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404 Park Avenue South, 16th Floor, New York, NY 10016 *(212) 889-2306
One of the notable and most troubling features of the recent libel landscape has been the seeming explosion in huge, "mega-verdicts" against the media. This painful reality has appeared to belie the promise of New York Times v. Sullivan that ruinous libel judgments would not be permitted to chill the constitutional guarantee of freedom of expression. In assessing the current state of affairs, it seemed appropriate to look back to gather historical data to put these recent trends into perspective.

To this end LDRC compiled additional historical data by systematically examining pre-Sullivan and post-Sullivan damage awards. The product of this research was formally presented in a paper prepared for a Conference on "The Cost of Libel," sponsored by the Gannett Center for Media Studies at Columbia University, which took place on June 13, 1986. Although the complete text of this paper will not be published by the Gannett Center for several months, the following summarizes the data presented in that paper which may prove useful in further evaluating the escalating costs and complications of libel litigation, and its influence on the media.

Damage Awards, 1954-1964: The Pre-Sullivan Decade

LDRC undertook systematically to examine reported libel cases involving damage awards against media defendants in the decade prior to New York Times v. Sullivan, 1954 to 1964. Reported decisions in 225 media libel cases (170 state cases; 55 federal) were found, 55 of which reached trial. In 40 of those 55 pre-Sullivan cases that went to trial, plaintiffs prevailed with an award of damages.* That translates into a 73% defense loss rate, a figure paralleling the trends observed by LDRC over the past 5 years. Actually, the 73% defense loss rate of the pre-Sullivan decade is slightly better than libel experience over the past several years. Since 1980, 3 out of 4 trials have been lost by media defendants. In short, even with the Sullivan privilege, libel defendants today are no more

* The 40 pre-Sullivan trials in which a damage award was entered are presented in Case List A, below.
successful at trial than they were prior to that landmark decision.

LDRC was able to obtain actual dollar values for 38 of the 40 pre-Sullivan cases in which damages were awarded to successful plaintiffs. In order to develop the most meaningful presentation, two sets of calculations were performed; one set including all 38 damage awards, and another excluding both the highest and lowest awards which proved to be disproportionate to the entire sample. The disproportionately low award was secured by the plaintiff in Brewster v. Boston Herald-Traveler, in which the judgment was for one symbolic cent. The disproportionately high award of $3,060,000 was entered in Curtis Publishing Co. v. Butts, a case which, although perhaps best known as one of the New York Times progeny, was actually tried prior to the Supreme Court's decision in the New York Times case.

The results of LDRC's calculations are as follows. The average pre-Sullivan award, including Butts and Brewster, was $127,434. Excluding the two incommensurate awards generated by Butts and Brewster, the average initial damage award fell to $49,513. This figure stands in stark contrast to the current average initial damage award (see LDRC Bulletin No. 11 at 18). In fact, the total of the awards in all of the 36 cases comprising the pre-Sullivan sample (again excluding Butts and Brewster) was only $1,782,498, or less for 36 cases than the average award in a single contemporary libel case.

Adjusting for Inflation

To some extent, of course, this pre-Sullivan average damage award of under $50,000 is misleading in that it fails to take into account two decades of inflation. In order to compensate for that inflationary effect, LDRC employed a rough U.S. Department of Labor CPI factor of 3.69 to bring the pre-Sullivan decade up to contemporary dollar values. After the adjustment, the average award for the entire 38 case sample came up to $470,231; and, excluding Butts and Brewster, to $182,706. Thus, the current experience, even correcting for inflation, is still somewhere between 400% and 500% greater than the decade before Sullivan.

Pre-Sullivan Awards On Appeal

The pre-New York Times data gathered also permits comparison regarding the results of appeals from initial damage awards. Perhaps not surprisingly this comparison reveals that plaintiffs in the pre-New York Times period were more
successful on appeal than is currently the case. In the early period plaintiffs who were awarded initial damages prevailed at the appellate level in 26 of 40 cases, a 65% rate of plaintiff success. This is almost the reverse of the current, post-Sullivan experience, where defendants prevail on appeal in 65% or more cases. (See LDRC Bulletin No. 11 at 19-20).

Predictably, however, the average damage award finally affirmed was considerably lower than those damages awarded at trial. Again excluding Butts (no appeal was taken in Brewster), the average award received at the appellate stage was $17,509 for all appellees, and $28,162 among successful appellees. Those figures become $64,608 and $103,936, respectively after being adjusted for inflation. Including a $460,000 award on appeal in Butts, the average appellate awards climbed to $29,941 and $46,160 among successful appellees, which translates into $110,485 and $170,330 respectively after compensating for inflation. The current average finally affirmed damage award is approximately $100,000 — see LDRC Bulletin No. 11 at 20-23.

**Damage Awards, 1964-1977: Post-Sullivan**

LDRC performed the same analysis for the post-Sullivan period, 1964-1977. Of 104 media libel suits that went to trial, plaintiffs successfully secured damage awards in 73 instances (48 state; 25 federal).* The average award including two awards of $1 million or more, was $180,597. Excluding the two unrepresentative awards the average dropped to $134,002. Adjusting for inflation using a CPI factor of 2.66, the averages became $480,388 including the million-dollar awards, and $356,449 excluding the excessive awards. Even with this final adjustment, these figures represent averages between 200% and 400% lower than the current experience.

At the appellate level, libel defendants were substantially more successful between 1964 and 1977 than during the pre-Sullivan decade. A total of forty-two of the seventy-three cases reported in which initial damages were awarded were reversed in favor of the defendant (54%). The average award finally collected after appeals, by successful plaintiffs, was approximately $82,861 (in 27 cases for which dollar amounts were ascertainable). Adjusted for inflation, that average becomes $220,410, or actually somewhat higher than recent finally affirmed awards.

* The 73 post-Sullivan trials in which a damage award was entered are presented in Case List B, below.
LDRC Bulletin No. 17

Damage Awards Comparison of Pre-Sullivan and 1982-1984 Cases

Table 1: Judge/Jury Rendered Awards

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Judge</td>
<td>1</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Jury</td>
<td>39</td>
<td>53</td>
<td>33</td>
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<tr>
<td>Total</td>
<td>40</td>
<td>60</td>
<td>34</td>
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</table>

Table 2: Size of Initial Damage Awards

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>$0-$9,999</td>
<td>6</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>$10,000-$24,999</td>
<td>12</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>$25,000-$99,999</td>
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<td>21</td>
<td>11</td>
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<tr>
<td>$100,000-$249,999</td>
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<td>8</td>
<td>5</td>
</tr>
<tr>
<td>$250,000-$499,999</td>
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<td>2</td>
<td>0</td>
</tr>
<tr>
<td>$500,000-$999,999</td>
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<td>2</td>
</tr>
<tr>
<td>$1 million plus</td>
<td>1</td>
<td>2</td>
<td>11</td>
</tr>
</tbody>
</table>

Table 3: Damage Awards by Trier of Fact

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Jury</td>
<td>5</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Judge</td>
<td>1</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Jury</td>
<td>12</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Judge</td>
<td>0</td>
<td>1</td>
<td>4</td>
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<td>Jury</td>
<td>16</td>
<td>19</td>
<td>11</td>
</tr>
<tr>
<td>Judge</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Jury</td>
<td>2</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>Judge</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Jury</td>
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<td>0</td>
</tr>
<tr>
<td>Judge</td>
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<td>0</td>
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</tr>
<tr>
<td>Jury</td>
<td>1</td>
<td>6</td>
<td>2</td>
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<tr>
<td>Judge</td>
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<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Jury</td>
<td>0</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

*Of the 73 reported cases for 1964-1977, actual dollar amounts awarded were only available for 60 cases.
**Of the 40 reported cases for 1954-1964, actual dollar amounts awarded were only available for 38 cases.
### Table 4: Damages Awarded by Type of Court

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State</td>
<td>Federal</td>
<td>State</td>
</tr>
<tr>
<td>$0-$9,999</td>
<td>5</td>
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<tr>
<td>$10,000-$24,999</td>
<td>6</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>$25,000-$99,999</td>
<td>10</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>$100,000-$249,999</td>
<td>2</td>
<td>0</td>
<td>5</td>
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<tr>
<td>$250,000-$299,999</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>$500,000-$999,999</td>
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<td>3</td>
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<tr>
<td>$1 million plus</td>
<td>0</td>
<td>1</td>
<td>2</td>
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</tbody>
</table>

### Table 5: Average Initial Damage Awards

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Average Award</td>
<td>$127,434 (38)</td>
<td>$180,597 (60)</td>
<td>$2,033,367 (34)</td>
</tr>
<tr>
<td>Adjusted for Inflation</td>
<td>$470,231</td>
<td>$480,388</td>
<td></td>
</tr>
<tr>
<td>Average (less disproportionate awards)</td>
<td>$49,514 (36)</td>
<td>$134,002 (58)</td>
<td>$910,359 (32)</td>
</tr>
<tr>
<td>Adjusted for Inflation</td>
<td>$182,706</td>
<td>$356,449</td>
<td></td>
</tr>
</tbody>
</table>

### Table 6: Appeals

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Total Appeals</td>
<td>39</td>
<td>72</td>
<td>28</td>
</tr>
<tr>
<td>Award Affirmed</td>
<td>21</td>
<td>20</td>
<td>6</td>
</tr>
<tr>
<td>Award Reduced</td>
<td>5</td>
<td>9</td>
<td>-</td>
</tr>
<tr>
<td>New Trial</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Judgment for Defendant</td>
<td>11</td>
<td>40</td>
<td>9</td>
</tr>
<tr>
<td>Pending/Settled</td>
<td>-</td>
<td>-</td>
<td>9</td>
</tr>
</tbody>
</table>
CASE LIST A:
Pre-Sullivan (1954-1964)
Media Libel Trials Resulting in Damage Awards

<table>
<thead>
<tr>
<th>Case</th>
<th>Damages Awarded</th>
<th>Type of Trial/Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alexandria Gazette Corp. v. West, 93 S.E.2d 274 (1956)</strong></td>
<td>2,500  0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td><strong>Aquino v. Bulletin Co., 154 A.2d 422 (1959)</strong></td>
<td>15,000  15,000</td>
<td>Jury/State</td>
</tr>
<tr>
<td><strong>Brogan v. Passaic Daily News, 22 N.J. 139, 123 A.2d 473 (1956)</strong></td>
<td>1,000  0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td><strong>Brush-Moore Newspapers, Inc. v. Pollitt, 220 Md. 132 (1959)</strong></td>
<td>12,000 reversed and remanded on damages</td>
<td>Jury/State</td>
</tr>
<tr>
<td><strong>Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967)</strong></td>
<td>3,060,000  460,000</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td><strong>Curtis Publishing Co. v. Fraser, 209 F.2d 1 (5th Cir. 1954)</strong></td>
<td>10,000  10,000</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td><strong>Curtis Publishing Co. v. Vaughan, 278 F.2d 23 (D.C. Cir. 1960)</strong></td>
<td>75,000  0-</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td><strong>Dingee v. Philadelphia Daily News, 328 F.2d 641 (3d Cir. 1964)</strong></td>
<td>20,000  20,000</td>
<td>Jury/Federal</td>
</tr>
</tbody>
</table>

(1) Case began pre-Sullivan.
(2) Damages information shown is for an earlier trial cited in this case.
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<table>
<thead>
<tr>
<th>Case Name</th>
<th>Jurisdiction</th>
<th>Damages</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Empire Printing Co. v. Roden</td>
<td>15,003 Jury/Federal</td>
<td>15,003</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Farrar v. Tribune Publishing Co.</td>
<td>23,000 Jury/State</td>
<td>-0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Frechette v. Special Magazines, Inc.</td>
<td>20,000 Jury/State</td>
<td>5,600</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Goldberg v. News Syndicate Co.</td>
<td>50,000 Jury/State</td>
<td>15,000</td>
<td>Jury/State</td>
</tr>
<tr>
<td>H.E. Crawford Co. v. Dun &amp; Bradstreet, Inc.</td>
<td>23,750 Jury/Federal</td>
<td>-0-</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Haas v. Evening Democrat Co.</td>
<td>75,000 Jury/State</td>
<td>-0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Haycox v. Dunn</td>
<td>65,000 Jury/State</td>
<td>-0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Herrmann v. Newark Morning Ledger Co.</td>
<td>3,000 Jury/State</td>
<td>3,000</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Hope v. Hearst Consolidated Publications, Inc.</td>
<td>58,500 Jury/Federal</td>
<td>58,500</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Jolly v. Valley Publishing Co.</td>
<td>(no info) aff'd Jury/State</td>
<td>(aff'd)</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Kern v. News Syndicate Co., Inc.</td>
<td>51,000+3 Jury/State</td>
<td>51,000</td>
<td>Jury/State</td>
</tr>
<tr>
<td>LaManna v. Scott Publishing Co.</td>
<td>29,600 Jury/State</td>
<td>15,600</td>
<td>Jury/State</td>
</tr>
</tbody>
</table>

