



Terry Gross, Partner, Gross & Belsky, and Internet Law Pioneer

[by Regan Morris]

Do online journalists deserve the same protections and freedom of speech as traditional reporters? Should courtrooms differentiate between courtrooms and blogs? LawCrossing speaks with attorney Terry Gross about his role in a case that could set precedents on Internet journalism.

Terry Gross was an obvious choice to represent the 19-year-old Harvard student accused by Apple of publishing trade secrets about its Mac products. The student, Nick Ciarelli, runs ThinkSecret.com, a Mac news website with articles about iPods and updated versions of Apple software, like Final Cut Pro 5, for example.

Mr. Gross, 56, started his career as a systems analyst with IBM and once served as general counsel to the Electronic Frontier Foundation, so he is no stranger to cases involving high-technology. But this case, he says, isn't one of them. This case is about the First Amendment rights to freedom of speech, and he is asking the Superior Court of California to dismiss the case on those grounds.

If you consider Mr. Ciarelli a journalist, then his publishing stories about the not-yet-released products would generally be called a scoop. Mr. Gross said his client got his information through legitimate reporting techniques.

"Look at his website; he's clearly a journalist," Mr. Gross said, referring to www.think-secret.com. "He did not steal the information; he didn't participate in any theft. I think the case is pretty clear that under the First Amendment, journalists can publish information that they lawfully obtain without fear of civil liability."

The case blends Mr. Gross' interest in technology and First Amendment law. He said he decided to start law school (at Berkeley) at age 29 because he felt as a systems analyst

he spent too much time with machines.

"I focused a lot on civil liberties and the First Amendment," he said. "That's what I was interested in. I was interested in law as a way to—God, it sounds so trite—as a way to make a difference in people's lives. And I thought focusing on Constitutional issues was a way to have larger impact."

Mr. Gross said journalists are and should remain protected under the Constitution to assure the free flow of information.

"The person that Apple should be going after if they think somebody is leaking information...they should be going after the people who stole the information, not after a journalist," he said.

Mr. Gross is partner in his San Francisco-based firm Gross & Belsky. He is counsel to, and formerly a partner at, Rabinowitz, Boudin, Standard, Krinsky & Lieberman in New York.

Mr. Gross is used to being involved in high-profile cases. He was part of the criminal defense team representing Leona Helmsley in her prosecution for income tax evasion and was responsible for the successful motion to dismiss her state prosecution on double jeopardy grounds.

He represented Dr. Spock in a breach-of-contract action relating to a video on child care. He successfully challenged Pan American World Airways' Gulf War policy against taking Iraqi nationals as passengers. He represented the widow of Salvador Allende,

the former president of Chile, and he has represented the governments of many countries, including South Africa and Cuba.

He was lead counsel and adviser to Panama in 1989, when the United States froze all Panamanian assets. In Cuba, he represented the Cuban Olympic Committee and the Cuban Television Agency in negotiations to sell the rights to broadcast the 1991 Pan American Games.

Mr. Gross was there from the beginning at the Electronic Frontier Foundation, a civil liberties organization focusing on electronic communication and other technology. It was someone from the EFF who called Mr. Gross and told him about the Apple case. He stopped acting as EFF's general counsel in 1993 and advised them to hire fulltime in-house counsel.

The EFF is involved in several similar cases involving Apple and online journalism. Apple had issued a subpoena to an online journalist's Internet service provider in an effort to access the reporter's email and find out who leaked news about their product "Asteroid." Attorneys for the reporters argued their cases against the subpoenas at a March 4 hearing.

Mr. Gross said his technology and computer background has helped him in the practice of law.

"Clearly, given what's happened with technology, both in terms of having clients and practicing in that area, as well as understanding the technology and being able to



use it, that has clearly had a big impact," he said.

Unlike many trial attorneys, Mr. Gross was a man of few words. But he advised young attorneys to think about what they want to do with their careers.

"People should think carefully about what it is...what gives you satisfaction," he said. "Because this is a job you're going to be doing for a long time. And you should make sure that the work you do does make you feel good when you go home at night."