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Re: **John Sharpe v. Landmark Communications, Inc., d/b/a The
Virginian-Pilot and David Mastio**
At Law No.: CL08-1664

Gentlemen:

The parties' counsel and Mr. Sharpe appeared before the Court on Wednesday, March 11, 2009, to argue the defendants' Motion to Declare John Sharpe a Public Official and a Public Figure, and the defendants' Motion for Summary Judgment.

The plaintiff, John Sharpe (hereinafter "Sharpe"), filed his Complaint on March 11, 2008, alleging that the defendants defamed him on March 15, 2007, by their publication of an editorial, authored by defendant David Mastio (hereinafter "Mastio"), "that falsely accuses Sharpe of, among other things, undermining his nation, being an open racist and anti-Semite, fundraising for anti-Semitic 'crackpots,' and participating in supremacist activities in violation Navy Regulations." Complaint, paragraph 6. Sharpe seeks \$5,000,000 in compensatory damages and, against each defendant, additionally seeks \$350,000 in punitive damages.

The defendants filed their Answer to Complaint (hereinafter "Answer") on April 4, 2008, wherein, inter alia, they admit publishing Mastio's editorial, yet deny defaming Sharpe. The defendants contend that, "The March 15, 2007 editorial was prepared in good faith, without actual malice, and for the purpose of informing the public of matters

of which the public had the right to be informed. The editorial related to a matter of general public interest and concern and was published in the exercise of the Defendants' Constitutionally protected rights of Freedom of Speech and Freedom of the Presses guaranteed by the First and Fourteenth Amendments to the United States Constitution...Defendants state that the editorial was of and concerning a public official and a public figure and concerned a matter of public interest." Answer, paragraphs 27 and 28.

Since coming at issue in the lawsuit, the parties have engaged in relatively extensive discovery, including depositions, interrogatories and responses thereto, requests for production of documents and attendant document production, the filing of United States Navy personnel-related documents (under seal), and the filing of affidavits (by Sharpe). During the March 11th hearing, counsel told the Court that it could use all such materials, specifically including deposition transcripts, to decide the pending motions. Since that date, the Court has reviewed and considered these voluminous materials.

In their declaratory motions, the defendants ask the Court to rule that Sharpe is a public official and/or a public figure within the ambit of New York Times v. Sullivan, 376 U.S. 254 (1964) and Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). The parties agree that whether Sharpe personifies a public official or figure constitutes an issue of law for the Court to decide, as opposed to an issue of fact. See generally, Rosenblatt v. Baer, 383 U.S. 75, 88 (1996); Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541, 1551 (Fourth Cir. 1994).

If the defendants prevail and the Court declares Sharpe to be a public official or public figure, then, at trial, the First and Fourteenth Amendments to the United States Constitution mandate that Sharpe must prove, by clear and convincing evidence, that the defendants acted with "actual malice" in defaming him through publication of the editorial; that is, Virginia defamation law would not control the case. New York Times, supra, at 280-286; Gertz, supra, at 335-6, 342. [For recent general discussions of Virginia law on defamation, see, Jordan v. Kollman, 269 Va. 569, 575-577, 612 S.E.2nd 203, 206-208 (2005), and WJLA-TV v. Levin, 264 Va. 140, 152-157, 564 S.E.2nd 383, 390-393 (2002).] Actual malice is defined as a statement made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times, supra, at 280.

PUBLIC OFFICIAL

The Court rules that Sharpe constitutes a public official within the meaning of New York Times v. Sullivan and Rosenblatt v. Baer, 383 U.S. 75 (1966).

In Rosenblatt, the Court discussed a limitation of the New York Times decision, in that it did not “determine how far down into the ranks of government employees the ‘public official’ designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included.” 383 U.S. at 84, quoting, New York Times, 376 U.S. at 283, n. 23. However, in Rosenblatt the Court ruled that the public official designation would apply “at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for control over the conduct of governmental affairs”. Id. With respect to a public official, the Court concluded that the, “employee’s position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy.” Id. at 86.