(3) Jury awarded $1000 compensatory and "more than $500,000" punitive damages.
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Lamb v. Sutton, 274 F.2d 705 (6th Cir. 1960) 25,000 25,000 Jury/Federal


Miami Herald Publishing Co. v. Brautigam, 12 So.2d 431 (Fla. Sup. Ct. 1960) 100,000 100,000 Jury/State


Phoenix Newspapers, Inc. v. Choisser, 82 Ariz. 271, 312 P.2d 150 (1957) 154,000 -0- Jury/State

Pitts v. Spokane Chronical Co., 388 P.2d 976 (Wash. Sup. Ct. 1964) 2,000 2,000 Bench/State

Polakoff v. New York World-Telegram Corp., 1 A.D.2d 884, 149 N.Y.S.2d 872 (1956) 50,000 50,000 Jury/State


Southwestern Publishing Co. v. Horsey, 230 F.2d 319 (9th Cir. 1956) 25,000 -0- Jury/Federal

(4) Case originated in Alabama state court, prior to 1964.
(5) Case originated in New York state court before Sullivan decision.
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Stevenson v. Hearst Consolidated Publications, 214 F.2d 902 (2d Cir. 1954) 75,000 75,000 Jury/Federal

Time, Inc. v. Hill, 385 U.S. 374 (1967) 30,000 0- Jury/State


Venn v. Tennessean Newspapers, Inc., 201 F. Supp. 47 (M.D. Tenn. 1962) 75,000 75,000 Jury/Federal


WSAZ, Inc. v. Lyons, 254 F.2d 10,000 Jury/Federal

<table>
<thead>
<tr>
<th>Case</th>
<th>Damages Awarded</th>
<th>Type of Trial/Jurisdiction</th>
</tr>
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<tbody>
<tr>
<td><strong>Case List B:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Post-Sullivan (1964-1977)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Media Libel Trials Resulting in Damage Awards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Afro-American Publishing Co. v. Jaffe, 366 F.2d 649 (D.C. Cir. 1966)</td>
<td>2,500 500</td>
<td>Bench/Federal</td>
</tr>
<tr>
<td>Appleyard v. Transamerica Press, Inc., 539 F.2d 1026 (4th Cir. 1976)</td>
<td>85,000 5,000</td>
<td>Jury/Federal</td>
</tr>
</tbody>
</table>

(1) Case originated in Texas state court.
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Amount</th>
<th>Verdict</th>
<th>Jurisdiction</th>
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</thead>
<tbody>
<tr>
<td>Baldine v. Sharon Herald Co., 391 F.2d 703 (3d Cir. 1968)</td>
<td>(no info)</td>
<td>-0-</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Berry v. National Broadcasting Co., 480 F.2d 428 (8th Cir. 1973)</td>
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<td>-0-</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Brewer v. Memphis Publishing Co., 538 F.2d 699 (5th Cir. 1976)</td>
<td>800,000</td>
<td>-0-</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Cantrell v. Forest City Publishing Co., 419 U.S. 245 (1974)</td>
<td>60,000</td>
<td>60,000</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Cape Publications, Inc. v. Adams, 336 So.2d 1197 (Fla. Ct. App. 1976)</td>
<td>214,000</td>
<td>214,000</td>
<td>Jury/State</td>
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<tr>
<td>Collier County Publishing Co. v. Chapman, 318 So.2d 492 (Fla. Ct. App. 1975)</td>
<td>12,800</td>
<td>-0-</td>
<td>Jury/State</td>
</tr>
</tbody>
</table>

(2) Affirmed as to liability for compensatory damages, but remanded for new trial as to amount; punitive damages reversed.
(3) Judgment N.O.V. entered for the defendant.

Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971)


Drotzmanns, Inc. v. McGraw-Hill, Inc., 500 F.2d 830 (8th Cir. 1974)


Dun & Bradstreet, Inc. v. Miller, 398 F.2d 218 (5th Cir. 1968)

Dun & Bradstreet, Inc. v. Nicklaus, 340 F.2d 882 (8th Cir. 1965)


Firestone v. Time, Inc., 414 F.2d 790 (5th Cir. 1969)


Goldwater v. Ginzburg, 414 F.2d 324 (2d Cir. 1969)


<table>
<thead>
<tr>
<th>Case</th>
<th>Verdict</th>
<th>Damages</th>
<th>Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harkaway v. Boston Herald-Traveler Corp., 418 F.2d 56 (1st Cir. 1969)</td>
<td>(no info) (aff'd)</td>
<td>Jury/Federal</td>
<td></td>
</tr>
<tr>
<td>Indiana Newspapers, Inc. v. Fields, 259 N.E.2d 651 (Ind. Sup. Ct. 1970)</td>
<td>60,000</td>
<td>60,000</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Jones v. Garner, 158 S.E.2d 909, 250 S.C. 479 (1968)</td>
<td>15,000</td>
<td>-0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Kansas Electric Supply Co. v. Dun &amp; Bradstreet, Inc., 448 F.2d 647 (10th Cir. 1971)</td>
<td>15,000</td>
<td>15,000</td>
<td>Jury/Federal</td>
</tr>
<tr>
<td>Lupkey v. Weldon, 419 S.W.2d 91 (Mo. Sup. Ct. 1967)</td>
<td>51,000</td>
<td>-0-</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Mahnke v. Northwest Publications, Inc., 280 Minn. 328, 160 N.W.2d 1 (1968)</td>
<td>4,000</td>
<td>4,000</td>
<td>Jury/State</td>
</tr>
</tbody>
</table>

(4) Initial verdict result of bench trial, final judgment result of jury trial; case originated in Maryland state court.
<table>
<thead>
<tr>
<th>Case</th>
<th>Verdict</th>
<th>Damages</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miller v. Argus Publishing Co., 79 Wash.2d 816, 490 P.2d 101</td>
<td>(no info)</td>
<td>0</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Moore v. P.W. Publishing Co., 3 Ohio St.2d 183, 209 N.E.2d 412 (1965)</td>
<td>(no info)</td>
<td>0</td>
<td>Jury/State</td>
</tr>
<tr>
<td>Morgan v. Dun &amp; Bradstreet, Inc., 421 F.2d 1241 (5th Cir. 1970)</td>
<td>70,000</td>
<td>70,000</td>
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<td>New York Times Co. v. Connor, 365 F.2d 367 (5th Cir. 1966)</td>
<td>40,000</td>
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<td>O'Neal v. Tribune Co., 176 So.2d 535 (Fla. Ct. App. 1965)</td>
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<td>Phoenix Newspapers, Inc. v. Pulliam, date unknown; cited by name in Phoenix case below</td>
<td>50,000</td>
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(5) Case originated in Florida state court.
(6) Judgment N.O.V. entered for the defendant.
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<th>Case</th>
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<td>Post v. Oregonian Publishing Co.</td>
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<td>Jury/State</td>
</tr>
<tr>
<td>Prystash v. Best Medium Publishing Co.</td>
<td>(no info) (aff'd)</td>
<td>Jury/State</td>
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<tr>
<td>Rawls v. Conde Nast Publications, Inc.</td>
<td>55,000</td>
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<td>Robinson v. Bantam Books, Inc.</td>
<td>300</td>
<td>Bench/Federal</td>
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<tr>
<td>Rosenbloom v. Metromedia, Inc.</td>
<td>750,000</td>
<td>Jury/Federal</td>
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<td>Serino v. Dun &amp; Bradstreet, Inc.</td>
<td>20,000</td>
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<td>Snowden v. Pearl River Broadcasting Corp.</td>
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<td>Sprouse v. Clay Communications, Inc.</td>
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<td>Stone v. Essex County Newspapers</td>
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<td>Tilton v. Cowles Publishing Co.</td>
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<td>Time, Inc. v. Firestone</td>
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<td>Tripoli v. Boston Herald-Traveler Corp.</td>
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(7) Case originated in Florida state court.
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<td>130,000</td>
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<td>Walker v. Associated Press, 206 So.2d 489 (La. Sup. Ct. 1968)</td>
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LDRC Bulletin No. 17
The fully updated and expanded LDRC 50-State Survey 1985-86 was published several weeks ago. (If you have not yet ordered your copy of the 1985-86 Survey you can do so by completing the Order Form that appears at the end of this Bulletin.) For most of the readers of the Bulletin this new Survey's value (and the value of each annual edition) will lie primarily in its usefulness as a research and reference tool. Accordingly, conclusions as to the significance of the Survey results in terms of what they reveal about the current status of, or current trends in, media libel and privacy law and litigation can to a great extent be left to each knowledgeable reader and user of the Survey.

However, publication of the results of the 1985-86 LDRC Survey is, to some extent at least, also a newsworthy event in its own right as are the trends it may identify. Therefore, subject to the important caveats noted below, it is felt to be appropriate again this year, as in years past, to attempt briefly to summarize the key findings of the 1985-86 Survey for our Bulletin readers.

It is important to reiterate, however, as is noted in the 50-State Survey itself, that the "key findings" which follow are, in effect, summaries of summaries of summaries. Just as each of the state survey reports must be understood as providing no more than an overview or outline of the law, this summary of the status summaries of those brief outlines must -- a fortiori -- be understood as no more than a shorthand description of general patterns in the law. In particular, the numbers and statistics provided below cannot be considered as more than approximations and general descriptions of basic trends. While we believe they provide generally reliable quantifications of our findings, based solely on the Survey

* LDRC gratefully acknowledges the invaluable assistance of Richard E. Novak, third-year student at the Cardozo Law School, in the preparation of this section of the "key findings" report. Mr. Novak was also substantially responsible for preparation of the revised tables and charts, which appear in the 1985-86 50-State Survey, and upon which this summary is largely based.
reports received, they should not be considered or cited as precise and totally accurate measures of the exact state of the law in any or every jurisdiction. Similarly, neither this summary of key findings nor the status summaries should be used as a substitute for consulting the individual state reports in the 50-State Survey and, beyond them, the actual cases or statutes to which they refer.

APPELLATE STANDARD OF REVIEW

Three years ago, the 50-State Survey was expanded to include post-trial and appellate review standards and procedures in each U.S. jurisdiction. Since that report was prepared, the Supreme Court in Bose v. Consumers Union, 466 U.S. 485 (1984), reaffirmed "independent appellate review" as the appropriate standard for appellate courts reviewing cases tried under an actual malice standard. The 1985-66 Survey reflected a continued slow but gradual shift away from more restrictive standards of review in jurisdictions that were undecided on the issue or that had previously conducted less searching review. According to this year’s Survey, at least 22 jurisdictions now apply the independent review standard, with another six (up two from last year) applying the arguably more expansive "de novo" review standard. In eleven jurisdictions the most recent cases decided still applied the same standard of review in defamation actions as would usually be applied in any other civil case.

Developments in this area at the state court level were also positive. The Florida Supreme Court applied Bose to reverse a judgment for plaintiff on the basis of an erroneous jury verdict to which no objection had been made in the trial court. An Illinois Third District appellate court held that appellate courts have the responsibility of reviewing verdicts finding the existence of actual malice de novo. The Minnesota Supreme Court also required independent de novo review for jury findings of actual malice and negligence. New cases applying independent review post-Bose were also decided in Pennsylvania and Virginia.

BROADCASTERS SPECIAL PRIVILEGE

Previous LDRC Surveys revealed that as many as 35 jurisdictions had adopted statutes providing special privileges to broadcasters, primarily where the law required that political candidates or other individuals be given coverage or access for equal time, fairness or other purposes, without the
possibility of review or control by the broadcaster. A number of these privileges apply, or also apply, to cablecasters. In 1985-86 no significant new developments on this issue were reported.

BURDEN OF PROOF

Several years ago the Supreme Court appeared to be prepared to decide the important issue of the burden of proof of truth or falsity in a libel action in Wilson v. Scripps-Howard but the case was settled after certiorari had been granted (see LDRC Bulletin No. 2 at 27-28 and Bulletin No. 3 at 26.) This year, in Philadelphia Newspapers, Inc. v. Hepps, 12 Med.L.Rptr. 1977, 106 S. Ct. 1558 (1986), the United States Supreme Court again took up the issue of the appropriate burden of proof of truth or falsity focusing specifically on a private figure plaintiff's libel action. The 50-State Survey had not previously distinguished between public and private figure plaintiffs for this purpose. Although some of the Survey reports had drawn this distinction, many had not. In response to the pendency of Hepps, LDRC requested preparers of the 1985-86 Survey to report separately on the truth/falsity burden issue regarding public plaintiffs on the one hand and private plaintiffs on the other.

According to the 1985-86 Survey, at least 31 jurisdictions imposed the burden of proof of falsity upon the plaintiff in a libel action, the same number as in the 1984 Survey. Nearly all of these relied upon their interpretation of constitutional requirements. There were, however, eleven jurisdictions (down 1 from last year), that continued to impose at least the initial burden of proof of truth upon the defendant -- 9 by judicial decision; 2 by statute. In the remaining jurisdictions it was undecided or unclear which party bore the burden of proof. With regard to the distinctions, if any, drawn in these jurisdictions between public and private plaintiffs, the new Survey found that, among the 24 states reporting on this aspect of the burden issue, 8 of those states did distinguish between "private" and "public" plaintiffs by imposing the burden of proving falsity on public plaintiffs while imposing the burden of proving truth on defendants in private-plaintiff libel actions. In the remaining 16 reporting jurisdictions, 7 had expressly declined to distinguish between public and private plaintiffs and in the rest no case had drawn such a distinction.

Shortly after the 1985-86 Survey went to press, the Supreme Court decided the Hepps case. Justice O'Connor, writing for
the five-Justice majority, stated that "at least where a newspaper publishes speech of public concern, a private-figure plaintiff cannot recover damages without also showing that the statements at issue are false." Hepps, No.84-1491, slip. op. at 1 (4/21/86). This definitive holding will presumably be controlling, in the future, in the lower courts based upon the square ruling that the First Amendment requires the plaintiff to bear the burden of proof as to falsity in a private figure action. It remains to be seen, however, whether and to what extent the "speech of public concern" limitation, first revived last year in Dun & Bradstreet v. Greenmoss Builders, 11 Med.L.Rptr. 2417, 86 i.Ed.2d 593 (1985), and reiterated in Hepps, will lead to an erosion of the favorable burden ruling through the back door of categorical exclusion of non-public concern actions involving media defendants.

COMMON LAW PRIVILEGES

Fair report, fair comment, and other common law privileges have proven to be of continuing utility to the media in its coverage of events of significant public concern, both in states where post-Sullivan constitutional principles have not been fully developed, and even in those that have also recognized constitutional principles. According to the 1985-86 Survey at least 46 jurisdictions recognize some form of fair report privilege (up 3 from last year), 20 by statute and the remainder under common law. At least 23 jurisdictions recognize a qualified privilege for fair comment, although only 3 do so by statute. At least 12 additional jurisdictions recognize, under the common law, a qualified privilege to report on matters of public interest or concern.

In 1985-86, as might be expected, the status of longstanding common law privileges did not dramatically change. However, there were some new developments of interest. New cases raised questions concerning the definition and scope of the "public interest" qualified privilege in Michigan and divided that state's appellate courts; recent cases raising the same issues divided the Sixth Circuit. Currently pending before the Michigan Supreme Court is a case, involving privilege, which may settle these issues in that state.

In New Jersey three federal decisions outlined the parameters of the fair report privilege. A Third Circuit and two federal District Court decisions extended the privilege to a complete, fair and accurate report of an official document, which may be defeated, however, by proof of "malice in fact."
New cases dealing with the fair report privilege were also decided in Rhode Island and Massachusetts. In Hawaii, a qualified privilege to report on statements made in judicial proceedings was acknowledged. In Connecticut new cases addressed an absolute privilege for communications related to judicial proceedings and outlined standards for defeating a qualified privilege.

CONSTITUTIONAL OPINION PRIVILEGE UNDER GERTZ

Despite the questions raised in 1982 by Justices White and Rehnquist in a dissent from denial of certiorari and reiterated in the 1985 Term by Justice Rehnquist (see Supreme Court Report, infra), the constitutional opinion privilege has continued to gain substantial momentum over the past three years in the lower courts. By 1984 as many as 35 jurisdictions had recognized special constitutional protection for opinion in reliance upon Gertz. At least eleven jurisdictions, including some jurisdictions in which Gertz is followed, also recognized common law privileges for opinion. Only 12 jurisdictions have not yet addressed the impact of Gertz on statements of opinion.

In the 1985-86 Survey new cases finding a privilege for opinion were reported in 8 jurisdictions; Gertz was cited in 3 of these. The Ohio Supreme Court recognized the constitutional opinion privilege under Gertz, but declined to adopt a per se rule to distinguish statements of fact from expressions of opinion. The D.C. Circuit, in a divided en banc decision (as to which cert. was later denied), granted substantial protection to statements of opinion. The majority used four factors to distinguish fact from opinion, and rejected as too narrow the Restatement (Second) §566 test concerning whether the opinion implies the existence of undisclosed facts. A new federal case in Rhode Island District Court also cited Gertz. Constitutional protection for opinion was also found, although Gertz was not cited, in new cases in Michigan and Virginia. New cases in Maine and Pennsylvania ruled that liability for statements of opinion must rest on undisclosed defamatory facts. It is unclear whether a new opinion case in Hawaii was decided under constitutional or common law privilege.

DAMAGES

As LDRC has continued to report (see, e.g., Damages Watch Update report, infra) huge damage awards are still being imposed at the trial level by juries, while the awards surviving post-trial motions and appeals continue to be
relatively small. Nevertheless, multi-million dollar verdicts and excessive punitive damage awards continue to be among the most worrisome features of current libel litigation.

The 1985-86 Survey reflects few changes from last year with respect to the state of the law governing damage awards in libel actions. 9 jurisdictions still bar punitive damage awards entirely, whether generally in all civil actions or specifically in libel actions. 29 jurisdictions recognize constitutional limitations on the availability of punitive damages in libel actions, and 33 jurisdictions also limit the availability of punitive damages either under a retraction law, other common law provisions, or both. A case currently pending before the Missouri Supreme Court will consider the propriety, under state constitutional law, of awards of punitive damages in free speech/free press cases. In Pennsylvania, a number of new cases have created divided authority regarding application of common law, in addition to constitutional, limits on punitive damages. And, in a non-libel context, the Maine Supreme Court held that punitive damages based on any tortious conduct may be awarded only upon evidence of "express malice" or outrageous conduct.

With regard to actual damages, as many as 34 jurisdictions have recognized Gertz limitations on recoverable actual damages (up 5 from last year), although four of those restrict Gertz benefits to public figure or media actions. New cases in three jurisdictions dealt with the presumption of damages. The Minnesota Supreme Court held that actual damages are recoverable only upon proof of actual injury supported by competent evidence. A new Virginia Supreme Court decision held that in an action brought by a private individual for defamatory words involving no matter of public concern, compensatory damages are presumed if the words are actionable per se. In a new case in Pennsylvania, the State Superior Court called into question its recent adoption of the Gertz definition of actual injury, stating that damages are limited to the harm an individual experiences to his reputation.

DEFENDANTS' REMEDIES

At a time when the cost of defending even frivolous claims is ever increasing, more and more media libel defendants have given serious consideration to pursuing their own counterclaims against libel plaintiffs for malicious prosecution, abuse of process or similar violations, or at the least are seeking to secure costs and attorney's fees against unsuccessful libel plaintiffs. The 1985-86 Survey indicates that some 29
jurisdictions may provide potentially meaningful remedies for such meritless libel claims. As many as 10 jurisdictions have already specifically recognized such remedies in the libel context. The Survey indicates that 12 additional jurisdictions provide for remedies under state law, but questions their usefulness or meaningful availability. Only two jurisdictions explicitly provide no remedies to the libel defendant. There is no law on the subject in the remaining jurisdictions.

Since the Nemoroff v. Abelson case was decided by the Second Circuit in 1983, 704 F.2d. 652, a number of libel defendants have gone to court seeking affirmative remedies. In a new case cited in this year's Survey in West Virginia, the Supreme Court of Appeals granted a writ of mandamus compelling reconsideration of a newspaper's motion for award of attorney's fees in a libel action that had previously been dismissed.

**DISCOVERY OF EDITORIAL MATTER AND THE EDITORIAL PROCESS**

At least since Herbert v. Lando, 441 U.S. 153 (1979), potentially intrusive discovery into the journalistic editorial process has become a controversial issue in libel litigation, with a number of widely-publicized decisions ordering discovery of editorial matter which the media defendant had vigorously sought to protect. Essentially, the 1985-86 Survey confirmed last year's findings that relatively few jurisdictions have considered the Herbert issue -- as opposed to shield law issues, see below. Of the 11 jurisdictions that had considered this discovery issue, only two had denied discovery (New Jersey and Pennsylvania (editorial matter only)), with three permitting such discovery and another seven permitting discovery but with certain limitations. In a new Kentucky Supreme Court decision, the news media was granted immunity from disclosing the source of any information, but not a privilege against disclosure of the information itself.

**INVASION OF PRIVACY**

The Survey has for several years now included detailed information covering the four traditional branches of the tort of invasion of privacy: false light; intimate facts; intrusion; and misappropriation/right of publicity and the extent to which these four torts had been recognized under common law, and by statutory and constitutional provisions, in the jurisdictions surveyed. The primary focus, of course, is on the use of the privacy cause of action in actions against the media, based upon editorial content.
According to the 1985-86 Survey, at least 42 jurisdictions now recognize one or more of the four common law torts (up 1 from last year), with 23 of these recognizing all four branches. In at least 22 of these jurisdictions, some form of privacy right is provided for by statute or constitutional provision or both; explicit constitutional protection exists in 13 of these jurisdictions. Only one state (Minnesota) appears to have expressly declined to recognize the privacy tort in any form, while four others, (New York, Oklahoma, Illinois and Virginia), have narrowly confined recognition to a statutory cause of action for misappropriation.

The false light tort has been explicitly recognized in at least 25 jurisdictions. Four jurisdictions have declined to adopt false light; in 25 others the issue is unsettled, or else undeveloped in the media context. The Oregon intermediate appellate court this past year adopted the false light tort theory, consisting of the elements stated in Restatement, Second. A new case pending before the Missouri Supreme Court will determine whether false light is a recognized tort in that state. In Illinois, although two intermediate appellate courts have suggested that invasion of privacy actions can only be grounded on misappropriation, a new Seventh Circuit case now predicts that state courts would recognize the false light tort when a suitable case arises. Additional case law development on false light this past year was reported in California and Pennsylvania.

At least 29 jurisdictions provide some right of action for the unauthorized publication of private facts, with only 4 clearly declining to do so. The private facts tort was addressed and refined last year in Hawaii and Pennsylvania. With regard to both false light and intimate facts, the plaintiff's right to recover is limited in a few jurisdictions by a requirement that actual malice be proven; or that the invasion be shown to be "highly offensive." In addition, a "newsworthiness defense" is recognized in at least seven other jurisdictions (up 1 from last year).

The 1985-86 Survey reports the tort of intrusion as recognized in at least 28 jurisdictions, not recognized in two, and unsettled in 24.

As to right of publicity, the 1985-86 Survey indicates that 30 jurisdictions recognize the tort in some form, although recognition is limited in 10 jurisdictions to common law or statutory misappropriation. New cases in the area were reported this past year in Oklahoma and Pennsylvania. In Oklahoma, a new statute provided that the property interest in
a deceased personality's right of publicity shall continue for one hundred years after that personality's death.

NEUTRAL REPORTAGE

A new, constitutionally based privilege for neutral reportage had been seen by some observers as holding out the promise of at least a partial solution to the chilling effect of libel actions on the media -- see LDRC Bulletin No. 5 at 12-13. Development of this privilege has moved slowly over the past few years, but now in nine jurisdictions, according to the 1985-86 Survey, at least one court had specifically recognized a First Amendment privilege for neutral reportage (up 2 from last year); another 14 jurisdictions have recognized related principles that might lead to adoption of neutral reportage or yield similar protection under the common law. Only four jurisdictions have definitively rejected the neutral reportage privilege. This past year the doctrine of neutral reportage was explicitly recognized by a federal district court in Indiana, and implicitly recognized by the Massachusetts Supreme Judicial Court. The Rhode Island Supreme Court briefly addressed neutral reportage, but skirted the issue of whether or not the state would adopt the doctrine. The South Dakota Supreme Court explicitly rejected neutral reportage as a special privilege.

NON-MEDIA DEFENDANTS UNDER GERTZ

One not insignificant issue left open by Gertz is the question of the availability of constitutional privileges, particularly in actions brought by private figure plaintiffs, in favor of non-media defendants. The 1985-86 Survey revealed that some 27 jurisdictions applied (expressly or implicitly) Gertz rules to non-media defendants (up 6 from last year's report). On the other hand, five jurisdictions expressly refused to apply Gertz in the non-media context (down 1 from last year). In 18 jurisdictions the issue did not appear to have yet been considered, and in four other jurisdictions there was divided authority on the matter.

Late in the 1984-85 Term, the Supreme Court decided Dun & Bradstreet v. Greenmoss, supra, with the plurality holding that at least in certain limited circumstances speech that does not involve matters "of public concern" will not be covered by the constitutional protection of Gertz. However, a majority of the current Justices of the Court appeared to hold to the view that a distinction between media and non-media defendants should not
be recognized. Thus, in *Dun & Bradstreet v. Greenmoss*, a head count suggests that as many as 5 Justices reject a non-media distinction (Justices Brennan, Marshall, Blackmun, Stevens and White. Compare the plurality opinion of Powell, J. with the concurring opinion of White, J. and the dissenting opinion of Brennan, J.) This Term, in *Hepps*, supra, Justice O'Connor's footnote 4, 54 U.S.L.W. at 4376, suggested that the non-media issue remains open, at least with respect to the burden issue. However, this comment by Justice O'Connor was expressly controverted in the brief concurring opinion of Justice Brennan, joined by Justice Blackmun. The four dissenting Justices in *Hepps* did not comment on the non-media issue (see LDRC Bulletin No. 14 at 40-47). The Greenmoss decision has already been cited in new cases decided in Maine, New York, Texas and Virginia. However, The Pennsylvania Superior Court held in a non-media case this past year that a private plaintiff must establish actual malice in order to recover punitive damages.

**OTHER TORTS**

In addition to defamation and invasion of privacy, the Survey covers eight related torts which have been, or could conceivably be, asserted against the media in actions based on editorial content. They are intentional infliction of emotional distress, trade libel (or product disparagement), negligent infliction of emotional distress, simple negligence, prima facie tort, conspiracy, interference with contract, and product (or strict) liability. Generally speaking, the 1985-86 Survey reconfirms past years' findings that these alternative causes of action have not been asserted with great success against media defendants. Although one or more of these torts are recognized as independently viable in a majority of jurisdictions, only a few jurisdictions have had occasion to consider them in a media context. In many of these cases the claims have been dismissed or otherwise rejected on the theory that a plaintiff should not be allowed to recover on a cause of action that is in essence for defamation, where one or more elements of a successful defamation claim are lacking. In the remainder, where courts have allowed an independent claim for one or another of these torts, the claims have generally been held to be subject to the same privileges and defenses that are available in an action for defamation.

The 1985-86 Survey reports some limited developments in these areas over the past year. A successful media defense against allegations of editorial interference with contract was made in Missouri. Unsuccessful claims were brought in
California and New Jersey for trade libel; in Florida, Massachusetts and North Carolina for intentional infliction of emotional distress; and in Illinois for simple negligence. As of this year's Survey, the torts that have been considered in a media context by the largest number of jurisdictions include intentional and/or negligent infliction of emotional distress (nine jurisdictions, up 1 from last year), trade libel (nine jurisdictions, also up 1), conspiracy (eight jurisdictions, up 2), and interference with contract (nine jurisdictions, up 1).

PRIVATE FIGURE UNDER GERTZ

Since 1974 lower state and federal courts have slowly but steadily begun to implement the Gertz mandate to define state defamation law "fault" standards applicable to private figure plaintiffs.

Unfortunately, 1985-86 has seen a continuation of the trend in state courts toward a mere negligence standard under Gertz. Thirty-three jurisdictions have now adopted a standard of mere negligence, six of these in the past year (Georgia, Minnesota, New Jersey, Oregon, Pennsylvania and Virginia). Only five jurisdictions have adopted a standard more demanding than simple negligence. The standard is unclear or unsettled in six other jurisdictions, with no reported cases in the remaining ten.

RECOGNITION OF THE SHIELD PRIVILEGE IN THE LIBEL CONTEXT

In 1985-86, the already substantial number of jurisdictions recognizing some form of shield privilege rose from at least 38 to at least 40. However, only a minority of those jurisdictions have yet specifically recognized a claim for protection of confidential sources or information in the context of a libel or privacy action against a media defendant asserting this privilege, and five jurisdictions have statutes still in force denying shield protection in the libel context.

Positive developments in the shield privilege area include new cases in Illinois, Delaware and Hawaii, refining and expanding the scope of shield protection in libel cases, and the recognition in California and Idaho of a qualified privilege under the First Amendment as a viable alternative to statutory shield protection. The Massachusetts Supreme Judicial Court, however, declined to promulgate rules which would establish a qualified privilege.
RETRACTION

Although some of them may not have the protective capacity they once had prior to the constitutionalization of libel law, retraction laws remained broadly in effect according to the 1985-86 Survey. Some 31 jurisdictions still provide for retraction by statute while another 11 jurisdictions were reported to recognize the effects of retraction under common law. While the decision is under challenge in the Arizona Supreme Court, that state's Court of Appeals recently ruled that its "correction statute" violates the abrogation clause of the Arizona Constitution. Accordingly, until the decision is reversed, there is some question whether publication of a correction will be effective in that state to limit damages in a libel action. The Maine legislature refused this past year to adopt a pure retraction statute, but did enact a statutory provision that a defendant may present evidence to show that damages would have been mitigated had retraction been requested. Although the Ohio Supreme Court has not ruled on the constitutionality of the state retraction statute, a trial court relying on Miami Herald v. Tornillo recently ruled that Ohio's retraction statute violates the First Amendment.

STATUTES OF LIMITATIONS

According to the 1985-86 Survey, 28 jurisdictions provided a one-year statute of limitations for libel, 19 a two-year statute, and 7 a three-year statute. In three jurisdictions the statute for slander was different (shorter) than for libel. In 24 jurisdictions the single publication rule had been expressly recognized (up 2 from last year), 16 of them under common law and eight by statute (generally the Uniform Single Publication Act). Only two jurisdictions expressly adhered to a multiple publication rule. In the only significant development reported in the new Survey, Alabama adopted a two-year statute of limitations for libel actions; their limitations period had previously been one year.

SUMMARY JUDGMENT

LDRC's two-year update of summary judgment motions in libel actions (see LDRC Bulletin No. 12 at 1-37) indicated a continuation of the trend toward summary judgment as the favored remedy in libel actions against the media. The study, which examined 136 summary judgment motions made during the period 1982-1984, revealed that defendants' motions for summary judgment continued to be granted in just under three out of

The 1985-86 Survey would also support the view that in the now seven years since Hutchinson was decided, that case has not had the major impact feared on the tendency of state courts to protect First Amendment interests by granting summary judgment motions in libel cases.

The new Survey reports reflect an equal, if not slightly greater, willingness on the part of state courts to grant summary judgment than was indicated by last year's Survey. Twenty-two jurisdictions, an increase of one over last year, are reported as "favoring" summary judgment motions. New cases granting summary judgment were reported from several states, including Alabama, where the State Supreme Court expressly overturned the prior state rule disfavoring summary judgment. Only six states appear to explicitly disfavor summary judgment in the libel context (down 2 from last year). A significant number of jurisdictions -- 17 by this year's count (Kentucky and the Virgin Islands have adopted a neutral standard since the last Survey) -- continue to apply a neutral standard. It should also be noted that the status of the summary judgment remedy remains unclear in at least nine jurisdictions. Among these states are Florida, where there is a sizable body of authority on both sides of the issue, and Mississippi, where summary judgment motions in libel cases are on appeal before the state supreme court for the first time.

The Supreme Court's recent decision in Anderson v. Liberty Lobby, 54 U.S.L.W. at 4755 (6/25/86), adds new perspective to the Hutchinson and Calder rulings. The Court there held that when considering a motion for summary judgment in a public-plaintiff libel action, courts must be guided by the Sullivan "clear and convincing" evidence standard in determining whether a triable issue of "actual malice" exists. In footnote 7 of Liberty Lobby, Justice White specifically softened the "warning" of Hutchinson, footnote 9, stating that note 9 was "simply an acknowledgment of our general reluctance 'to grant special procedural protections to defendants in libel and defamation actions in addition to the constitutional protections embodied in the substantive laws.'" (Citing Calder, 465 U.S. 783 at 791.) It is quite possible that the favorable holding in Liberty Lobby, combined with this language limiting the impact of Hutchinson note 9, will be reflected in the future strengthening of the availability of summary judgment in libel actions. The 50-State Survey will continue closely to track this important issue.
SURVIVABILITY AND DESCENDABILITY OF LIBEL AND PRIVACY CLAIMS

It has been almost universally understood that the dead do not have a cause of action for libel and it has been generally assumed that such a cause of action previously asserted dies with the person allegedly defamed. However, at least one widely-reported recent libel case held that a claim will survive and a minority of jurisdictions have previously so held. Also, the issue of the survivability and descendability of privacy claims -- particularly right of publicity claims -- has recently been the subject of a growing body of divided case law. The 50-State Survey, while not fully definitive due to some lack of Survey response and also due to the fact that the issues are open and undecided in a number of jurisdictions, generally confirms the given wisdom, but does indicate some variety of approach among jurisdictions. Thus, with regard to libel claims, according to the 1985-86 LDRC Survey, at least 23 jurisdictions do not allow for survival or descent, while 6 apparently do to some extent (Florida, Michigan, New Jersey, Pennsylvania, Rhode Island (under very limited circumstances) and South Dakota). In another 23 jurisdictions the matter is unclear or there is no law on the point. There were no significant new developments regarding the survival of libel claims, although in a flurry of activity shortly after the 1985-86 Survey was published, one house of the New York State Legislature passed, but then withdrew, a bill that would have created a limited-duration libel cause of action for survivors of the dead. The 1987 Survey will be expanded to explore the status of this issue around the country.

Regarding survival of privacy claims, the situation is less definitive. In a majority of jurisdictions (40) there is no law on point or at least the Survey reports do not address the issue. In two states new statutes provided for the survivability of the property interest in a deceased personality's right of publicity. In California, that right expires 50 years after the death of the individual. In Oklahoma, the interest continues for one hundred years after the personality's death. Only seven other jurisdictions were reported as recognizing survival or descent -- not necessarily as to all branches of the privacy tort -- (Georgia, Kentucky, Michigan, New Jersey, New Mexico, South Dakota and Wisconsin), with another two divided on the issue (Tennessee and Texas). Arizona was the only jurisdiction indicated as expressly not recognizing survival or descent of privacy claims. No further new developments on this score were reported this year.
Despite the somewhat foreboding picture painted by records of the new nominees to the Supreme Court (see Analysis of Libel (Privacy) Rulings by Pending Supreme Court Nominees, this Bulletin, infra) and indications that certain justices are looking for cases in which to re-examine libel law, cases actually decided in the last few months of the 1985-86 Term were notably successful for libel defendants. Since April, the Court voted pro-media in the three cases it decided: Philadelphia Newspapers, Inc. v. Hepps; Anderson v. Liberty Lobby; and Schiavone v. Time, Inc., although the libel issues never were actually addressed in Schiavone which was decided on the procedural issue of statute of limitations.

Notably, in Anderson v. Liberty Lobby, footnote 7, Justice White took much of the sting out of Hutchinson v. Proxmire, footnote 9, calling note 9 "simply an acknowledgment of our general reluctance 'to grant special procedural protections to defendants in libel and defamation actions in addition to the constitutional protections embodied in the substantive laws.'" LDRC will be conducting two new summary judgment studies -- pre- and post-Liberty Lobby -- to monitor the effect of this ruling.

A consolidated case list, recording all Supreme Court actions during the 1985-86 Term, will be published in LDRC Bulletin No. 18. The Court's actions from February 25, 1986 through July 7, 1986, as recorded in 54 United States Law Week, Issue No. 33 through 54 United States Law Week, Extra Edition No. 2 are as follows:

Decisions -- Favorable (3)

Philadelphia Newspapers, Inc. v. Hepps, 54 U.S.L.W. 4373 (4/22/86, No. 84-1491). (The Court held that at least when a newspaper publishes speech of public concern about a private figure, the private figure plaintiff has the burden of proving falsity in order to recover damages.

Schiavone v. Time, Inc., 54 U.S.L.W. 4692 (6/18/86, No. 85-1839). (The Court held that plaintiff who had wrongly named defendant in original complaint, and did not amend the complaint until after the statute of limitations had run, was not entitled to "relation-back" treatment under Rule 15(c), Fed.R.Civ.P.)
Anderson v. Liberty Lobby, 54 U.S.L.W. 4755 (6/25/86, No.84-1602). (The Court held that when considering a motion for summary judgment in a public plaintiff libel action, courts must be guided by the New York Times v. Sullivan 'clear and convincing' evidence standard in determining whether a triable issue of "actual malice" exists.)

Media Defendants -- Favorable Decisions Left Standing (9)


Gadd v. News-Press Publishing Co., 412 So.2d 894, 8 Med.L.Rptr. 1454 (Fla. Dist. Ct. App. 1982), cert. denied, 54 U.S.L.W. 3646 (3/31/86, No. 85-1456). (Florida District Court of Appeals had affirmed circuit court's grant of dismissal for failure to state a cause of action in a defamation action brought by a former hospital administrator against a newspaper for an article unfavorable to hospital management.)

Fleming v. Moore, 780 F.2d 438 (4th Cir. 1985), cert. denied, 54 U.S.L.W. 3697 (4/21/86, No. 85-1532). (The Fourth Circuit had held that pursuit of aspects of libel action previously lost in Virginia State Court in which the libel plaintiff did not act on behalf of State or any of its political subdivisions in bringing state libel action, cannot be relitigated by the libel defendant under guise of 42 U.S.C. 1983 action in federal court.)

Bartino v. Horseman's Benevolent and Protection Association, 771 F.2d 894, 12 Med.L.Rptr. 1567 (5th Cir. 1989), cert. denied, 54 U.S.L.W. 2207 (5/5/86, No. 85-1065). (Fifth Circuit had affirmed grant of involuntary dismissal on the ground that the public figure plaintiff failed to prove actual malice.)

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Dameron v. Washington Magazine, Inc., 779 F.2d 736, 12 Med.L.Rptr. 1508 (D.C. Cir. 1985) prior dec. 10 Med.L.Rptr. 1220, cert. denied, 54 U.S.L.W. 3774 (5/27/86, No. 85-1569). (The D.C. Circuit Court had affirmed grant of summary judgment on the ground that plaintiff was an involuntary public figure who admitted he could not prove actual malice.)

Herbert v. Lando, 781 F.2d 298, 12 Med.L.Rptr. 1593, (2d Cir. 1986), cert. denied, 54 U.S.L.W. 3822 (6/16/86, No. 85-1685). (The Second Circuit had affirmed the partial grant of summary judgment and reversed the partial denial of summary judgment holding that the public plaintiff's defamation action could not proceed solely on the basis of inaccuracies in other statements which imply the same view as, are merely an outgrowth of, or are subsidiary to claims upon which recovery has been disallowed.)

Coughlin v. Westinghouse Broadcasting and Cable, Inc., 780 F.2d 340, 12 Med.L.Rptr. 1529 (3d Cir. 1985), cert. denied, 54 U.S.L.W. 3822 (6/16/86, No. 85-1593). (The Third Circuit had affirmed grant of summary judgment in a public official's libel action based upon a lack of sufficient evidence of actual malice, as defined in New York Times v. Sullivan. Chief Justice Burger, joined by Justice Rehnquist, dissented. They would have granted certiorari to determine whether or not the New York Times standard "remains an appropriate one" or whether it should be reexamined.

Synanon Church v. Reader's Digest Association, 37 Cal.3d 244, 690 P.2d 610, 11 Med.L.Rptr. 1065 (1984), cert. denied, 54 U.S.L.W. 3855 (6/28/86, No. 84-1304). (California Supreme Court had held that district court should have granted Reader's Digest's motion for summary judgment in light of absence of clear and convincing evidence of actual malice.)

Non-Media Defendants -- Favorable Decisions Left Standing (3)

Matchett v. Chicago Council of Lawyers, Ill. Ct. App. 7/18/85, unpublished opinion, cert. denied, 54 U.S.L.W. 3650 (3/15/86, No. 85-1487). (The Illinois Court of Appeals had held that an unincorporated association cannot be sued in its own name without joining all members as parties and therefore upheld trial court's dismissal of suit brought by unsuccessful candidate for judgeship alleging that he had been libelled by bar association's evaluation of him.)

Hon Yip v. Pagano, 782 F.2d 1033 (3d Cir. 1986), cert. denied, 54 U.S.L.W. 3774 (5/27/86, No. 85-1621). (Third Circuit had affirmed District Court holding that, under New Jersey law, statements to legislative bodies are protected by an absolute privilege which is not lost by voluntary appearance, lack of testimony under oath or asserted irrelevancy of testimony.)

Non-Media Defendant -- Unfavorable Decision Left Standing (1)

Hess v. Treece, 286 Ark. 434, 693 S.W.2d 792, cert. denied, 54 U.S.L.W. 3556 (2/24/86, No. 85-974). (The Arkansas Supreme Court had found substantial evidence to support jury's finding of outrageous conduct and awards of $25,000 compensatory and $50,000 punitive damages to police officer against individual acting first as private citizen and second as city director.)

Petitions Filed But Not Yet Acted Upon (1)

LaRouche v. National Broadcasting Company, Inc., 780 F.2d 1134, 12 Med.L.Rptr. 1585 (4th Cir. 1986), cert. filed, 54 U.S.L.W. 3795 (5/20/86, No. 85-1914). (In a public figure's action that resulted in a verdict against the plaintiff on its libel claim and for defendant NBC on its counterclaim for interference with business relations the Fourth Circuit had affirmed the judgment.)
ANALYSIS OF LIBEL (PRIVACY) RULINGS 
BY PENDING SUPREME COURT NOMINEES

LDRC Bulletin No. 17

LDRC examined a total of 25 libel (and privacy) cases in which Justice Rehnquist and Judge Scalia wrote or joined in a decision or statement reflecting their view on a substantive libel or privacy law issue. In those 25 cases (20 by Rehnquist and 5 by Scalia), none favored the media or libel defendant.

JUSTICE REHNQUIST

Perhaps not surprisingly, since his previous opinions on the Court are generally well known, LDRC's systematic review documents the consistency with which Justice Rehnquist has voted against the media defendant in libel (and privacy) cases since his appointment to the bench in 1972. His record can be summarized as follows, including the Court's most recent libel decision last Wednesday:

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<th>Voted Pro-Media</th>
<th>Voted Pro-Plaintiff</th>
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<tbody>
<tr>
<td>Libel</td>
<td>18</td>
<td>0</td>
</tr>
<tr>
<td>Privacy</td>
<td>2</td>
<td>0</td>
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* One of the cases included in the analysis, Tornillo, was not a libel action and Rehnquist concurred in the favorable judgment. However, the concurrence was unfavorable on a libel issue. On the other hand, this analysis of the total of Rehnquist libel cases and votes does not include one other case in which, although the underlying claim was for libel, the Supreme Court's decision and dissent deal solely and exclusively with a procedural issue, under Rule 15(c), Fed.R.Civ.P., regarding relation back of amendments to federal pleadings. In that case, Schiavone v. Fortune, ___ S.Ct. ___, 54 U.S.L.W. 4692 (June 18, 1986), Justice Rehnquist joined in the majority opinion that favored Time, Incorporated on this procedural issue.

** Includes one dissent, in Cox, on a procedural issue.
In connection with his consistently unfavorable record, from the media defense point of view on libel and privacy issues, the following is a comprehensive listing of all of Justice Rehnquist's pertinent libel (and privacy) votes, with brief summaries of the position he stated or joined in each of those cases.

<table>
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<th>Plenary Decisions</th>
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<tr>
<td>Although concurring in the favorable result, reserved on an issue — mandatory retraction — unfavorable to the media.</td>
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<td>Drew the constitutional line for libel purposes between public and private figures and held that the states are free to decide the liability standards for private figures only so long as they do not impose liability without fault.</td>
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<td>Reinstated the trial court judge's award for punitive damages based on a common law definition of actual malice, applied to false light privacy; moreover, the Court found that the facts of the case also met New York Times and Time v. Hill actual malice standards.</td>
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*** Includes three dissents from denials of certiorari.

**** Includes one dissent from a denial of certiorari.
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975). (Rehnquist dissented from favorable opinion.)

Dissented on a procedural issue, stating that the Supreme Court did not have jurisdiction because the decision of the court below was not a final judgment under 28 U.S.C. §1257, but certain language in his dissent suggests that he would not have viewed a decision against the defendant on the merits as offensive to First Amendment rights.


Reports of judicial proceedings, even if such proceedings are of general interest and lead to press conferences held by parties to the proceedings, are not constitutionally privileged and do not automatically qualify parties as public figures as defined in Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

Herbert v. Lando, 441 U.S. 153 (1979). (Rehnquist joined unfavorable opinion.)

Rejected the idea that information and materials considered part of the editorial process are constitutionally privileged or deserving of protection from discovery in an action for defamation.

Hutchinson v. Proxmire, 443 U.S. 111 (1979). (Rehnquist joined unfavorable opinion.)

Held that U.S. Senators do not have an absolute privilege under the Speech or Debate Clause for statements made outside the legislative chambers or for newsletters and press releases not essential to deliberation of the Senate.


Applying reasoning similar to that used in Firestone, held that persons who have engaged in criminal conduct do not automatically become public figures, even for reports limited to issues involving the specific proceedings and conviction.


Allowed libel suit to be brought in New Hampshire after statute of limitations had run in all other jurisdictions and held that
jurisdiction exists over publisher of magazine that "continuously and deliberately exploited the New Hampshire market," despite the fact that the plaintiff is not a resident of the State, because it is in the State's interest to "employ its libel laws to discourage the deception of its citizens."


Held that personal jurisdiction exists in state where plaintiff resides and works over newspaper reporter and editor who are residents of a different state, when their work is allegedly calculated to cause injury in the plaintiff's state.


Objected to "independent review" of constitutional libel actions. "Actual malice" determinations are "best left to the trial judge."

Seattle Times Co. v. Rhinehart, 104 S.Ct. 2199 (1984). (Rehnquist joined unfavorable majority opinion.)

Affirmed a protective order prohibiting libel defendant/newspaper from publishing, disseminating or using information obtained during discovery.

McDonald v. Smith, 105 S.Ct. 2787 (1985). (Rehnquist joined unfavorable majority opinion.)

Held that there is no absolute privilege under the First Amendment protecting an individual petitioning the government from a claim of libel; the qualified "actual malice" privilege is the maximum protection that would apply.


Held that the State's interest in protecting reputation prevails over constitutional interest in protecting free expression, at least when the defamatory statements involve no issue of public concern and, like the credit reports there at issue, are distributed to a limited number of clients paying for the service. On this basis, ruled that the Gertz damage rules did not apply.)
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Dissented from the Court's holding that the First Amendment, as the dissent put it, "require[s] a private individual to bear the risk that a defamatory statement -- uttered either with a mind toward assassinating his good name or with careless indifference to that possibility -- cannot be proven false."


