

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
RAYCOM AMERICA, INC.)	File No. EB-02-IH-0626
)	Facility #19184
Licensee of Station WMC-TV)	
Memphis, Tennessee)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 6, 2003

Released: March 11, 2003

By the Commission:

1. In this *Memorandum Opinion and Order*, we deny an application for review filed May 9, 2002, by Randy Sharp (“Sharp”). Sharp seeks review of the April 18, 2002, letter ruling of the Chief, Investigations and Hearings Division, Enforcement Bureau, which denied his complaint alleging that WMC-TV, Memphis, Tennessee, aired profane material on September 19, 2001, between 8:00 and 9:00 p.m., Central Standard Time, during the program “The West Wing.” Sharp alleges that the staff erred in failing to find that the broadcast violated Section 1464 of Title 18 of the United States Code, 18 U.S.C. § 1464, which prohibits, among other things, the broadcast of profane material. Raycom America, Inc. (“Raycom”), the station’s licensee, filed a pleading opposing Sharp’s request for review on July 2, 2002.¹ Sharp did not file a reply thereto.

2. Sharp’s complaint arises from the station’s broadcast of the “Two Cathedrals” episode of the NBC-network program “The West Wing.” According to Raycom, in that episode, the show’s character President Bartlet, while alone in a church, reflects aloud on his “personal struggles and growth” during an impassioned lament to God.² Raycom represents that both the show and episode in question have garnered numerous dramatic awards and nominations, in addition to critical and philosophical attention on the subject of communicating with God.³ Raycom contends that the speech about which Sharp complains is not profane, but was merely intended as a character’s expression of frustration with a deity who is seemingly indifferent to instances of human suffering. For the reasons set forth below, we find no merit to Sharp’s complaint, and conclude that the staff’s April 18, 2002, letter ruling properly found that the licensee did not violate 18 U.S.C. § 1464 by airing the remarks in question.

3. First, Sharp argues that licensee violated the statute by broadcasting the portion of “The West Wing” program wherein character President Bartlet “scream[ed] at God,” and made irreverent references toward the deity—“[y]ou’re a sonofabitch, you know that?,” and “have I displeased you, you feckless thug?” Sharp cites *FCC v. Pacifica*, 438 U.S. 726 (1978) and

¹ On July 11, 2002, NBC, Inc. submitted remarks concurring with Raycom’s response.

² See text of script, attached.

³ James M. Wall, *Quarrelling with God*, 118 *The Christian Century* 36 (June 6, 2001).

Schenck v. U.S., 249 U.S. 47, 52 (1919) as precedents that support a finding that the language at issue is legally profane. However, the cases Sharp relies on are inapposite.⁴ The courts have held that material, such as the phrase “god damn it” uttered in anger, while offensive to some, is not legally profane for purposes of section 1464. *Gagliardo v. United States*, 366 F.2d 720, 725 (9th Cir. 1966) (CB radio transmission); *see also Warren B. Appleton*, 28 FCC 2d 36 (1971) (broadcast of “damn” is not profane). The United States Supreme Court has also struck down a state statute banning “sacrilegious” movies as violative of the First and Fourteenth amendments. *Burstyn v. Wilson*, 343 U.S. 495 (1952). In so ruling the court stated: “[i]t is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine. . . .” *Id.* at 505. Because we believe the language at issue here falls within the scope of *Gagliardo* and *Burstyn*, we do not believe it was actionably profane.

4. Secondly, it appears that Sharp did not accurately characterize some further remarks about which he complains. Sharp alleges that the show’s character President Bartlet uttered profanity by cursing God— “[t]o hell with your punishments! To hell with you!” However, citing the NBC show’s script, Raycom represents that the complained of phrases were actually spoken in Latin, not English ---“cruciatu in crucem, eas in crucem,” which literally mean “send your torments to the cross” and “may you go to the cross.”⁵ Moreover, even if the Latin phrases were understood to have the idiomatic meaning that Sharp ascribes to them, we believe that *Gagliardo* and *Burstyn* compel the conclusion that they are not actionable under section 1464. Finally, it appears that the other Latin phrases uttered in the character’s broadcast soliloquy are not even arguably profane.⁶

5. Accordingly, IT IS ORDERED, pursuant to Section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, that the application for review filed May 9, 2002, by Randy Sharp IS DENIED; that the staff’s April 18, 2002, decision IS AFFIRMED.

6. IT IS FURTHER ORDERED, that copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail, Return Receipt Requested, to Randy Sharp, 411 N. Ione, Tupelo, Mississippi, 38801, and to Rebecca S. Bryan, Vice President and General Counsel, Raycom America, RSA Tower 20th Floor, 201 Monroe Street, Montgomery, Alabama, 36104. A

⁴ In *Pacifica*, the Supreme Court discussed the government’s authority to restrict speech that is indecent but not obscene; profanity was not at issue. In *Schenck*, it discussed the circumstances in which the government may regulate speech that poses a “clear and present danger.”

⁵ *See Quarrelling with God, supra*. We note that the citations in Wall’s article are textually consistent with Raycom’s script of the broadcast, and that Sharp did not dispute Raycom’s account.

⁶ According to the article *Quarrelling with God*, the phrase “haec credam a deo pio, a deo justo, a deo scito?” means “am I to believe these things from a righteous God, a just God, a wise God?”; “gratias tibi ago, domine” means “thank you, Lord”; and “tuus in terra serves, nuntius fui; officium perfeci” means “I was Your servant, Your messenger on the earth; I did my duty.”

courtesy copy shall be sent by regular mail to Andrea R. Hartman, Senior Vice President and Deputy General Counsel, NBC, Inc., 330 Bob Hope Drive, Burbank, California, 91523.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary