

MVP: Williams & Connolly's Thomas G. Hentoff

By Sameer Rao

Law360 (September 30, 2021, 4:36 PM EDT) -- Over the past year, Williams & Connolly LLP partner Thomas G. Hentoff secured dismissals of two high-profile federal lawsuits against The Washington Post and an appellate victory in famed photographer Lynn Goldsmith's copyright claims against the Andy Warhol Foundation, landing him among Law360's 2021 Media & Entertainment MVPs.

WHY HE'S A MEDIA ATTORNEY:

Hentoff said he grew up in a household of politically and culturally savvy journalists and writers. His mother, Margot, wrote book reviews and other pieces for publications including Harper's and The New York Review of Books, while his father, Nat, explored politics, freedom of speech issues and jazz music for publications including The Village Voice, where he worked for nearly five decades.

Hentoff recalled that his parents, both avid news consumers, each had their own copies of The New York Times and the New York Daily News, among other publications, arriving at the doorstep every morning. His father also served on the American Civil Liberties Union's board during the 1970s, during which he took his then-teenage son to a board meeting, Hentoff said. The topic of discussion: how to handle the United States government's request for prior restraint against The Progressive, which sought to publish an article purportedly detailing how hydrogen bombs worked. This led to the influential 1979 First Amendment case *United States v. Progressive Inc.*

"That's a pretty good indication of the kind of teenage leisure activities I had," Hentoff recounted.

Despite catching the writing bug himself, Hentoff ultimately went into the legal field after writing a novel, struggling to get it published and finding that he enjoyed studying law. But he said his early experiences influenced the path he ultimately took after earning his law degree from Columbia Law School in 1991.

"I enjoy helping [journalists] do their job, and helping them say what they want to say while protecting



them from potential liability," he said, adding that reporting and legal research require much the same rigor.

Hentoff now co-chairs two Williams & Connolly practice groups: trademark and copyright law, and First Amendment and media law.

HIS MOST IMPORTANT CASES IN THE PAST YEAR:

Hentoff was recently the lead attorney in a set of widely covered cases. The one that went the furthest in the federal court system was *The Andy Warhol Foundation v. Goldsmith*, in which Hentoff represented noted portrait photographer and artist Lynn Goldsmith before the Second Circuit. Hentoff secured a victory for Goldsmith when the appeals court ruled that prints the foundation's namesake artist made of the late musician Prince actually infringed the copyright held by Goldsmith, whose photos of Prince inspired Warhol's work. This ruling overturned a district court decision that Warhol's prints constituted fair use.

Hentoff praised the efforts of his Williams & Connolly colleagues — including associate Katherine Moran Meeks and the firm's Supreme Court and appellate practice chair Lisa Blatt — that he said made this victory possible. He also highlighted the work of fellow partner and 2021 appellate MVP Sarah M. Harris in securing the court's affirmation of the ruling after the foundation petitioned for a rehearing.

"Litigation, at Williams & Connolly and everywhere, is very much completely a team activity," he said.

Hentoff's other notable victories included two successful defenses of *The Washington Post*.

One was a dismissal of litigation related to the news outlet's reporting on a widely publicized incident involving students of Covington Catholic High School and Native American activist Nathan Phillips near the Lincoln Memorial in January 2019. The U.S. District Court for the Eastern District of Kentucky ultimately dismissed the students' allegations that the newspaper's coverage defamed them by implying that they instigated a confrontation and were racist. Instead, the court found that the reporting did not constitute defamation and was protected by the First Amendment. After the plaintiffs in the principal case filed an amended complaint, the court proceeded with three of the original 33 defamation complaints; Hentoff and his colleagues stayed on as *The Post*'s lead defense counsel through the eventual settlement for an undisclosed amount, which the parties reached in July 2020.

The Washington D.C. based attorney also helped *The Post* defeat a defamation suit brought by U.S. Rep. Devin Nunes over the newspaper's reporting on his alleged revelation to President Donald Trump of intelligence concerning Russia's preference for Trump in the 2020 election. Hentoff got the case transferred from the Eastern District of Virginia to the District of Columbia's district court, and then secured *The Post*'s requested dismissal in December 2020.

WHAT HIS WORK HAS TAUGHT HIM ABOUT SLAPP SUITS:

Without specifically referring to select cases in which he was involved, Hentoff admitted that defamation lawsuits against media organizations can be burdensome for them.

"News organizations have to do their job, and it's unfortunate that [they then have to] pay for representation to defend these lawsuits," he said. "I can't necessarily say that makes me part of the solution, since I'm part of the burden of having to defend these cases. Even if the news organization wins the case at an early stage, it's still very expensive and disruptive."

Hentoff noted that he has anecdotally observed an increase in recent years not only in defamation suits, but also in multiple-defendant defamation suits in which one litigant sues a number of media outlets. Given this context, he said he appreciates how states like California have laws designed to limit so-called strategic lawsuits against public participation, or SLAPP suits — that is, suits filed with the intent of censoring or intimidating defendants by burdening them with defense costs, without the expectation of winning the suits. Hentoff said he also believes that a federal anti-SLAPP law could offer news outlets, including those without many resources, more protection.

"Larger news organizations can deal with the problem, but what about smaller news organizations?" he said. "What does that do to their coverage when they have to worry about any one particular lawsuit potentially putting them out of business?"

WHY HE WORKS AT WILLIAMS & CONNOLLY:

After finishing law school, Hentoff was a clerk to Eleventh Circuit Judge Phyllis A. Kravitch in Atlanta until 1992. Looking to build litigation experience, he found Williams & Connolly to be the right place to grow.

"When I looked around, the best place that I was aware of that would actually give a new attorney really good, interesting litigation experience was Williams & Connolly," he said. "I actually came to Washington to work at Williams & Connolly. ... I thought the work would be really interesting for the short term."

But working at the firm — which is primarily based in D.C. with a small New York City outpost — afforded Hentoff enough opportunities to tackle First Amendment issues that he stayed for the entirety of his career, he said. He noted that he also likes Williams & Connolly's strategic investment in its own employees, as the firm largely does not grow via lateral hires.

"Every so often there's an exception, but it's pretty rare, [and lateral partner growth] is not part of the business model," he explained. "People who are partners have been at the firm since they were either new associates or midlevel associates. Add that we have one main office [and] that everybody's here, has grown up in the firm ... there's an opportunity to know more people within the firm than you otherwise would at a firm with a more rigid structure."

— *As told to Sameer Rao*

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