Dissented from the Court's holding that, when considering a motion for summary judgment in a public plaintiff libel action, courts must be guided by the Sullivan "clear and convincing" evidence standard in determining whether a triable issue of "actual malice" exists.

Cases in which Rehnquist dissented from denial of cert.

Miskovsky v. Oklahoma Publishing, 8 Med.L.Rptr. 2302 (1982), cert. denied 51 U.S.L.W. 3284 (October 12, 1982). (Rehnquist would have reviewed favorable decision below.)

Questioned the Oklahoma Supreme Court's reliance on Gertz for the proposition that statements of opinion cannot be actionable under the First Amendment.

Lawrence v. Bauer Publishing & Printing, Ltd., 8 Med.L.Rptr. 2454, cert. denied 51 U.S.L.W. 3360 (Nov. 8, 1982). (Rehnquist would have reviewed favorable decision below.)

Protested the New Jersey Supreme Court's invasion of the "constitutional office of the jury" and denied that New York Times v. Sullivan gave appellate courts the mandate to review issues already decided by the jury.

Ollman v. Evans, 750 F.2d 970, cert. denied, 53 U.S.L.W. 3836 (May 2, 1985). (Rehnquist would have reviewed favorable decision below.)

Criticized the D.C. Circuit's excessive reliance on language in Gertz that there is no such thing as a "false idea," and argued that the statement was limited to the "political" context.

Coughlin v. Westinghouse Broadcasting, 780 F.2d 340, 12 Med.L.Rptr. 1529 (3rd Cir. 1985), cert. denied, 54 U.S.L.W. 3822 (June 16, 1986). (Rehnquist joined dissent to denial of cert.)
Although the Third Circuit affirmed grant of summary judgment based upon a lack of sufficient evidence of actual malice, as defined in New York Times v. Sullivan, Rehnquist joined dissenting opinion of Chief Justice Burger who would have granted certiorari to determine whether or not the Sullivan standard "remains an appropriate one" or whether it should be "reexamined."

**JUDGE SCALIA**

Judge Scalia's record is perhaps not as well known on libel/privacy issues, nor is it nearly as lengthy a record as that of Justice Rehnquist. Nonetheless, Judge Scalia's rulings in this field have also consistently favored the libel plaintiff over the media defendant. His record can be summarized as follows:

<table>
<thead>
<tr>
<th>Scalia Vote</th>
<th>Scalia Action</th>
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<tbody>
<tr>
<td>Decision</td>
<td>Pro- Media</td>
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<td></td>
<td>Pro- Plaintiff</td>
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<tr>
<td>Liberty</td>
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<td>Lobby</td>
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<td>Ollman</td>
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<td>Tavoulareas I</td>
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<td>Tavoulareas II</td>
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<tr>
<td>In re Reporters Committee</td>
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</table>

Scalia's limited but unfavorable judicial record on libel issues is also accompanied by an apparently unfavorable disposition toward related issues, as indicated in certain other press-related rulings he has made during his relatively brief tenure on the D.C. Circuit, including rulings on press access and freedom of information.
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Judge Scalia Votes and Rulings in Libel Issues

Liberty Lobby v. Anderson, 746 F.2d 1563 (D.C.Cir. 1984). (Scalia wrote unfavorable decision.)

Held that clear and convincing proof of actual malice need not be demonstrated at summary judgment stage.

Ollman v. Evans, 750 F.2d 970 (D.C. Cir. 1984). (Scalia wrote dissent to favorable decision.)

Disagreed with application of four-factor test differentiating fact from opinion, and wrote that the clear and convincing evidence standard applicable at trial provides ample First Amendment protection for media defendants, such that arguably factual assertions without adequate support ought not be allowed to pass as opinion.


Reversed the trial court's judgment that had reweighed jury findings of lack of media credibility. (Tavoulareas I)

Tavoulareas v. Washington Post, 773 F.2d 1325. (Scalia joined dissent to favorable decision.)

Disagreed with the grant of rehearing en banc and reargued the correctness of the original panel decision reinstating the unfavorable jury verdict. (Tavoulareas II)

In re Reporters Committee for Freedom of the Press, 773 F.2d 1325 (D.C.Cir. 1985). (Scalia wrote unfavorable decision.)

In an ancillary proceeding arising out of the Tavoulareas, held that there is no First Amendment right of public access to court records pertaining to private civil actions prior to judgment.
DAMAGES WATCH
UPDATE

The information received by LDRC on the results of media libel trials and post-trial motions or appeals therefrom since approximately January 1, 1986 through approximately June 30, 1986 is summarized below.

I. TRIALS

A. Defendant Wins

1. Salazar v. El Paso Times
(Texas County Court)

Award (Jury) -0-

Result: Jury unanimously agreed that several articles and an editorial dealing with city land transactions lacked defamatory meaning as to Salazar or co-plaintiff Foster.

2. DeRoburt v. Gannett*

Award (Judge/Directed Verdict) -0-

Result: Court granted at the close of plaintiff's case-in-chief defendant's motion to dismiss claim for punitive damages in this public official libel action on the ground that there was insufficient evidence to submit to the jury under the Hawaiian standard requiring intent to gain some material advantage, and

* See also LDRC Bulletin No. 16 at 49 for report of jury verdict in favor of subsidiary newspaper in same action.
granted defendant's motion for directed verdict at the close of all evidence on the ground that, under the applicable law, the parent corporation was not liable for the independent editorial actions of its newspaper subsidiary.

3. Keane v. Gannett
   Award (Judge/Directed Verdict) -0-
   Result: In an action against a newspaper and its source plaintiff failed to show actual malice in newspaper's use of quote from the source. Directed verdict granted for newspaper at the close of plaintiff's case-in-chief. (The claim against the source later reached the jury, which reportedly awarded plaintiff $4,000,000.)

B. Plaintiff Wins

1. Godwin v. Daily Local News
   (Chester County, Pa., 5/6/86)
   Award (Jury)  $89,000 (compensatory)
                 $100,000 (punitive)
                 $189,000 (total)
   Result: Jury awarded former state trooper damages in connection with a newspaper article that quoted a Philadelphia man who claimed police officers had taken his property for their personal use when he was arrested.
2. **Freeman v. Florida Star**  
(Jacksonville, Fla., 11/85)

Award (Jury)  
$75,000 (compensatory)  
$25,000 (punitive)  
$100,000 (total)

Result: Plaintiff awarded damages as a result of being wrongly identified as a rape and robbery victim in a newspaper column of police reports. An appeal is pending.

3. **Boyles v. Central Florida Television**  
(Orlando, Fla., 6/86)

Award (Jury)  
$200,000 (compensatory)

Result: State institution worker/plaintiff awarded damages as a result of television investigative report that had connected him with rape of patient.

4. **Fletcher v. San Jose Mercury News**  
(6/30/86)

Award (Jury)  
$1,000,000 (v. newspaper)  
(actual and punitive)  
$10,000 (v. reporter)  
$1,010,000 (total)

Result: Former city councilman awarded damages as a result of newspaper article alleging improper financial ties between public official and business seeking public contract; plaintiff claimed to have lost an election as a result of the publication.
II. POST-TRIAL MOTIONS AND APPEALS

A. Defendant Wins

1. Douglass v. Hustler
(607 F. Supp. 816, reversed and remanded, 769 F. 2d 1128 (7th Cir. 1985), cert. denied, 54 U.S.L.W. 3646 (3/31/86, No. 85-862))

Award (Jury) $600,000 (compensatory)

Holding: District Court's failure to instruct jury that it must find actual malice by clear and convincing evidence is reversible error in case involving invasion of privacy, defamation. Remanded for new trial. The Supreme Court denied plaintiff's petition for certiorari.

2. Crittendon v. Combined Communications
(12 Med.L.Rptr. 1649, Ok. Sup. Ct. 12/24/85)

Award (Jury) $555,000 (compensatory)
$25,000 (punitive)
$580,000 (total)

Holding: Television broadcast which is substantially accurate, fair and true report of a judicial proceeding is privileged as a matter of law. Because the trial court erroneously submitted the issue of statutory privilege to the jury, the case was reversed and remanded.

(12 Med.L.Rptr. 1465, Alabama Supreme Ct. 11/22/85)

Award (Jury) $75,000 (total)

Post-Trial Ruling: trial court granted newspaper's motion for JNOV and entered judgment in favor of defendant.
Holding: Trial court properly found that plaintiff had not presented clear and convincing evidence of actual malice by defendant in writing and publishing news stories, or in drafting and publishing headlines, thus granting of JNOV affirmed.

4. Beckham v. Sun News
(12 Med.L.Rptr. 2196, S.C. Sup. Ct. 5/5/86)

Award (Jury) $1,000,000 (compensatory)
$2,500,000 (punitive)
(reduced by judge to $1,000,000)
$3,500,000 (total)
(reduced to $2,000,000)

Holding: In libel action by undercover police officer arising from newspaper article concerning allegedly false affidavits, the judge's charge to the jury that the defendant has the burden of proof about the truth of the article is reversible error, and the case is remanded for a new trial.

5. Williams v. Pulitzer Broadcasting Company
(12 Med.L.Rptr. 1712, Missouri Ct. of App., E.D. 1/28/86)

Award (Jury) $100,000 (compensatory)
$2,500 (punitive v. reporter)
$1,000,000 (punitive v. TV station)
$1,102,500 (total)

Holding: Private figure plaintiff failed to show by clear and convincing evidence that TV station or reporter consciously had serious doubts as to truth of defamatory
statement, thus award of punitive damages reversed. Compensatory damage award, based upon finding of negligence, affirmed.

6. **Perruccio v. Arseneault**  
   (12 Med.L.Rptr. 2208, Conn. Appellate Ct. 5/20/86)  
   **Award (Judge/Directed Verdict)** -0-  
   **Holding:** Directed verdict for defendant at the close of public figure plaintiff's case, based upon plaintiff's failure to show that defendant's statements in newspaper were false and made with actual malice, is affirmed.

7. **Penn v. Detroit Free Press**  
   (12 Med.L.Rptr. 2129, Michigan Cir. Ct., Wayne County 2/14/86)  
   **Award (Jury)** $266,000 (plus interest)  
   **Holding:** Post-trial motion for judgment -NOV- granted on the ground that public official plaintiff had failed to adduce clear and convincing evidence of actual malice; court had previously granted defendant's motion for a directed verdict on the issue of common law malice and had set aside the jury verdict for exemplary damages.

8. **Kerr v. El Paso Times**  
   (29 Texas Sup. Ct. Journal 525, 7/19/86)  
   **Award (Jury)** $500,000 (compensatory)  
   $3,000,000 (punitive)  
   $3,500,000 (total)  
   **Holding:** Intermediate appellate court reversed trial court ruling and ruled for defendant. Texas Supreme Court refused plaintiff's writ of error.
B. Plaintiff Wins

1. Guccione v. Hustler
   (12 Med.L.Rptr. 2041, S.D.N.Y. 3/19/86)
   
   Award (Jury) $1 (compensatory)
   $900,000 (punitive v. Hustler)
   $700,000 (punitive v. Flynt)
   $1,600,001 (total)

   Holding: Defendant's motion for judgment NOV or for new trial denied. Common law malicious intent standard is appropriate guideline for awarding punitive damages. The award is reasonably related to defendant's net worth, and in the "unique context" of the case it doesn't threaten the First Amendment.

2. Hawkins v. Multimedia
   
   Award (Jury) $1,500 (compensatory)
   $25,000 (punitive)
   $26,500 (total)

   Holding: Submitting to jury whether article concerned matter of legitimate public or general interest, and failure to charge jury that actual malice must be shown by clear and convincing evidence to recover for invasion of privacy, are not reversible error and trial verdict is affirmed.

