


# On Bees, Gospel Music and Redistricting

*by Warren Kraft*

A neighbor calls the City to complain that the house next door is infested with bees; a colleague alerts municipal counsel that the City is hosting a concert that will include a gospel-singing contest; and another has questions about redistricting. Before the electronic era, there was the telephone and lots of calls to be made in hopes that someone in that Rolodex would have leads or an outright answer. "Back in the day," one would marvel that "the world is sure getting smaller" when introduced to an out-of-town person who knew a mutual friend. In these days of social media, texts and emails, more people know about even more (Facebook) friends in making a connection with another person. ("Hey! My wife's cousin lives in Tullahoma!")

For the past decade and beyond, the MCC and IMLA Municipal Attorney List Serve and its companion, the Water Cooler, have made connections, expanded resources, and created friendships that transcend national borders (we even sprouted special colored dots on name badges at IMLA events). In our respective worksites, the weather is a principal topic. Discussions on the Water Cooler provided a human face to national media reports on spring storms and annual flooding. When tornadoes devastated Joplin, MO, an inquiry about a colleague's safety led to stories of compassionate caring that never made the news outlets. In that stormy week, one wrote that the sirens were "now sounding in downtown," and it was hoped that the writer took shelter. (He did.)

But, back to our bee infestation: though it is expensive to abate this condition, one respondent suggested proceeding under the general nuisance code provisions and consulting with the local fire department (they always seem to know to remove bees). Another community utilized the services of a beekeeper in removing bees which had built hives around water meters. In exchange for the bee colony, he did the work at no charge to the city (the homeowners also appreciated the free service) and cautioned that certain bees were becoming endangered. They should, he thought, be relocated without being destroyed. Perhaps an appropriate prohibition against beekeeping within the locality might put others on notice (provided the state had not restricted the municipality's police powers to do so).

Questions about "appropriate" music involve the customary First Amendment analysis, but a question about gospel music as part of a city-sponsored event brought a quick connection to New Orleans and its Jazz and Heritage Festival. "New Orleans wouldn't be New Orleans without gospel music. That has been part of the Jazz Fest since near its beginning, and jazz funerals (which frequently include gospel music) have been part of the culture for about as long as they have occurred." As long as the music fits the genre, the writer continued, don't particularly worry about the content. Gospel music could be jazz or blues, and the message (the gospel lyrics) was incidental; it was the underlying music that counted. As an aside, one contributor asked whether anybody else had "a sudden craving for beignets and coffee (not to mention jambalaya, dirty rice and a cold Pat O'Brien's Hurricane)?"

With every census-taking, there are redistricting issues: enough changes from decade-to-decade so that what was done in 2001 might not suffice ten years later. "Can anyone point me to a good article or other source of information on this process so I can spin my two minutes into five or ten?" wrote a colleague. In response, someone suggested two sources for good basic information on redistricting law: the National Conference of State Legislatures' Redistricting Seminar materials (www.ncsl.org and pick *Redistricting*) and the Brennan Center for Justice at New York University School of Law, www.brennancenter.org. (Or better still, another municipal attorney volunteered to forward presentations already developed for use in that particular community.)

The List Serve and Water Cooler provide an important connection for hundreds of attorneys. Peter Letzmann of Lowell MI, writes, "What that a fantastic resource, this attorney list serve. This alone (a discussion thread on a FOIA request from a professor at University of Texas) is worth the price of admission." Peggy Lyon of Vero Beach FL, added, "Participating in this list serve is like having a 'mobile shout-out' to some of the most intelligent, experienced and generous folks you can imagine! And the best thing is that it is all such a collegial and cooperative effort. When I describe the workings of this list serve to my attorney friends in non-governmental private practice who typically must compete daily against their fellow attorneys for legal work and an upper hand, they are simply amazed by the good will and camaraderie displayed by the government attorneys on this list serve. So, cheers to us ...!" Now, if there is ever a need for a good Vidalia onion recipe or an outlet for Crystal Hot Sauce & Wickles Pickles, or a good conversation on the Three-Brain Theory, there are colleagues ready with responses.