Importantly, Rosenblatt provided future courts with an articulation of the basic principles at work in enunciating constitutional limitations upon state defamation law:

The motivating force for the decision in New York Times was twofold. We expressed “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, *and* that [such debate] may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” 376 U.S. 270 (emphasis supplied.)

* * *

The thrust of New York Times is that when interests in public discussion are particularly strong, as they were in that case, the Constitution limits the protection afforded by the law of defamation. Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in New York Times are present and the New York Times malice standards apply.

Rosenblatt, supra, 383 U.S. at 85, 86. See also, discussion, Richmond Newspapers, Inc. v. Lipscomb, 234 Va. 277, 284-87, 362 S.E.2nd 32, 35-37 (1987).

Pursuant to these constitutional standards and guiding principles, in determining Sharpe's "public official" designation, the Court first turns to an examination of Sharpe's United States Navy rank and position at the time of the alleged March 15, 2007 defamation. On that date Sharpe served as a Lieutenant Commander, a rank often compared to that of Major in other armed services of the United States military, which rank the Court deems to constitute a commissioned officer of relatively substantial authority. At the time the defendants published the editorial, Sharpe served as the Public Affairs Officer of the *USS Carl Vinson*, a Nimitz-class aircraft carrier undergoing significant and lengthy drydock work and repairs at Newport News Shipbuilding and Drydock.

According to www.Navy.com, which website the parties agree contains the job description and other career-related information relevant to those serving in various capacities within the United States Navy, a Public Affairs Officer's position is described as follows:

Job Description:

Managing the flow of news and information for the Navy, the media, and the public is the responsibility of a group of elite Officers who specialize in the Navy's public relations. Public Affairs Officers are the eyes and ears of the fleet and often the rest of the world. Effective delivery of information is an intricate part of the Navy – in the form of visual, audio and written communications, both internally and to the public.

The website description of Public Affairs Officers also provides examples of representative duties, including, supervising the writing and delivery of press releases and reports for both the public and military personnel, briefing military personnel prior to their meetings with public and news media organizations, providing information to various media sources, and importantly, advising the "operational commander on decision-making and communication with three main audiences: media, internal Navy and the public."

Sharpe's former commanding officer, W. E. Carter, Jr., the Captain of the *USS Carl Vinson*, in his May 18, 2007, Punitive Letter of Reprimand to Sharpe, both echoed

the significance of Sharpe's position in the public's eye and emphasized its actual gravity within the naval command structure and the command of that vessel:

As the Public Affairs Officer of the *USS Carl Vinson* (CVN 70) you are expected to explain the mission of this command and its role in the Global War on Terrorism in a professional and unbiased manner, without regard to your personal beliefs or opinions. Your contemptuous words directed against the Commander-In-Chief, both in print and other media, undermine your position as a Public Affairs Officer and make it impossible for your to effectively act as a spokesman for this command.

The Commander of the Naval Air Force Atlantic, J.W. Goodwin, on June 19, 2007, affirmed Capt. Carter's action in reprimanding Sharpe, specifically finding that "your Commanding Officer did not abuse his discretion and is within his authority to take the action noted. I do not find his action to be unjust".

The record contains other examples of Sharpe's significant actual and apparent authority as a Lieutenant Commander in the Public Affairs Officer corps, of which one example is Sharpe's Fitness Report and Counseling Record of June 14, 2004. That document, authored prior to Sharpe's assignment to the *USS Carl Vinson*, among other contents, describes Sharpe's duties as including such things as, "directing the media relations activity of one of the most dynamic and complex command environments found anywhere in DoD. His skill at handling complex media requests and sensitive issues help him navigate the command through challenging media inquiries from nationally recognized outlets[.]"