3. Brown v. K.N.D. Corporation
   (12 Med.L.Rptr. 2201, Conn. Appellate Ct. 5/20/86)
   
   Award (Judge/Bench Trial) -0-

   Holding: Trial court was in error in holding that broadcaster's on-air statements about public official libel plaintiff were
not made with actual malice. Under the "clearly erroneous" standard of review, appellate court held that defendant's statements and refusal to retract demonstrated with "convincing clarity" that defendant acted with actual malice. Case remanded to trial court with direction to render judgment for plaintiff and to conduct hearing on damages.
1985 ANNUAL REPORT

The turbulent events of 1985, in terms of widely-publicized developments in the libel field, hardly need extensive repetition. The year began with Generals Westmoreland and Sharon simultaneously trying their libel cases in New York City to probably the most intensive media coverage in the history of American libel litigation. Ultimately those cases were successfully defended, albeit at great cost -- economic and psychological -- for the defendants and the media as a whole. But 1985 ended, as it began, with libel still very much an issue for the media. Million and multi-million dollar judgments have continued to proliferate. Indeed, they currently appear to be the rule rather than the exception. And the Supreme Court has once again entered the fray, with troubling questions raised in 1985 regarding the continued vitality of the Sullivan rule itself, and with two critically-important procedural cases argued and now carried over for decision in 1986.

Throughout this tumultuous period, LDRC has quietly, and we believe effectively, continued its work to monitor, study and attempt to respond to such developments. During the highly-publicized events of the past year LDRC was a reliable and visible source for public information, placing events into perspective from the media's point of view. But LDRC did not simply rest content to comment on events. It also worked hard toward a fuller understanding and effective response to adverse trends. Along with the American Newspaper Publishers Association and the National Association of Broadcasters, it mounted a successful and innovative training session for media attorneys on trying and winning libel cases. In connection with that Symposium, LDRC produced two significant videotapes exploring jury attitudes and effective trial techniques. LDRC also completed two in-depth jury studies. Two additional jury studies are planned for the coming year, funded with proceeds from the Libel Trial Symposium.

In the report that follows, more particulars of LDRC's impressive range of projects during its fifth anniversary year of operations are presented. The picture that emerges, we believe you will agree, is one of continued accomplishment, on behalf of LDRC's now sixty-five supporting organizations, as well as on behalf of the even larger number of media organizations -- and the public at large -- who also share a common interest in LDRC's purposes and activities.
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Finally, we would, as always, add our thanks to those many, many individuals and organizations who gave their time and support -- moral and financial -- to LDRC in 1985. We look forward gratefully to continued support as LDRC enters 1986, its sixth year, with the ambitious agenda for useful action outlined herein.

New York City
January 15, 1986

Harry M. Johnston, III, Chairman
Henry R. Kaufman, General Counsel

Background

The idea that ultimately led to the formation of the LDRC had its genesis in the late 1970's with the informal meetings and discussions of an "Ad Hoc Libel Group" -- several attorneys representing media organizations concerned about adverse developments in the libel field. Later, in 1979 and early 1980, proposals were entertained to formalize such activities under the aegis of a new "umbrella" organization. Finally, in November, 1980, these efforts culminated in the formation of a Steering Committee, the election of a Chairman and the appointment of a General Counsel for the new entity, the "Libel Defense Resource Center."

In its first years of operation LDRC moved rapidly from theory to reality. Substantial funding was provided by an impressive array of leading trade groups, professional organizations and media entities. An information bank and clearinghouse system were established and utilized by libel defendants and their attorneys. Various special projects and studies were formulated and undertaken. LDRC was increasingly looked to as a source of useful and authoritative information by attorneys practicing in the field as well as by journalists, academics, government officials and others with an interest in libel (and related privacy) developments.

Organization

LDRC was formally established in 1981 as an unincorporated, not-for profit tax exempt 501(c)(6) entity, governed by a Steering Committee comprised of one representative from each of LDRC's supporting organizations. Under its by-laws, LDRC's day to day operations are supervised by an Executive Committee of between 9 and 13 individuals, chosen from the larger Steering Committee, headed by a Chairman selected by the Executive Committee, and administered by a
retained General Counsel. LDRC maintains its headquarters and small staff at the offices of its General Counsel. Members of LDRC's Executive and Steering Committees include a number of the nation's most knowledgeable libel defense attorneys and representatives of most of the nation's leading media organizations.

Finances

In 1985, LDRC obtained voluntary contributions from 60 of its supporting organizations totalling more than $130,000. In addition, substantial revenues were also realized from interest on income; sales of LDRC materials, including the 50-State Survey, the quarterly Bulletin and brief bank digests; also, from copying and LDRC administrative fees; and proceeds from the ANPA/NAB/LDRC Symposium and the annual LDRC Steering Committee dinner program. With these revenues, LDRC was able to fund a total budget (including all special projects and activities) that approached $300,000 -- to pay for legal fees; fees for administrative staff; stipends for law student interns; fees for other legal research; rent for office space; printing and distribution of the Bulletins; the ongoing computerization of more than 1000 records including contributors, subscribers, press contacts, and LDRC's brief bank digests; the publication of the LDRC 50-State Survey; work in connection with production of two educational videotapes; the publication of several major LDRC studies as summarized in this report; and all other day-to-day operations of the Center.

LDRC Steering Committee

The sixty-five organizations represented on LDRC's Steering Committee in 1985 (up from sixty-two in 1984) represent a broad spectrum of leading media groups, publishers, broadcasters, journalists, editors, authors and libel insurance carriers, some of whom may never have previously worked together in a formal way but all of whom share a common interest in responding effectively to continuing problems in the libel field. They are: American Broadcasting Companies, Inc.; American Newspaper Publishers Association; American Society of Journalists and Authors; American Society of Newspaper Editors; Association of American Publishers; Association of American University Presses; Authors League of America; Bantam Books, Inc.; Bergen Evening Record Corporation; CBS Inc.; CMP Publications, Inc.; CNA, Insurance; Capital Cities Communications, Inc.; Council of Writers Organizations; Cowles Media Company/Minneapolis Star and Tribune Company; Cox Enterprises, Inc.; Donrey Media Group; Doubleday & Company, Inc.; Dow Jones & Company; Dun & Bradstreet, Inc.; Employers
LDRC Bulletin No. 17

LDRC 50-State Survey

In 1985 LDRC once again published and marketed an updated volume of its annual 50-State Survey of current developments in media libel and invasion of privacy law. The 900-plus page 1984 Survey, which included a special report on each of the federal circuit courts of appeals, was published in the spring. In 1986, LDRC plans to publish a revised edition of the Survey to be entitled this year the 1985-86 Survey. This new edition is intended for use throughout 1986 and will contain updated information current through December 31, 1985. In the 1985-86 Survey, leading libel expert Professor Marc Franklin will be contributing a Foreword which analyzes Supreme Court libel developments over the past five years and attempts to place the Supreme Court's current views into a more objective context that should, in turn, provide fresh insights into libel trends in the nation's highest court.

ANPA/NAB/LDRC Libel Trial Symposium

In 1985 LDRC co-sponsored, with the American Newspaper Publishers Association and the National Association of Broadcasters, its second major educational workshop, the Libel Trial Symposium. The Symposium was held in Chicago on August 21-23 and was attended by more than 175 paid registrants with a
total audience, including panelists and speakers, of over 200. The Symposium featured two and one-half days of intensive workshops covering a broad spectrum of issues relating to the defense of libel actions. (Attendance at the Symposium was strictly limited to media defense counsel only.) LDRC prepared several major studies for use at the Symposium, described below.

(i) Jury Attitudes Research Project

In 1985 LDRC released the first two studies in its ongoing Jury Attitudes Research Project. The first study focused on a public figure/print situation, and the second on a private figure/broadcast libel suit. Both studies were distributed and discussed at the Symposium. They were also published in the LDRC Bulletin in order better to understand how jurors assess and respond to libel issues and journalistic practices in reaching their verdicts, so often highly unfavorable to the media defendants. LDRC systematically interviewed jurors who served on two libel cases (both of which resulted in an adverse verdict from the media defense point of view). Detailed questionnaires were developed covering a wide range of issues, including jurors' feelings about the plaintiff, defendant, attorneys, dynamics of the courtroom, jury instructions, juror demographics, and very detailed questions relating specifically to the case. Though no firm conclusions can yet be drawn from just two studies, preliminary analyses of the data are included in each study. It is hoped that these studies will begin to provide more reliable data upon which defense counsel can rely in planning trial strategy in order to improve upon the media's recent poor track record before juries in these cases.

(ii) Jury Instructions Manual

A preliminary collection of actual and requested jury charges in specific recent libel (and related) cases was compiled for distribution at the Symposium. The instructions were generally selected in an attempt to treat potential defamation issues in a manner as consistent as possible with the interests of media defendants, while at the same time being firmly grounded in legal precedent so as to assure that the charges were substantively acceptable to trial courts. This preliminary Symposium draft of the LDRC Jury Instructions Manual is organized by key legal issues. For each issue, selected jury instructions, identified by source, illustrate approaches used by different courts to charge the applicable points of law to the jury. (Current draft for media defense counsel only.)
(iii) **Survey of Attorney Awareness**

An Attorney Awareness Survey was prepared as a supplement and complement to LDRC's Jury Attitudes Studies released at the Symposium. The Survey was conducted over the telephone with media defense counsel in 25 different libel cases. LDRC developed a questionnaire of nearly 100 objective and subjective questions covering, among other issues, pre-trial jury information; jury selection; trial strategies and techniques; the deliberative process and background material on the case and parties. The results of LDRC's Survey were then computerized and statistically compiled. The answers requiring a subjective response were also reviewed with an emphasis on factors related to, or having an impact on, the jury. Although the subjective nature of many of the responses, and the relatively small size of the sample make confident generalization difficult, it is nonetheless believed that the Survey does provide some interesting and useful data for the guidance of media defense counsel. (Available to media defense counsel only.)

(iv) **Expert Witness Bank**

In 1984 LDRC contacted more than 100 expert witnesses in 40 states by means of a detailed questionnaire. In 1985, LDRC systematically compiled a list of expert witnesses in its files for distribution at the Symposium. The list is organized alphabetically and includes the following information, when available: name; affiliation; residence; plaintiff or defense witness; cases in which the expert has appeared; issues on which the expert has testified or is qualified to testify; and available documents regarding the expert or the expert's prior testimony. (Available to media defense counsel only.)

(v) **Videotape Project**

In conjunction with the Symposium, LDRC produced two videotapes with the assistance of an expert jury consultant. This ambitious project resulted in two highly effective, educational and at times entertaining programs. The first tape features approximately half of the jurors in the Westmoreland case, responding to carefully-crafted questions about the issues raised in that litigation. Everything from the legal complexities of the case to the pressures of the publicity surrounding the trial are candidly discussed by the jurors. In effect, the participating jurors had an opportunity informally to debate and deliberate on the LDRC videotape, a chance they never had in the courtroom because of the General's withdrawal of his libel claim. Taped separately and then edited into the...
videotape are the comments of two attorneys from CBS's defense team. This juxtaposition of jurors' and attorneys' comments (often on the same issue or theme) result in a provocative and often surprising presentation of the issues raised in Westmoreland.

The second videotape featured a series of four jury trial simulations before four six-person mock jury panels. The simulations were built around four variations on an actual libel case, modified somewhat for purposes of the trial simulations. Experienced media attorneys presented opening and closing arguments, plus a total of six live witnesses. After exposure to these brief but realistic presentations, the jurors, who had been selected demographically by LDRC's jury consultant, were charged with the law applicable to each of the four variant cases -- public and private figure plaintiff, burden of proof on plaintiff or defendant and absence or presence of special first amendment charge language. Each of the juries was then videotaped deliberating on the case and reaching a verdict on liability. The resulting 105-minute, edited videotape summarizes the basic case simulation and each of the juries' deliberations, providing a fascinating insight into the reactions and perceptions of a broadly based cross-section of potential jury members in response to libel and privacy issues.

