordingly.

ENTER: August 12, 2014

A handwritten signature in black ink, appearing to read "Thomas C. Evans, III", written over a horizontal line.

Thomas C. Evans, III, Presiding Judge
Business Court Division
State of West Virginia

⁵ The issue raised by the pending motion of WVU BOG remains before the court and can certainly be renewed should circumstances arise warranting a renewal.