Viewed holistically, the Court finds that Sharpe, by virtue of his rank, assignment, and duties, possessed a position "among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." Rosenblatt, *supra*, 383 U.S. at 84. And see discussions, Baumbach v. American Broadcasting Company, Inc., No. 97-2316, 1998 WL536358, at pages 2-4 (Fourth Cir., August 13, 1998); Ydoyaga v. Jones, 74 Va. Cir. 466, 468-69 (2008). He served as the purveyor of information both to the public on behalf of, and within a wartime naval command. The very object of his public office was to instill confidence in the accuracy and integrity of his and his department's work product.

Sharpe's efforts to minimize or even trivialize his duties as the *USS Carl Vinson's* Public Information Officer do not persuade the Court. While his vessel's drydock status

arguably may have diminished some of the actual significance of his duties, that status would not effectively have diminished the public's perception of the apparent authority of his job. In addition, it is clear that the drydocking of the *USS Carl Vinson* did not diminish the U.S. Navy's perception of either the actual or apparent authority of Sharpe's position, as evidenced by his senior officers' findings and communications. At the time of the alleged defamation, Sharpe did, in fact, maintain department head status within the *USS Carl Vinson's* command hierarchy and supervised some 28 subordinate personnel, including at least one other commissioned officer, a non-commissioned officer, and several enlisted personnel. Sharpe Deposition of September 10, 2008, pages 13-17.

Even (Retired) Rear Admiral T. L. McCreary, the former Chief of Information of the United States Navy's Office of Information, and an individual once having oversight over Sharpe's performance as a Public Information Officer, "administratively cautioned" Sharpe in 2005 with respect to his activities. Rear Admiral McCreary, at the time on active duty, noted to Sharpe that, "As a Public Affairs Officer, you should know that the public manner of such comments [as those made in Sharpe's writings] could negatively impact your effectiveness as a spokesman for the Navy, the Department of Defense or the U.S. Government . . . you should understand that in the role of spokespersons, military PAOs are required to explain policy matters in an unbiased, balanced manner regardless of personal opinion or belief." [Clarification added]. In a July 28, 2008 e-mail to Sharpe, McCreary, then retired, and clearly sympathetic to Sharpe, acknowledged that "he placed Sharpe aboard the *USS Carl Vinson* essentially in an effort to place him out of the mainstream while continuing his career in a reasonably competitive way."

The Court views such communications as consistent with its finding that Sharpe was a public official at the time of the alleged defamatory editorial. The fact that Rear Admiral McCreary sought to assign Sharpe out of the limelight neither negated the public perception of Sharpe's apparent authority nor, in reality, so eroded his actual duties so as to require a conclusion that he possessed no substantial responsibility for control or conduct of governmental affairs or negate an invitation of public scrutiny and discussion of the attributes of the person holding the position. Rosenblatt, supra, 383 U.S. at 85 and 86.

Therefore, at trial, the Court will apply the actual malice standard of the New York Times decision's constitutional limitation upon state defamation law.

LIMITED-PURPOSE PUBLIC FIGURE

The Court finds that Sharpe is not a limited-purpose public figure. (The defendants do not herein contend that Sharpe represents a public figure for all purposes, but instead, that he is a limited-purpose public figure.)

In Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974), the Court differentiated between two categories of individuals who may be characterized as a “public figure”:

That designation may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.

Following Gertz, many courts have discussed and sought to develop workable definitions and tests determinative of whether a specific individual, upon a given set of facts, constitutes a limited-purpose public figure. See discussion, Foretich v. American Broadcasting Companies, Inc., 37 F.3d 1541, 1552-1555 (Fourth Cir. 1994), and see, WJLA-TV, *supra*, 264 Va. at 154 n. 3, 564 S.E.2d at 391 n. 3; Flemming v. Moore, 221 Va. 884, 891-92, 275 S.E.2d 632, 637-38 (1981). Although the Virginia Supreme Court has discussed the issue, it has not articulated or adopted a particular elemental test for Virginia Circuit Courts to follow to determine, in a specific context, if an individual constitutes a limited-purpose public figure.

