



GENERAL COUNSEL

MARC J. RANDAZZA, ESQ.

T 619.866.5975 • F 619.866.5976

marc@corbinfisher.com

December 11, 2009

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries & Complaints Division
445 12th Street, SW
Washington, DC 2054

Re: Brief in Support of the American Broadcasting Company for its American Music Awards broadcast of Adam Lambert's performance

Dear Federal Communications Commission:

It has come to this organization's attention that you received a complaint from The "Liberty Counsel," a homophobic organization dedicated to the imposition of Christian-based theocracy in the United States, and the replacement of the Rule of Law with "Rule by Superstition."

This letter is sent as a counterweight to the uneducated and bigoted letter sent by this ever-hysterical organization.

The fact that such an organization can even exist is a testament to the breadth of the protections afforded to us by the First Amendment. While we must tolerate the existence of the Ku Klux Klan, the American Nazi Party, and the Liberty Counsel, we need not allow such organizations to shape our public policy. If Anita Staver wishes to tie her stained granny panties in a wad over some perceived homosexual threat, she has that right. But, the time has come for the FCC to cease its policy of allowing every Comstock-wanna-be with a crucifix to start the censorship ball rolling.

The broadcast that gave Ms. Staver an attack of the vapors was Adam Lambert's performance on the American Music Awards. In the Liberty Counsel's rant, it called for the FCC to fine ABC for "airing such an outrageously lewd and filthy performance during a show and time period that is targeted for family audiences."

As a preliminary matter, Ms. Staver claims that her complaint is based upon a broadcast that took place in Lynchburg, VA and in Dallas, TX. We are uncertain how Ms. Staver was watching television in two separate time zones at the same time, but we would like to learn that trick. We presume that Ms. Staver was actually in Lynchburg, VA, which can hardly be deemed a community that can be considered to be a good measuring stick for the "average person."

As you may be aware, the Commonwealth of Virginia once had a program for forced sterilization of the mentally retarded. These sterilizations were carried out at the Virginia State Colony for Epileptics and Feeble-minded, which is now known as the Central Virginia Training School, and which is located just outside of Lynchburg. During Virginia's experiment with eugenics, Lynchburg was the "dumping ground" for those who were deemed "unfit to reproduce." It should therefore come as no surprise that Jerry Falwell later chose Lynchburg to be the home to his Orwellian-named "Liberty" University. It seems quite clear that this is not the "real America," and thus complaints from within this community should be given no weight.

I. The Lambert Performance Was Not Obscene

According to *Miller v. California*, 413 U.S. 15 (1973), in order for material to be deemed legally obscene, a court must determine the following:

- A) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest,
- B) Whether the work depicts/describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law,
- C) Whether the work, taken as a whole, lacks serious literary and/or artistic, political, or scientific value.

A. Lambert's performance did not appeal to the "prurient" interest.

Prurient means "marked by or arousing an unwholesome sexual interest or desire." Accordingly, we must question who in Ms. Staver's household was aroused by Mr. Lambert's performance? We cannot presume, for the moment, which member of Ms. Staver's household felt arousal or sexual interest in Mr. Lambert, but she should be prepared to provide this information to the FCC if it is her position that the broadcast was marked by an "unwholesome sexual interest or desire."

Accordingly, since Ms. Staver's complaint must be based on experience in her own household, we demand that the FCC subject all male members of the Staver household to a test to determine whether, indeed, one of them is susceptible to arousal by Mr. Lambert's performance. We suggest one of two methods to be administered to determine if, indeed, a member of the Staver household found his loins to be appropriately stirred so that it would warrant an investigation by the federal government.

The subjects could submit to penile plethysmography while watching a tape of the Adam Lambert performance. Alternatively, Joseph G. Bohlen, James P. Held, and Margaret Olwen Sanderson were able to judge the levels of sexual pleasure in men by the administration of a convenient anal probe, which measured involuntary contractions of the sphincter during

orgasm. See *The male orgasm: Pelvic contractions measured by anal probe*, in the April 23, 2005 edition of Behavioral Science. Either method would do.

B. Lambert's performance neither depicted nor described sexual conduct in a patently offensive manner.

The Liberty counsel's complaint cannot be based on the fact that there was actually sexual conduct – there was not. Mr. Lambert did nothing that isn't commonplace on network television, MTV, and on the streets of most towns in America. Yes, Mr. Lambert dragged a man around by a leash, but we interpreted that as a political statement about Abu Ghiraib prison. Perhaps if we lived in the imbecile capitol of America, like the Stavers, we would not be as politically astute.

In order for something to be “patently” offensive, it must be offensive in a clear and unambiguous manner. In other words, it must be identifiable as “offensive” to anyone who watches – not just the hypersensitive members of the Junior Anti-Sex League or the Liberty Counsel. Of course the material is offensive to the Stavers, but is it clearly offensive to anyone who watches it? I would think not. In fact, it took me multiple viewings of the clip to find out just what the Liberty Counsel was so verklempt over. Even now, I find myself mystified as to what could have put the Counsel's staid gray panties in such a wad.

C. Lambert's work, taken as a whole, has serious literary and/or artistic, political, or scientific value.

Okay, we'll be serious. Lambert's work likely has no serious scientific value. However, serious artistic or political value? It can easily be said that it has both.

Artistic value is really merely a matter of taste. But political value? Well, that is is easy – the Liberty Counsel have made homosexuality a political issue by throwing a hissy fit in court any time a homosexual couple might find a bit of happiness. Opposite sex kissing on screen has been permissible since the advent of film. Two girls making out on screen is commonplace. But, it seems to freak out members of this cult to see two boys kissing. The fact is, Adam Lambert was making a statement about equality, and the Stavers feel threatened that their Leviticus-inspired worldview is crumbling around them. That mentality should not be able to be extended beyond the walls of the Stavers' chosen home, Lynchburg, VA.

II. Conclusion

The Lambert performance was neither obscene nor indecent, and on behalf of the employees and members of Corbin Fisher, and all of their families, we found the Lambert performance to be demonstrative of “family values.” Whether the Stavers like it or not,

homosexuals have families too, and both the gay and straight people employed by this company believe that acceptance and tolerance are “family values.” On the other hand, the intolerance, superstition, and bigotry spouted by the Liberty Counsel is “patently offensive,” and absolutely without any redeeming value.

We urge the FCC to reject the Liberty Counsel's complaint as unfounded, and we hereby offer our support for the continued broadcast of this kind of material.

Sincerely,

A handwritten signature in blue ink that reads "Marc J. Randazza". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Marc J. Randazza, Esq.