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Newspapers, Other Media By Stefanie Knapp Daily Journal Staff Writer LOS
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July 12, 2004

BIAS CLAIM, FREE SPEECH RIGHTS FACE OFF IN 'FRIENDS' LITIGATION
'Friends' Case Alarms Newspapers, Other Media

By Stefanie Knapp

Daily Journal Staff Writer

LOS ANGELES - A major legal battle over claims that writers on the TV comedy "Friends" fantasized aloud about sex with star Jennifer Aniston, and spoke in "ghetto talk," is roiling Hollywood studios and corporate newsrooms.

Amaani Lyle, 31, an African-American writer's assistant, sued the show and its production company, saying she was subjected to a barrage of sexually and racially offensive comments from writers on the Warner Bros. lot in 1999. Lyle was fired for poor performance after four months.

The writers' attorney, Adam Levin, doesn't dispute that explicit sexual discussions took place in the writers' room but argues the dialogue was part of their necessary creative process. The show frequently explored sexual situations, and the sometimes juvenile sexual antics of characters including Matt LeBlanc's dim-bulb Lothario Joey, and Matthew Perry's suave but hapless Chandler.

Lyle's suit, which included wrongful termination, sexual and racial discrimination and harassment claims, was originally thrown out by a trial judge, who found that the discussions were necessary to create the television show, which is protected by the First Amendment.

But in late April, a state appeals court overturned that decision. Justices Earl Johnson, joined by Presiding Justice Dennis Perluss and Justice Fred Woods ruled that a jury should decide Lyle's claim against the writers, Warner Bros. and Bright, Kaufmann, Crane Productions that she was subjected to a sexually hostile workplace.

"[W]e conclude "creative necessity" is not an affirmative defense to a cause of action for sexual harassment but it is a factor a jury can consider along with other factors in determining whether defendants' conduct created a hostile work environment for the plaintiff," Justice Johnson wrote.

That decision sent fear through entertainment and media companies, which rely on full and sometimes explicit discourse to develop stories. Noted media lawyer Kelli Sager alerted media firms and organizations, and eight, including the Daily Journal, signed on to a letter requesting that the state Supreme Court review the appellate ruling.

Newspapers worry that if the appellate ruling stands, they will have no recourse if an

employee is offended by frank newsroom discussions about such high-profile stories as the Kobe Bryant rape trial, the Michael Jackson molestation case or the Abu Ghraib prison scandal.

"The decision from the Court of Appeal is not limited to the particular context of a television sitcom, [it could be] arguably applicable to any workplace where allegations are ... deriving from discussion related to that workplace," said Sager of Los Angeles' Davis Wright Tremaine, who wrote the letter.

"Courts are not supposed to be editors," Sager said. "They don't get to decide what ... should be discussed in the newsroom."

Women's and employee rights' groups entered the fray, arguing that the media advocates want a free pass for harassment. They are asking the Supreme Court to review dismissal of Lyle's employment and discrimination claims against the writers and Warner Bros.

"It would make the sexual harassment laws meaningless to side with the defendants in this case," Nancy Solomon, a staff attorney at the California Woman's Law Center in Los Angeles, said.

Lyle, who is an Air Force first-class airman stationed in Germany, is bewildered by the hostility to what she sees as a fight against insulting and demeaning conduct in the workplace.

"The banter ... had everything to do with their personal lives and their own crudeness and ... nothing to do with the script," Lyle said during a phone interview from Spangdahlem, Germany.

The Supreme Court has 60 days from the date of filing to decide whether to take a case. Both sides filed appeals at the end of May.

Lyle, the daughter of jazz musician Bobby Lyle, said her troubles began when she started urging "Friends" staffers to add black members to the then white cast.

She filed suit July 25, 2002. In addition to the sexual harassment claims, she filed racial and sexual discrimination claims against "Friends" writers; NBC studios; Warner Bros. Television Productions; Bright, Kaufman, Crane Productions; and co-executive producer Todd Stevens. *Lyle v. Warner Bros.* S125171.

Stevens and NBC were later dismissed from the suit because they didn't employ Lyle.

Lyle's job was to take notes during free-flowing script meetings where writers would riff on various comedic bits and story ideas. Lyle would type up the notes, and the writers would use them to develop scripts.

The meetings included both male and female writers. Lyle claimed that three of the writers, Greg Malins, Adam Chase and Andrew Reich, would draw vaginas and breasts on female characters in a coloring book that showed the women with their legs spread open, according to her December 2001 declaration.

Malins, Chase and Reich couldn't be reached for comment.

"In terms of the claim of sexual harassment, we don't dispute that there were discussions in the writers' room of a sexual nature, but we do dispute some specific allegations," said Levin, who represents the writers, the studio and the production company.

"I remember sitting around waiting to go home while writers were sitting around pretending to masturbate and continually talking about schlongs," Lyle said in her declaration.

The three writers "regularly discussed making the character Joey a serial rapist and would discuss full scenes of how he would rape the women," Lyle said in her declaration.

They would often mimic "black ghetto talk" and call each other "Homie Homerson," Lyle alleged.

There came a point when Lyle dreaded going to work, knowing that she had to endure an 18 hour day of "racist jokes, mocking African-Americans, forcing [her] to listen to very specific accounts of [their] experiences with oral and anal sex and having [her] supervisors pretend to masturbate," Lyle wrote in an e-mail response to questions.

"That was very difficult to go through, especially through that long of time," Lyle said

in a phone interview.

The "Friends" writers' lawyers said the writer's dialogue was a "creative necessity."

"She claims that the joking created a hostile work environment for her," Levin, of Los Angeles' Mitchell Silberberg & Knupp, said. "Certainly the creative process should be protected by the First Amendment."