In Hatfill v. The New York Times Co., 532 F.3d 312, 318-19 (Fourth Cir. 2008), the Court favorably cited Foretich and stated the following test, which test this Court adopts for determination of the relevant issue in this case:

Accordingly, in contrast to a public official or an all-purpose public figure, either of whom must always meet the actual malice standard, a “limited-purpose public figure,” one who has “thrust [himself] to the forefront of *particular public controversies* in order to influence the resolution of the issues involved, Gertz, 418 U.S. 345 (*emphasis added*), must show actual malice only when alleging defamation with regard to the particular controversy into which he has inserted himself.

The reasons for narrowing the protections of state defamation law for limited-purpose public figures gives rise to factors that we have articulated for determining whether a plaintiff in a defamation case is a private person entitled to the full protection of state defamation law or a limited-purpose public figure entitled to only a narrowed protection. Under these factors, we focus on whether:

- (1) the plaintiff had access to channels of effective communication;
- (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy;
- (3) the plaintiff sought to influence the resolution or outcome of the controversy;
- (4) the controversy existed prior to the publication of the defamatory statement; and
- (5) the plaintiff retained public-figure status at the time of the alleged defamation.

Also, in Foretich, the Court noted that, “[t]ypically, we have combined the second and third requirements to ask, ‘whether the plaintiff had voluntarily assumed a role of special prominence in a public controversy by attempting to influence the outcome of the controversy.’” [Citations omitted]. Foretich, supra, 37 F.3d at 1553. As noted in Gertz, public figures receive the constitutional privilege of New York Times because, although they may not hold public office, they are persons who “are nevertheless intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large”. 418 U.S. at 336-37, quoting, Associated Press v. Walker, 388 U.S. 130, 164 (1967) (Warren, C.J., concurring in result); and see, Hatfill, supra, 532 F.3d at 317-319.

Thus, the legal test to determine whether an individual may be classified as a limited-purpose public figure with respect to one or more identifiable public controversies includes an examination of whether that plaintiff maintains a position of sufficient prominence that he does or potentially may make a qualitative impact upon the outcome of the controversy at issue.

With respect to the particular public controversy inquiry, the Court finds that Sharpe, writing from the perspective of an advocate of his personal interpretations of the very conservative Catholic Social Doctrine, frequently writes or compiles, re-publishes, or endorses the writings of others that criticize the alleged role of Jews and their perceived conspiratorial efforts to dominate the United States Government, world financial markets, the media, and world events, including but not limited to, the September 11, 2001 attacks by Islamic extremists in the United States and the resultant United States' and other western nations' involvement in armed conflicts in Afghanistan and Iraq. While relatively broad in their scope, Sharpe's writings and those which he otherwise published or endorsed on the websites of the Legion of St. Louis or the IHS Press (hereinafter collectively referred to as "Sharpe's writings" or "his writings") coalesce around one common denominator, that is, suspicion and criticism of the role of Jews in world events, including the perceived cause and effect of such Jewish efforts on the downfall on western Christendom and, in particular, Catholicism. Sharpe's writings take a macro view of perceived Jewish influence, variously referring to it in such ways as "Judeo-Masonry", the "Jewish Nation", "World Judaism", "World Jewry", and "depending upon who is asked, what makes someone Jewish, is anything from their religious persuasion to their ethnicity, to their nationality, to the religion or ethnicity of their maternal parent." Special Feature: WTC and the Pentagon Attacked. Part III, a writing authored by Sharpe and published circa October 16, 2001, on the website of the Legion of St. Louis. Thus, having generally defined the public controversy which drew the defendants' ire in the March 15, 2007 editorial, the Court turns to the applicable legal test.

