

## Sick Pics

**By Reg P. Wydeven  
March 20, 2010**

Last week I wrote about the U.S. Supreme Court's decision to not review an appeal made by Larry Flynt, publisher of the racy adult Hustler magazine, and photographer Mark Samansky. Samansky took nude pictures of Nancy Benoit in the 1980s and sold them to Hustler after she was murdered by her husband, professional wrestler Chris Benoit, in 2007. Nancy's mother, Maureen Toffoloni, sued Hustler and is seeking monetary damages on behalf of her daughter's estate for publishing the photos in the magazine's March 2008 issue without the family's permission.

The suit pitted Benoit's right to privacy against Hustler's freedom of the press protections. While Hustler claimed it was protected by the 1<sup>st</sup> Amendment for publishing the photos because they were "newsworthy," the Georgia court held that since the pictures were so old and not related to the newsworthy crime, Nancy's right to privacy won out.

Well, Larry Flynt must have Georgia on his mind, as he is back in court again over another set of nude photos. A writer on assignment for Hustler made a request for copies of crime scene photos of 24-year-old Meredith Emerson, a hiker who was murdered and her body mutilated in the Georgia mountains in January of 2008. Hustler alleges it intended to use the pictures, which depict Emerson's nude and decapitated body, in a "news story about this crime."

Upon hearing of the request, Emerson's family sought a temporary restraining order preventing the release of the photos. DeKalb Superior Court Judge Daniel Coursey granted the order precluding the Georgia Bureau of Investigation from releasing "any and all photographs, visual images or depictions of Meredith Emerson which show Emerson in an unclothed or dismembered state."

On the same day the order was issued, the Georgia House Governmental Affairs Committee unanimously passed "The Meredith Emerson Memorial Privacy Act," which would prevent the release of photographs of the bodies of crime victims that are "nude, bruised, bloodied or in a broken state with open wounds, a state of dismemberment or decapitation."

Rep. Jill Chambers, who sponsored the bill, claims the new law would walk the fine line between "open record laws and the constitutional provisions that allow women to be able to be photographed nude or in pornography when they knowingly and willingly offer their bodies for dissemination." She went on to say that, "Meredith isn't in a position to give that kind of permission to have her exploited in that kind of venue."

The bill would allow credentialed journalists, lawyers and law enforcement to view such photographs at the Georgia Bureau of Investigation's headquarters, but not make copies of them. Current state statutes prevent the release of autopsy photos without the permission of the victim's next of kin, but the law does not necessarily apply to crime scene photos.

While everyone agrees Hustler's attempt to publish the photos was distasteful, many proponents of the 1<sup>st</sup> Amendment are on the publisher's side and are paying close attention to the status of the Emerson bill. Many feel the pictures are no more an invasion of privacy than the photos of victims of the Haiti earthquake.

Hustler issued a statement claiming the publisher and "Mr. Flynt disagree with the GBI's position, and are currently exploring all legal options available to them should the decision be made to go forward with the story." Things are far from peachy in the Peach State.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2010 McCarty Law LLP. All rights reserved.*