

Wednesday, May 16, 2007

Of Falwell, Flynt, and the First Amendment.

The First Amendment and Larry Flynt prevailed against Jerry Falwell in *Hustler v. Falwell*, 485 U.S. 46 (1988). (Image from the public domain.) In high school, I'd hear about the Moral Majority, that it was neither, and that some guy named Jerry Falwell was involved with it. I heard he also led Liberty University in Lynchburg, Virginia -- where one of my teachers, Jim Jeans, ultimately taught, at the law school there -- which is about four hours down the road from me, and where Falwell apparently was roundly popular well beyond the campus. Jerry Falwell and other religious conservatives helped sweep Reagan into the White House, and I lived under Reagan's misery for much too long, followed by the misery of George Bush I and now George Bush II. (Then again, if I really wanted to get away from Reagan's misery, I never would have gone to law school in Washington, DC, in the first place, let alone a law school sitting just four blocks from his presidential palace). In the 1980's, the First Amendment prevailed against Falwell in his libel lawsuit against Larry Flynt's *Hustler Magazine*. *Hustler v. Falwell*, 485 U.S. 46 (1988). In setting the lower courts straight by overturning Falwell's lawsuit for libel (the jury found no libel) and emotional distress (the jury awarded him money), late chief justice Rehnquist, never a pal to the First Amendment, still got it right in describing the issue at hand, writing for the majority: "The inside front cover of the November 1983 issue of *Hustler Magazine* featured a 'parody' of an advertisement for Campari Liqueur that contained the name and picture of respondent and was entitled 'Jerry Falwell talks about his first time.' This parody was modeled after actual Campari ads that included interviews with various celebrities about their 'first times.' Although it was apparent by the end of each interview that this meant the first time they sampled Campari, the ads clearly played on the sexual double entendre of the general subject of 'first times.' Copying the form and layout of these Campari ads, *Hustler's* editors chose respondent as the featured celebrity and drafted an alleged 'interview' with him in which he states that his 'first time' was during a drunken incestuous rendezvous with his mother in an outhouse. The *Hustler* parody portrays respondent and his mother as drunk and immoral, and suggests that respondent is a hypocrite who preaches only when he is drunk. In small print at the bottom of the page, the ad contains the disclaimer, 'ad parody - not to be taken seriously.' The magazine's table of contents also lists the ad as 'Fiction; Ad and Personality Parody.'" "Never one to mince words, here is a glimpse at the deposition of *Hustler* owner Larry Flynt by Falwell's lawyer, at which "Flynt identified himself as Christopher Columbus Cornwallis I. P. Q. Harvey H. Apache Pugh and testified that the parody was written by rock stars Yoko Ono and Billy Idol." *Hustler v. Flynt*, 797 F.2d 1270, 1273 (4th Cir. 1986), reversed, 485 U.S. 46 (1988) (how many of the Fourth Circuit judges who ruled in Falwell's favor ever listened to Billy Idol?): [FALWELL'S LAWYER]: "Did you want to upset Reverend Falwell?" [LARRY FLYNT]: Yes. . . . Q. Do you recognize that in having published what you did in this ad, you were attempting to convey to the people who read it that Reverend Falwell was just as you characterized him, a liar? A. He's a glutton. Q. How about a liar? A. Yeah. He's a liar, too. Q. How about a hypocrite? A. Yeah. Q. That's what you wanted to convey? A. Yeah. Q. And didn't it occur to you that if it wasn't true, you were attacking a man in his profession? A. Yes. Q. Did you appreciate, at the time that you wrote "okay" or approved this publication, that for Reverend Falwell to function in his livelihood, and in his commitment and career, he has to have an integrity that people believe in? Did you not appreciate that? A. Yeah. Q. And wasn't one of your objectives to destroy that integrity, or harm it, if you could? A. To assassinate it. As the *Washington Post* reminds us: "In 1999, he told an evangelical conference that the antichrist was a male Jew alive in the world today. He later apologized for his remarks but not for holding the belief. That same year, he warned parents that Tinky Winky, a character on the children's TV show 'Teletubbies,' was a gay role model. On '60 Minutes' in 2002, he labeled Muhammad a terrorist." "Yesterday, Mr. Falwell died. I do not believe in dancing on anybody's grave. Nor do I believe in whitewashing the biography of people who have thrown themselves into the center of public affairs and the eye of the political storm. Falwell was who he was." Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:20