First, the Court finds that Sharpe did have access to channels of effective communication, in that he maintained (and has not removed from the internet) two websites wherein he showcased his writings between the years 2001 and 2005. Clearly, through his writings, Sharpe sought to influence the resolution or outcome of the public controversy, in that he advocated that western society should inform itself and critically examine the role of Jews in modern world events enroute to proactively adopting within the fabric of that society principles of the Catholic Social Doctrine. The controversy, as this Court perceives it, certainly existed prior to the publication of the allegedly defamatory editorial. Thus, Sharpe satisfies the first, third and fourth elements of the Hatfill test. However, because the Court finds that Sharpe did not maintain a "role of special prominence in the public controversy", it holds that he does not fulfill the second element of the test and therefore, necessarily, cannot fulfill its fifth element.

In essence, Sharpe's writings represent a relatively weak voice from the outer boundary of the marketplace of ideas. The particular public controversy at issue is not one in the forefront of modern public discussion. To be sure, Sharpe's writings warrant the serious treatment they receive from legitimate and credible organizations that monitor and publicize information about persons publishing anti-Semitic, racist or extremist viewpoints, and the Court does not here seek to diminish the societal value of such monitoring organizations. Nevertheless, Sharpe's societal impact, including the fact that many of his writings were published on the websites of the Society of St. Louis and the IHS Press several years ago, yields but marginal effect, at best. Indeed, Sharpe fails to rank significantly even among like-minded modern commentators and writers.

The defendants cite such authority as Dilworth v. Dudley, 75 F3d 307 (7th Cir. 1996) for the proposition that, "anyone who publishes becomes a public figure in the world bounded by the readership of the literature to which he has contributed By publishing your views you invite public criticism and rebuttal; you enter voluntarily into one of the sub-markets of ideas and opinions and consent therefore to the rough competition of the marketplace." Id., at 309. They argue that because Sharpe published his writings on the World Wide Web, that is, the internet, then the Court should declare Sharpe to be a limited-purpose public figure for rebuttal in any media, including the editorial to the readers of The Virginian-Pilot newspaper and its internet website. The Court disagrees with this position.

First, the record contains no evidence that Sharpe's writings ever achieved any palpable measure of prominence in the marketplace of ideas. Other than Rear Admiral McCreary, the U.S. Navy apparently did not take notice of Sharpe's writings until 2007, when the defendants and another local publication drew attention to Sharpe's writings and his alleged espoused viewpoints. Second, the record affirmatively reveals that aside from the monitoring organizations that report on alleged "fringe" persons and entities, the published rebuttals to Sharpe's writings primarily came from such sources as a publication entitled, The Remnant, wherein an individual named "Matt Anger" wrote an article entitled, "Catholic Action for the Third Millennium." That article differed with Sharpe on the issue whether Catholicism approved of such societal activism on behalf of the Catholic Social Doctrine as that which Sharpe advocates. Indeed, such discourse more accurately represents the "sub-market" of ideas and opinions most appropriate to Sharpe's writings. In short, the defendants greatly overmatched Sharpe in the Dilworth rebuttal analysis, and that analysis therefore cannot control the issue whether Sharpe represents a limited-purpose public figure. .

Therefore, because Sharpe does not satisfy the Hatfill test elements, the Court concludes that he does not constitute a limited-purpose public figure.

SUMMARY JUDGMENT RULINGS

The Court, in part, will grant and deny summary judgment to the defendants.

The applicable legal standard dictates that a trial court may enter summary judgment only when no material fact genuinely is in dispute respecting a particular issue. The court must “adopt those inferences from the facts that are most favorable to the non-moving party”, unless to do so would be strained, forced or contrary to reason. Carson v. LeBlanc, 245 Va. 145, 139-40, 472 S.E.2d 189, 192 (1993); Rule 3:20 of the Rules of the Supreme Court of Virginia. As noted on Carson, “[w]hile the summary judgment rules and the discovery rules are not intended to substitute a new method for trial when an issue of fact exists, these rules ‘were adopted to allow trial courts to bring litigation to an end at an early stage when it clearly appeared that one of the parties was entitled to judgment in the case as made out by the pleadings and the admissions of the parties.’ ” Id., citing Kasco Mills, Inc. v. Ferbee, 197 Va. 589, 593, 90 S.E.2d 866, 870 (1956). Summary judgment may be granted only where no trial is necessary because no evidence could affect the result. Kasco Mills, Inc. supra, citing Carwhile v. Richmond Newspapers, 196 Va. 1, 5, 82 S.E.2d 588, 590-91 (1954). In short, when reasonable persons could disagree on the resolution of a particular factual issue, the trial court should not grant summary judgment; when reasonable persons could not disagree on the proper resolution of such an issue, then summary judgment is appropriate. See generally, Hansen v. Stanley Martin Companies, Inc., 266 Va. 345, 585 S.E.2d 567 (2003).