Levin points out that conduct, verbal or physical, directed at an individual based on their race or sex could be actionable. But Lyle admitted in court papers she didn't believe the comments were directed against her; she was merely a bystander, Levin said.

The humor, however crude, did produce scripts, the writers alleged in court papers. For example, while "Homie Homerson" didn't appear in any episodes of "Friends," "Lovie Loverson" did, according to court records, as a direct result of the script discussions among the writers.

Lyle should have known what she was getting into when she joined the risqué, satiric show, her critics said.

"If you're in an occupation voluntarily, then I think under the First Amendment it has to be understood that in creating comedy as well as other genres the artists have to be free to sketch things out and have some elbow room for coming up with things that will make people laugh without having to worry," Terry Francke, general counsel of Californians Aware, an advocacy group for open government, said.

Lyle's attorney, Mark Weidmann, doesn't have a problem with the writers claiming creative necessity. But he thinks a jury should decide if the claim is true.

"Basically what they want to do is have the media get a free pass on sexual harassment and racial harassment," Weidmann, of Los Angeles, said.

"It's a straight-up factual issue," said sexual harassment law expert Dan Stormer of Los Angeles' Hadsell & Stormer. "It should go to the jury."

"If the writers in this case feel that their oversexed personal stories and other types of remarks are related to the creation of prime-time "Friends" show, let them explain that," Solomon said.

"Friends" is a prime-time television show, not pornography, Weidmann said.

"If this was an Andrew Dice Clay skit she was working on, they would have a better argument," Weidmann said.

But advocates for "Friends" writers say that, since the show's content is protected by the First Amendment, the process to create the show should be protected, as well. And because it is a constitutional issue, it should be decided before trial by a judge rather than a jury.

"Constitutional privileges shouldn't be left up to ... opinions of jurors, and they generally are not," Peter Scheer of the California First Amendment Coalition, said.

The appeals court found that Judge Horowitz correctly dismissed Lyle's claims for racial and gender discrimination and wrongful termination because she, along with a white, male writer's assistant, were fired for cause.

The appeals court, however, sided with Weidmann in holding that a jury should referee the racial and sexual harassment claim.

"Context is only one factor to be considered in determining the existence of a hostile working environment and because there are triable issues of fact as to whether defendant's conduct was indeed necessary to the performance of their jobs," Justice Earl Johnson wrote in the published opinion. *Lyle v. Warner Bros.* 117 Cal.App.4th 1164.

Labor law experts, like Anthony Oncidi of Proskauer Rose in Los Angeles, believe that the writers' defense will force the court to realize that "some workplaces are different than others."

"[This is] the first case that recognizes that a one-size-fits-all harassment policy may not be the appropriate way to deal with some of these issues," Oncidi said.

In addition to the Daily Journal Corp., Los Angeles Times Communications, Freedom Communications Inc., Copley Press Inc., American Society of Newspapers Editors, California First Amendment Coalition, California Newspaper Publishers Association and

the Reporter's Committee for Freedom of the Press joined to seek Supreme Court review of the decision.

"We're not saying that the media should be exempt from applicable laws relating to sexual harassment," Tom Newton, general counsel of the California Newspaper Publishers Association, said.

"Where there is no conduct that targets an individual but is conduct that is associated with creating a news story, movie, play or television show, the First Amendment should serve to prevent liability for that creative process," Newton said.

The Employers Group, a nonprofit human resource management group, Feminists for Free Expression and Women's Freedom Network also filed letters to the Supreme Court in support of Warner Bros. In addition, the La Mirada Theater for Performing Arts, Individual Rights Foundation, Center for Individual Rights, National Association of Scholars, California Employment Counsel, Motion Picture Association of America, Alliance of Motion Picture and Television Producers also wrote letters for the studio. A similar letter from the Writers Guild included 11 individual signators, including television writers Steven Bochco, Diane English and David Milch.

The California Women's Law Center and several other women's rights groups, however, argue that the First Amendment should not trump sexual harassment claims.

"Attempting to cloak themselves in the First Amendment, defendants claim a right which no employer in California has ever been granted: permission to discriminate at will against their employees without limitation," Solomon wrote in the amicus letter.

The California Employment Lawyer's Association, National Women's Law Center, National Center for Lesbian Rights, Equal Rights Advocates and UCLA professor Christine A. Littleton joined in the California Women's Law Center letter to the court.

San Francisco's Legal Aid Society-Employment Law Center submitted a separate amicus letter on Lyle's behalf to the Supreme Court.

The letter was signed by legal scholar Catharine Mackinnon, who beginning in the late 1970s fought for the creation of the legal claim for sexual harassment as a form of sex discrimination. The U.S. Supreme Court accepted MacKinnon's sexual harassment theory in 1986 in *Meritor Savings Bank, FSB, v. Vinson*, 477 U.S. 57. She now teaches at the University of Michigan Law School.

Lyle said her "Friends" experience soured her, at least partially, on a Hollywood career. Before "Friends," she worked at Nickelodeon and on Hollywood productions .

After "Friends", she worked on a few films before joining the Air Force in 2002 because it would allow her to do two things that she always loved - writing and traveling, she said.

"After Sept. 11, I guess I got struck with a little bit of patriotism and things slowed down in my industry," Lyle said.

Considering the media giants lined up against her, her new career choice may sound surprising: journalism.

She is working as a photojournalist for the U.S. Air Forces in Europe and NATO, on a term of duty that ends in 2006.

She plans to move to New York City to finish her bachelor's degree, possibly in journalism, she said.

But she's not ready to give up on screenwriting completely. Lyle recently completed a script, titled "The Last Laugh," which she plans to start shopping around.

Lyle described the film as a dark comedy about "the trials and tribulations of a writers' assistant."

"I've been told it's pretty funny so we'll see what happens."

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