For those of you who would like to join the listserv, go to http://www.municode.com and select the *Listservs* link to get the page on *Mailing Lists*.

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## Supreme Court

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it was obtained with evidence procured in violation of the Fourth Amendment.

The issue now comes before the U.S. Supreme Court. In addition to the question presented by the petition for certiorari (whether the warrantless use of a tracking device on Jones's vehicle to monitor its movements on public streets violated the Fourth Amendment), the parties were directed to brief and argue the following question: "Whether the government violated respondent's Fourth Amendment rights by installing the GPS tracking device on his vehicle without a valid warrant and without his consent." ML

## Inside Canada

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chases, with little wait time or screening, were most likely to occur at retail pet stores. "Requiring owners to put additional thought and preparation into their decision to purchase a dog is rationally connected to reducing unwanted dogs in the city."[8]

Other Canadian cities are now looking at enacting similar restrictions.

### Notes

1. *International Bio Research v. Richmond (City)*, 2011 BCSC 471, at para. 16 (B.C.S.C. Apr. 15, 2011).
2. *Id.* at para. 6.
3. Council Minutes, Nov. 08, 2010, at para. 3, available at http://www.richmond.ca/cityhall/council/agendas/council/2010/110810_minutes.htm.
4. *International Bio Research*, at para. 3.
5. *Id.* at para. 37.
6. *Id.* at paras. 56,57.
7. *Id.* at para. 83.
8. *Id.* at para. 77. ML

## Second Look

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4. Advisory Committee Notes, Fed. R. Evid. 502(d).
5. For an example of a motion seeking a Rule 502(d) order, *see* City of Dallas' Motion for Entry of Order Protecting Privileges from Waiver with Supporting Brief, *United States. v. Don Hill*, Crim. Action No. 3:07-CR-289-M (N.D. Tex. Aug. 5, 2009), ECF No. 929; and for an example of a Rule 502(d) order, see Order Granting Motion for Entry of a Protective Order as to City of Dallas, *United States v. Don Hill*, *supra* (N.D. Tex. Aug. 14, 2009), ECF No. 934, which provides in pertinent part:

> The motion is GRANTED, and it is hereby ORDERED that pursuant to Federal Rule of Evidence 502(d) and the Court's inherent powers, no privilege or protection for communications or other information claimed as privileged by the City of Dallas, Texas, is waived by disclosure connected with the litigation pending in this case, and that any such disclosure is also not a waiver in any other Federal or State proceeding.

Note that Dallas had to seek relief under common law and inherent powers to protect privileges beyond attorney-client and work product because Rule 502 is limited to protecting only those two privileges. The City's main additional concern was to protect the legislative deliberative privilege for City Council discussions. ML

## List Serv

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## Federal

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have deterred broadband deployment or adoption, or that they will do so in the future. If the FCC has genuinely not pre-judged these issues, it should have little trouble concluding that its time and resources are better spent elsewhere. But, if the FCC cannot appreciate the evidence we have placed before them, we are fully prepared to visit the matter with higher authorities such as the Congress, the courts and the people of America—the real owners of the rights-of-way.

*Jay Doegey is IMLA's President-Elect and City Attorney of Arlington, Texas. Gerry Lederer is Of Counsel with the law firm of Best Best & Krieger (incorporating the practice of Miller & Van Eaton) and a proud IMLA member. Best Best & Krieger has been honored to assist IMLA in assembling and serving as counsel to the local government coalition.*

### Notes

1. *In re Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No. 11-59, FCC 11-51 (Apr. 7, 2011).
2. The coalition's members, in addition to IMLA, include: The National League of Cities, National Association of Counties, United States Conference of Mayors, National Association of Telecommunications Officers and Advisors, Government Finance Officers Association, International City/County Managers Association, and the American Public Works Association.
3. *Seventh Broadband Progress Report and Order on Reconsideration* (GN 10-59), dissenting Statement of Commissioner Robert McDowell (released May 20, 2011) at 1. ML