In paragraph three of the March 15, 2007 editorial the defendants state that, “Sharpe’s views aren’t dangerous because they are openly racist and anti-Semitic, though that would be bad enough. His ideas are dangerous because they’re crazy, and when uttered by a commissioned officer, they take on the aura of authority”. Although one might argue that the defendants uttered only opinion in stating that Sharpe’s views are “openly racist and anti-Semitic”, Sharpe claims that the defendants therein make factual assertions and defamed him by doing so. Complaint, paragraphs 6 and 20.

Viewed as allegedly defamatory factual statements respecting Sharpe’s views, the Court grants the defendants summary judgment. The Court, having thoroughly reviewed the corpus of Sharpe’s writings, and especially those selections personally

authored by him, concludes as a matter of law that the writings do espouse anti-Semitic and racist views. See, Exhibit B to Answers to Interrogatories, Writings of Mr. Sharpe or Those He Endorses and Distributes Prior to Editorial, Tabs 1, 3, 4, 5, 6, 10, 12, 14, and 15.

The term anti-Semitism is variously defined, however, its core meaning is considered to be a prejudice against or hostility toward Jews. This somewhat universal definition may be found in both dictionary definitions and reported cases. See, e.g., <http://www.merriam-webster.com/dictionary/anti-semitism>; <http://dictionary.reference.com/browse/anti-semitism>; <http://en.wikipedia.org/wiki/anti-semitism>; Webster's New World Dictionary of the American Language, 2nd College Edition, "anti-Semitic" (1974); and Jones v. City of Philadelphia, Common Pleas Court of Philadelphia, Civil Trial Division, at page 9 (2005), affirmed, Jones v. City of Philadelphia, 893 A.2d 837 Pa. (2006). In addition, the Office for Democratic Institutions and Human Rights has produced a "working definition" of anti-Semitism which, in relevant part, states as follows:

Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed to Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities. In addition, such manifestations could also target the State of Israel conceived as a Jewish collectivity.

Anti-Semitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong". It is expressed in speech, writing, visual forms and actions, and employs sinister stereotypes and negative character traits.

* * *

Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other social institutions.

* * *

Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.

See, www1yadvashem.org.il/about_holocaust/holocaust_anti-semitism/working_definition_on_anti-semitism.pdf

Sharpe's views, as expressed in his personally authored writings, align almost perfectly with both the traditional and more modern expanded definitions of the term "anti-Semitism". Indeed, on one occasion, Sharpe admitted, in effect, that a hypothetical enlisted member of his command might well have considered his writings to be anti-Semitism. Exhibit 6, Defendant's Confidential Exhibits to their Memorandum in Support of Motion for Summary Judgment.

The term "racist" generally signifies a viewpoint of racial prejudice or discrimination or hatred or intolerance of another race; or, a policy or system of government that is based upon or fostering such a doctrine for discrimination. See, <http://www.merriam-webster.com/dictionary/racist>; <http://dictionary.reference.com/browse/racist>; and Webster's New World Dictionary of the American Language, 2nd College Edition, "racism" (1974). In Beverly Hills Food Land, Inc. v. United Food and Commercial Workers Union, Local 655, 840 F.Supp. 697, 707 (E.D. Mo. 1993), the court adopted the following definitions:

"Racism" or "racist" is defined as 1) a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race; or 2) racial prejudice or discrimination. Webster's 9th New Collegiate Dictionary (1984). One of the generally accepted definitions of "prejudice" is "an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics." Id.

