

[Daily Journal](#) Newswire Articles

www.dailyjournal.com

© 2008 The Daily Journal Corporation. All rights reserved.

- select Print from the File menu above

LITIGATION • May. 04, 2000

Punk Bands Royalty Dispute Takes Center Stage

By Tyler Cunningham

Daily Journal Staff Writer

SAN FRANCISCO - Punk rock went on trial Tuesday, as the former members of the 1980s band Dead Kennedys appeared in a San Francisco court to air a long-running dispute over the band's past royalties and future control of their recordings.

Aside from the spectacle of having the onetime bandmates gathered again, the unique courtroom scene included attorneys waving seven-inch record singles and reciting lyrics from the band's closest approximation to a hit song: "California Uber Alles," an anthem needling former Gov. Jerry Brown.

Jurors occasionally stifled snickers during opening statements as lawyers referred to the group's album titles, among them "Fresh Fruit for Rotting Vegetables" and "Plastic Surgery Disasters."

And one attorney announced that he plans to call Dexter Holland, lead singer for the Southern California band The Offspring, as an expert witness. (Holland, who runs his own record label, is expected to testify about the business of promoting albums.)

But perhaps the strangest item of the day was the lawyerly assertion that the band's name has an intrinsic "goodwill value."

That claim contrasted sharply with attitudes displayed earlier this week during voir dire, when potential jurors seemed less than eager to hear the case. One man, a former campaigner for both Robert and John Kennedy, lashed out at the band members for their "appalling" name. Others expressed disbelief that the dispute had reached trial at all.

"I can't get over the irony that a band that was into anarchy and all that is now looking to the justice system to resolve this," a potential juror said.

The essence of the dispute is money. Three former Dead Kennedys - guitarist East Bay Ray (Ray Pepperell), bassist Klaus Fluoride (Geoffrey Lyall) and drummer D.H. Peligro (Darren Henley) - claim leader Jello Biafra (Eric Reed Boucher) cheated the rest of the band out of royalties.

The group, represented by David Phillips and David Given, of San Francisco's Phillips & Erlewine, also claim Biafra is wrongfully exploiting the band's old catalog through his record label Alternative Tentacles despite a vote from the rest of the band revoking the label's right.

They seek compensatory and punitive damages and an order from the court prohibiting Biafra from exploiting and controlling the band's old catalog. *Dead Kennedys v. Biafra*, 998892.

Biafra, in a cross-complaint, claims he's the one being cheated. As author of the songs, he claims, he has exclusive rights to the recordings.

"The music was good," said Biafra attorney John Stewart, of San Francisco's Carroll, Burdick & McDonough, during his opening statement. "It was listenable. But what set it apart was the lyrics. ... [Biafra] was the principal songwriter, the front man, the artist and the conscience of the band."

Biafra also claims Pepperell skimmed from the band's profits. He seeks compensatory and punitive damages, along with a judicial declaration that the recordings belong to him.

One major hurdle during the trial may involve the haphazard paperwork covering the band's finances. Attorneys acknowledged Wednesday that even by the standards of the 1980s music business, the group kept scant financial records and didn't undertake a full accounting until more than a decade after it disbanded.

Adding to the problem is that most of the contracts were drawn up by lawyers representing the entities on the other end of the agreement.

The amount of past royalties at stake is in the low six figures, attorneys in the case said, leading some observers to question the financial wisdom of taking the dispute to trial. But the more important issue, the attorneys said, is to determine future rights to the band's catalog. The group still sells between 60,000 and 90,000 albums each year.

Moreover, the whole dispute remains fueled by ill will accumulated over 20 years.

"In essence, this is a divorce," Stewart said. "It's a musical divorce. And every time there's a divorce, there's a lot of bitterness to come out."

© 2008 Daily Journal Corporation. All rights reserved.