

Settlement with radio station includes rare on-air apology

Media outlets said to be nervous in wake of recent libel verdict

By David E. Frank

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On a recent Monday morning, listeners tuning into WEEI sports radio were treated to something they hardly ever hear on the station: an apology.

John Dennis, co-host of the No. 1-rated "Dennis & Callahan" show, apologized over the airwaves on June 18 for accusations he and his partner, Gerry Callahan, had made four months earlier against a sitting judge, retired judge and high-ranking state prosecutor. (See sidebar on page 25 for text of retraction.)

"It's a pretty extraordinary event for radio talk-show hosts to agree to apologize on the air to three current or former public servants," said the trio's Boston attorney, Howard M. Cooper. "After being accused of fixing a case, [my clients] felt very genuinely that this was not just disparaging, but defamatory, and unfairly put a black mark on their reputation."

Lawyers Weekly has learned that the apology — issued to District Court Judge Peter F. Doyle, retired Judge David T. Doyle and Essex County Deputy First Assistant District Attorney Mary-Alice Doyle — was made as part of an otherwise confidential settlement with WEEI.

And while demands for retractions and public apologies have been commonplace in libel cases for years, what makes this situation unusual is that WEEI actually complied.

A lawyer representing the radio station, Robert L. Kirby Jr. of Boston, declined to comment.



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Boston media lawyer Jeffrey A. Newman, weighing in on the matter, noted that a sea change has been occurring over the last few years that "needs to be examined."

Newman added: "I'm seeing things occur now relative to the nervousness and the fidgetiness of station management in situations that I didn't see even a couple of years ago."

Proceed with caution

Asked to explain what has prompted that nervousness, Newman pointed to several recent libel cases that have ended unfavorably for media outlets, including a \$2.01 judgment against the Boston Herald in a case brought by Superior Court Judge Ernest B. Murphy.

"Particularly since the Murphy case and a few others that have been taken forward, it ap-



Howard M. Cooper

pears as though defamation is becoming a more popular tort, which is proving to be a strong weapon in the arsenal of plaintiffs' lawyers like Howard Cooper," said Newman. "Even though talk-show hosts are getting more cautious, a lot of media outlets feel as though they are not protected as much as they once were."

Newman, who serves as legal counsel to New England Cable News, Fox TV and several other outlets, said cases like Murphy's have led, in part, to more and more media entities quickly agreeing to apology demands.

"I think what you're seeing now is the media becoming concerned about whether [a reported false statement] could have a significant impact on the bottom line at a time when advertising rates are already low," he said.

While stopping short of attributing WEEI's response to any one factor, Jonathan M. Albano, who has represented newspapers, broadcasters and book publishers in a wide variety of cases involving libel, said it is more common to see media outlets agree to offer a correction rather than an apology.

In March, for instance, the Herald swiftly responded to a request "for a fair and complete correction" of "several false and highly defamatory 'facts'" written about Appeals Court Judge Mitchell J. Sikora by issuing a "clarification" to a story about the judge's handling of a 2002 sentencing.

But when it comes to radio personalities like Dennis and Callahan, as opposed to newspaper reporters, Albano said that their opinions are rarely taken as fact and generally are protected from liability.

"I would hope that there would be a very different response if the situation was one in which someone was merely expressing an offensive, unjustifiable opinion," he said. "I would hope the media would view that as something that's worth fighting about."

Off-the-field commentary

On Feb. 16, instead of ranting about Curt Schilling's bid for an extension to his Red Sox contract or the Celtics' continued woes, WEEI's "Dennis & Callahan" show focused on Superior Court Judge Leila R. Kern and the perceived light sentence she had just

doled out in a child-endangerment case against criminal defendant Patrick Doyle.

Despite a prosecutor's request for a four- to six-year prison term, Doyle received a one-year jail sentence for his role in a case in which a Beverly woman was accused of allowing two men to have sex with her daughter in exchange for cocaine.

Doyle reportedly took no steps to stop the assault, which took place several feet away from him.

When radio personalities Dennis and Callahan learned about Doyle's family connections, they began insinuating that the three public officials had reached out to Judge Kern in an attempt to influence her sentence.

"They were brutal, especially when you consider that they were making an unmerciful attack on an 80-year-old retired judge who did nothing in this case," said Doyle's criminal defense attorney, Randy S. Chapman of Chelsea, who appeared as a guest on the show that morning.

"Despite having no evidence to support their claims, they were bashing all three of them by making completely baseless accusations," Chapman recalled. "The calmer I got, the angrier they seemed to get."

Record fixing

With the assistance of attorney Cooper, who had also represented Murphy and Sikora in their cases against the Herald, the Doyles contacted the station and asked for a public retraction.

"The substance of the show and the statements about the Doyles were that they had fixed the sentencing of a relative in a criminal case, and that telephone calls had been made by them to Judge Kern, which resulted in a sentence in a criminal case with which Mr. Dennis and Mr. Callahan were not in agreement," said Cooper.

After contacting lawyers representing WEEI, Cooper said the station agreed to make the on-air apology on June 18 at 8 a.m. — considered to be the time of the morning when listenership is at its highest.

When asked if any financial settlement or other conditions were a part of the deal, Cooper declined to comment.

"I'm constrained from talking about the settlement in any detail except to say that one piece of it was that Mr. Dennis and Mr. Callahan agreed to read the apology that you heard on the radio," said Cooper.

Because Callahan was suffering from a throat ailment that prevented him from appearing on the show, the parties agreed to have Dennis read the statement on the air.

In addition, Cooper said his clients were also in possession of a written apology from Dennis, Callahan and the radio station.

"This was about fixing the record," he said. "I think the apology is simply an admission that they spoke without having any basis in fact for what they were saying."

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Dennis and Callahan: 'We apologize'

Four months after accusing District Court Judge Peter F. Doyle, retired Judge David T. Doyle and Essex County Deputy First Assistant District Attorney Mary-Alice Doyle of making inappropriate contact with Superior Court Judge Leila R. Kern in connection with a criminal case, WEEI radio hosts John Dennis and Gerry Callahan issued the following on-air apology:

"On February 16th, 2007, we discussed the criminal case of Patrick Doyle who had recently been sentenced in Essex Superior Court. During the show, we made statements suggesting that members of the

Doyle family, including a District Court judge, a retired District Court judge and an assistant district attorney, had made phone calls to the sentencing judge or otherwise had influenced the outcome of Mr. Doyle's sentence.

"We want to make it clear to the public that we did not mean to claim that any member of the Doyle family had actually done anything improper and that we did not have any information to support those statements. We apologize to the Doyle family and to the public for any confusion our statements may have caused."



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