No reasonable person can read Sharpe's individual writings and conclude that he espouses anything other than a deep, abiding and pervasive suspicion of and hostility toward Jews, whether considered as a collective people, religion, nation or ethnic group. From his perspective as an advocate of the Catholic Social Doctrine, he considers Jews to be in direct competition with western Christendom, in fact, seeking to bring about its end, and also responsible in whole or in part for nefarious and self-centered domination of the

United States Government, one or more of its former Presidents, the media, the world financial markets, and, bearing responsibility for such events as the terrorist attacks on United States soil occurring on September 11, 2001.

This Court thus holds that reasonable persons could not differ in concluding that such views, however intellectually or articulately expressed or claimed to be authoritatively based, are racist towards Jews. Therefore, it grants defendants summary judgment with respect to their above-quoted characterization of Sharpe's views.

In the editorial's sixth paragraph, the defendants criticize Sharpe's writings as follows:

Jews are responsible for "centuries of usury and at least one century's (and two world wars') worth of godless and conscious-less Empire . . ."

The Court grants the defendants' motion for summary judgment with respect to this statement. The Court finds that Sharpe did make the quoted statement and, in so doing, he clearly implicated Jews as the culprits for those things. See, Exhibit B to Answers to Interrogatories, Writings of Mr. Sharpe or Those He Endorses and Distributes Prior to Editorial, Tab 1, page 6. Moreover, the defendants' use of the quote in paragraph 6 of the editorial did not in any way result in a material change in the meaning conveyed by the statement as Sharpe originally published it. See, Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 517 (1991).

In the editorial's paragraph 7, the defendants state that, "Sharpe used his groups to raise money for holocaust revisionist Jim Condit, an Ohio crackpot who claims that Zionist Jews engineered Adolph Hitler's rise to power." Sharpe contends that he did not raise funds for Condit, nor has he ever used group to raise money for any holocaust revisionist agenda, and that the editorial defamed him in those regards. However, in Issue 36 of the Legion News and Views, dated October 5, 2002, Sharpe made the following statements:

ACTION: SUPPORT JIM CONDIT'S RADIO AD CAMPAIGN.

* * *

ACTION: SUPPORT JIM CONDIT'S RADIO AD CAMPAIGN.

Jim Condit is trying to raise money for 10 days worth (sic) of saturation radio advertising coverage, in order to get the word out about how (sic) is driving our country toward war with Iraq, and why.

* * *

Remember, the Zionist Big Media IGNORES opposition when it can – and attacks when it must. The TEN DAY saturation blitz was picked for a reason. It is an achievable goal if everyone who hears of the strategy -- and believes in it – responds as generously as they can – and spreads the word by email, by printing out these messages and handing them to others, and by lobbying for help by word of mouth. Time is of the essence.

* * *

The Legion is not in any way connected with Mr. Condit's enterprise, for the record, but one thing is for sure. The more Catholics take the line "my way or the highway" the easier it is for our enemies to maintain their stranglehold on the world. We Catholics, who all too often insist – in matters which are strictly temporal and ordained to the common good of society – that someone with whom we collaborate be exactly like mind with ourselves (in any number of issues), are digging our own grave. It is essential that we unite with people of like mind, without any compromise on essentials, to work for the Common Good. Exactly the way Father Coughlin did with his National Union for Social Justice.

It is with these thoughts in mind that we direct our readers' attention to Mr. Condit's enterprise. – ED.

Exhibit B to Answers to Interrogatories, Writings of Mr. Sharpe and Those He Endorses and Distributes Prior to Editorial, Tab 12, pages 1 and 2.