LDRC Bulletin

In 1985 the primary means of disseminating information about LDRC's resources and materials continued to be the LDRC Bulletin. Published quarterly, Bulletin reports on LDRC special studies and other activities provide news of recent libel and privacy developments and list available materials which can be ordered from LDRC. The LDRC Bulletin is available by subscription ($75 per year in 1985, same price in 1986). LDRC sold approximately 250 subscriptions this year. Income from Bulletin sales is used to support LDRC's general budget. In 1986 LDRC hopes to increase its paid subscription base. When combined with sales of back issues, special studies excerpted from the Bulletins, indexes and embossed binders, LDRC generated in excess of $20,000 in 1985 to support LDRC programs and expects to generate as much as $22,500 in Bulletin revenue to support programs and activities in 1986. 1985 Bulletins, covered the following key topics, among others: comprehensive listings of Supreme Court actions and developments; summaries and analyses of the Dun & Bradstreet v. Greenmoss, Hepps v. Philadelphia Newspapers and Anderson v. Liberty Lobby cases; reports of LDRC's first two in-depth jury attitudes studies; ongoing litigation updates, including LDRC's...
systematic tracking of trial results, damages and appeals; LDRC's annual summary of the "key findings" of the LDRC 50-State Survey; the texts of important speeches at the LDRC annual dinner; current news items of interest; and ongoing bibliographic lists of briefs available at LDHC, organized by case name and by legal issue, as well as lists of law review articles and other publications.

Information Services

(i) LDRC/CBS Computer Brief Bank

In 1985 LDRC completed its project to digest and computerize the combined LDRC/CBS brief bank. Included in the brief bank is substantive and bibliographic information covering some 75 key legal issues in 125 cases and encompassing some 250 legal points made in the digested briefs. Full digests and photocopies of any brief in the LDRC/CBS Brief Bank can be ordered through LDRC. In 1985, LDRC discontinued its full brief digesting service due to limited demand. However, it began to offer more detailed listings of issues discussed in briefs on file at LDRC. These listings will periodically be published in the LDRC Bulletin and copies of the briefs will be available on order through LDRC.

(ii) LDRC Case Files

In 1985 LDRC continued to maintain, update and expand its state by state files of pending libel cases. When received by LDRC, generally in advance of publication, case opinions or litigation documents are indexed by case name, state and legal issue(s) presented. Requests for further information, briefs and other materials are then made regarding important cases and issues and periodic follow-ups are also scheduled. As of the end of 1985, LDRC had developed files of such opinions, briefs and other litigation materials in well over 650 cases pending in all U.S. jurisdictions.

(iii) Special Issue Files

In 1985 LDRC continued to maintain its active special issue files covering well over 100 key legal issues, closely paralleling libel and invasion of privacy issues identified in the Media Law Reporter's classification guide. These files collect materials, in addition to those contained in the active LDRC case files or general archival materials, on high priority issues such as media vs. non-media standards; absolute privilege; libel claims involving reviews and criticism; libel actions against non-media defendants; appellate review;
discovery; burden of proof; motions to dismiss; punitive damages; reporter's privilege in libel actions; state Gertz standards; statute of limitations; summary judgment; counterclaims for malicious prosecution; definition of actual malice and public figure; right of publicity; related editorial torts; bookseller, printer and distributor liability; invasion of privacy; venue in libel actions; and insurance, among many others.

(iv) Other Special Collections

In 1985 LDRC also increased its special collections of law review articles and separate files for jury instructions and other litigation forms. In addition to the bibliographic listing of LDRC's law review library published in LDRC Bulletin No. 10, LDRC published a comprehensive update of law review articles available at LDRC in Bulletin No. 15. A sampling of the jury instructions on file was reproduced in the preliminary Symposium draft of LDRC's jury instructions manual (see above). Finally, LDRC continued to expand its files on expert witnesses used in libel actions, which were summarized in a report to the Libel Trial Symposium (see above).

(v) Responding to Inquiries

In addition to providing general information through mass publication to LDRC's entire constituency, or providing general access to LDRC's collections of materials and files, in 1985 LDRC counsel, law student interns and staff continued to be available to answer specific inquiries from libel defendants or their counsel and other interested organizations or individuals who contacted LDRC, by telephone or by mail, for special assistance. Such assistance, which is provided either without fee or with the imposition of modest administrative fee ($7.50 per request in 1985), ranged from simply alerting the caller to recent developments or legal opinions and providing available briefs or materials pertinent to the particular inquiry, to more extensive legal research or investigations initiated by LDRC counsel or staff, at times utilizing LDRC's network of knowledgeable organizations, attorneys and other individuals. Such inquiries -- more than 275 in 1985 -- covered the gamut of issues and problems that can be presented in libel counselling or libel litigation. Inquiries not involving specific litigations or legal issues, primarily from scholars or researchers interested in general developments in the libel field also demanded the time and attention of LDRC staff. Finally, a number of callers have sought assistance in securing knowledgeable libel counsel or in alerting potential amici curiae to issues and appeals of interest to them.
Press Coverage

In 1985 LDRC again enjoyed wide coverage in the general and trade press. Requests from more than two dozen news organizations were responded to in 1985. LDRC also published a major article written by LDRC General Counsel which appeared in the fall issue of Communications Lawyer. This publication also included a "profile" of LDRC on its fifth anniversary (described below).

(i) Print Coverage

LDRC's print coverage was extensive in 1985. LDRC was mentioned in Time, The Washington Post, the New York Times (including the Sunday Times Magazine), the Philadelphia Inquirer, Newsday, U.S.A. Today and the Los Angeles Times, among numerous others. Data released by LDRC was also covered in the Christian Science Monitor, the Columbia Journalism Review, and the Washington Journalism Review, and in a variety of law review articles, special studies, communications law outlines and bar association reports. In addition, LDRC continued to receive in 1985 significant coverage in the trade press. All of LDRC's press releases, studies and publications were covered in the Media Law Reporter, the key publication reaching LDRC's legal constituency. Other specialized coverage was secured in the National and New York Law Journals, and the American Bar Association Journal. LDRC activities were also noted in 1985 in most of the key media trade publications, including Editor & Publisher, Presstime, Publishers Weekly, Broadcasting and Folio.

(ii) Communications Lawyer

In 1985 the American Bar Association's section on Communications law devoted more than half of its quarterly publication, Communications Lawyer (Vol. 3, No. 4), to LDRC. LDRC's General Counsel wrote a comprehensive overview, and a general analysis, of the current libel scene, entitled "Libel 1980-85: Promises and Realities." The article also made mention of the results of several of LDRC's recent studies, including its summary judgment studies, its two jury attitudes in-depth case reports and its analyses of damage awards over the past several years. A separate sidebar piece, written by LDRC Executive Intern Dorothy C. Young, profiling LDRC "At Five Years of Age," accompanied the main article. In addition to its regular circulation, this issue of the Communications Lawyer was distributed to hundreds of media attorneys at the 1985 PLI Communications Law seminar.
Annual Steering Committee Dinner

LDRC's annual Steering Committee dinner, traditionally scheduled to coincide with the PLI Communications Law Seminar, was held on November 6, 1985. The theme for this year's dinner program was "Liber and Press Coverage of Public Affairs: The View from Washington." Speakers at the dinner, attended by more than 200 media attorneys and executives, were United States Senator Paul Simon of Illinois and Lyle Denniston, Supreme Court reporter for the Baltimore Sun. The Senator, who is himself a former newspaper publisher, strongly reaffirmed the need for a free press, remarking that "the strength of America is the cross fertilization of ideas that we have and anything that discourages that free flow of ideas hits at what is the fundamental strength of this country... [One of the greatest] threats [to that freedom] is libel." Senator Simon also stressed the plight of this nation's smaller newspapers, expressing concern and dismay at the devasting chilling effect, and often unbearable financial burden, of frivolous libel litigation. Lyle Denniston provided an overview of recent and pending libel litigation, and eloquently expressed his concern that libel litigation, along with other trends, are forcing the press into the uncomfortable and inappropriate posture of merely "existing to do a public service, as guardians of the public's right to know...[T]he law has discovered that it has the capacity as well as the opportunity to instruct us in how we are to perform that public service mission." Master of Ceremonies for the evening's program was Richard M. Schmidt, partner at the Washington firm of Cohn & Marks and counsel to the American Society of Newspaper Editors.

1986 Programs and Projects

In 1986, in addition to continuing its many current activities as outlined above, LDRC hopes to embark upon the following major projects among others: continuation of the LDRC Jury Attitudes Research Project; a comprehensive update of Supreme Court actions over the past five years; a project to disseminate the Symposium videotapes (and possibly other materials) to media defense counsel not present at the Libel Trial Symposium; the publication of a comprehensive, empirical study of defamation actions by public officials; and completion of a law review article on current trends and developments in the libel field. Other projects in 1986 may include updates of LDRC's previous motions to dismiss and independent appellate review studies and possibly a revised, and more complete, public version of the Jury Instructions Manual.
1985 Budget

As LDRC entered its sixth full year of operations, the Steering Committee approved a budget for 1986 at its annual meeting on November 6, based on the report of a special budget review subcommittee which concluded that LDRC's basic financial structure is sound. In 1985 LDRC experienced a modest budget surplus and in 1986 the budget has been set conservatively at the level of 1985 expenditures.

During 1986, funding of LDRC's budget will continue to be based upon a combination of voluntary contributions from supporting organizations and self-generated revenues. LDRC's self-reliance approached 60%, thanks in significant part to funding generated by the Libel Trial Symposium. LDRC's self-sufficiency should remain at least over 50% in the coming year. Despite this continued partial self-reliance, voluntary contributions will remain a vitally-important source of LDRC's revenues in 1986. Such contributions increased last year almost 20%, with the addition of a half-dozen new supporting organizations.

In 1986 it is again hoped that current contributors will renew, and possibly increase, their voluntary financial support. Several of LDRC's supporters have already renewed their contributions for 1986, with a few substantially increasing their levels of giving. Leading these early supporters in sustaining or increasing their substantial contributions were pledges by CBS Inc. and The Washington Post Company of $10,000 -- the highest level of individual current contributions to LDRC.

In addition to the basic and 50-State Survey budgets, separate budgets will continue to be established for any special LDRC projects. Each of these would either be self-funding or specially-funded. Each special project will be subject to specific review and approval by the Executive Committee under the policy guidelines approved by the Steering Committee in November 1983. Specially-funded projects in 1986 are expected to include publication of two additional Jury Attitudes Studies and LDRC's Videotape project. $20,000 is already available to LDRC for the additional jury studies, due to the generosity of the American Newspaper Publishers Association and the National Association of Broadcasters, which turned over their profits from the Libel Trial Symposium for this purpose.
ANNOUNCING THE LDRC
50-STATE SURVEY 1985-86

The Libel Defense Resource Center is pleased to announce that the completely updated 1985-86 edition of the LDRC 50-State Survey: Current Developments in Media Libel & Invasion of Privacy Law, for use throughout 1986, is available. (Publication date: May, 1986)

The 1985-86 50-State Survey, almost 900 pages in length, is an exhaustive state by state survey of media libel and privacy law in all 50 states, the District of Columbia and the U.S. possessions, current through December 31, 1985. The LDRC Survey is prepared by practicing attorneys in each state who are experts on their particular state's laws in the media field. Specific details of the law in each state are presented in brief but authoritative summaries.

This year's edition of the 50-State Survey also includes a Foreword on recent Supreme Court developments by Professor Marc A. Franklin of the Stanford Law School. Professor Franklin, one of the nation's leading experts on both tort and libel law, provides an unusual and informative perspective on what he labels the "quiet side" of Supreme Court actions -- that is, the Court's processing of petitions and appeals not taken over the past several years. Professor Franklin develops some eye-opening statistics on how the Court treats media libel petitions in relation to all other cases. He also examines what kinds of libel cases the Court is likely to take and in what posture. He then relates this uniquely focused data to a broader assessment of what the practitioner can or cannot expect in the future from the Court on these important issues.

In the 1985-86 edition, new information is highlighted in the text and charts, tables and index for easy identification of new developments. The new volume is also illustrated with dozens of pages of fully updated charts and notes for tracking at a glance the status of key legal issues for ready state-by-state comparison. We believe this easy-to-use reference volume, updating LDRC's previous Surveys, will be an invaluable addition to your media law library.

LDRC's annual Survey has become a widely recognized resource in this increasingly important field and is now a fixture on the desks and in the libraries of media defense lawyers, media organizations, law schools and courts across the nation.
ORDER FORM

Single Order
LDRC 50-State Survey 1985-86: Current Developments in Media Libel and Invasion of Privacy Law (ISBN 0-913269-03-4) $80.00
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