The Court finds that the editorial accurately characterized Sharpe's association with and fundraising effort for the individual referenced as "Jim Condit", and thus the Court grants summary judgment upon that narrow issue.

With respect to Sharpe's other complaints about the contents of the editorial, the Court denies summary judgment and will permit Sharpe to proceed to trial. Most of

Sharpe's other allegations of defamation, though not all of them, relate to the defendants' use of quotation marks to attribute certain specific statements to Sharpe. Sharpe contends that, *inter alia*, these quotations either inaccurately portray statements authored by him and/or contained within his writings, that these quotations are cobbled together from various examples of Sharpe's writings in a way that mischaracterizes their meaning, or that the defendants manipulated his statements to attribute to him views he does not hold, all of which devices employed by the defendants served to defame and damage him.

In *Masson, supra*, the Court reversed the granting of summary judgment to journalistic defendants when they used quotation marks to attribute specific statements to the plaintiff that he, similar to Sharpe, contended that he never made or which mischaracterized his actual views. In its opinion, the Court stated:

In general, quotation marks around a passage indicate to the reader that the passage reproduces the speaker's words verbatim. They inform the reader that he or she is reading the statement of the speaker, not a paraphrase or other indirect interpretation by an author. By providing this information, quotations add authority to the statement and credibility to the author's work. Quotations allow the reader to form his or her own conclusions and to assess the conclusions of the author instead of relying entirely upon the author's characterization of their subject.

A fabricated quotation may injure a reputation in at least two senses either giving rise to a conceivable claim of defamation. First, the quotation might injure because it attributes an untrue factual assertion to the speaker. An example would be a fabricated quotation of a public official admitting he had been convicted of a serious crime when in fact he had not.

Second, regardless of the truth or falsity of the factual matters asserted within the quoted statement, the attribution may result in injury to reputation because the manner of expression or even the fact that the statement was made indicates a negative personal trait or an attitude the speaker does not hold.

* * *

We conclude that a deliberate alteration of the words uttered by a plaintiff does not equate with knowledge of falsity for purposes of *New York Times v. Sullivan*, 376 U.S. 279-280, and *Gertz v. Robert Welch, Inc.*,

supra, 342, unless the alteration results in a material change in the meaning conveyed by the statement. The use of quotations to attribute words not in fact spoken bears in a most important way on that inquiry, but it is not dispositive in every case.

* * *

Where, however, a writer uses a quotation, and where a reasonable reader would conclude that the quotation purports to be a verbatim repetition of a statement by the speaker, the quotation marks indicate that the author is not involved in an interpretation of the speaker's ambiguous statement, but attempting to convey what the speaker said. This orthodox use of a quotation is a quintessential "direct account of events that speak for themselves." . . . More accurately, the quotation allows the subject to speak for himself.

The Court finds that the defendants' use of quotations in the editorial, and its other factual assertions with respect to Sharpe and about which he complains, constitute matters on which the minds of reasonable persons might differ in this case. In such an instance, a trial court should not resolve the issues on summary judgment. Instead, the parties should proceed to trial where the devices of examination and cross-examination will yield the sharp focus and juxtaposed positions that will enable a jury, as fact finder, and upon appropriate instructions of law, to resolve the issue placed before them for decision.

As noted, at trial the Court will apply the actual malice standard first articulated in the New York Times case. That standard also applies to Sharpe's demand for punitive damages. See, Newspaper Publishing Corp. v. Burke, 216 Va. 800, 224 S.E.2d 132 (1976).

CONCLUSION

The Court directs defendant's counsel to prepare a brief order to incorporate by reference and to effect the rulings of this letter-opinion, circulate it to plaintiff's counsel and present it to the Court for entry on or before Thursday, April 16, 2009. The parties may appropriately endorse the order so as to note and preserve their respective objections thereto.

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RE: Sharpe v. Landmark Communications

Thank you for your cooperation and assistance in these important matters.

Very truly yours,

Norman A. Thomas
Circuit Judge

NAT/nm