



BULLETIN

CURRENT RETRACTION PRACTICE--

AN LDRC SURVEY

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I. INTRODUCTION: THE SIGNIFICANCE OF LDRC'S RETRACTION SURVEY IN THE YEAR OF THE UNIFORM CORRECTION ACT

Readers of this Bulletin are already fully familiar with the background of the controversial Uniform Defamation Act. See LDRC Bulletin Special Issue A (June 30, 1992). Subsequent to that Bulletin a sea change occurred in the drafting process, leading ultimately to withdrawal of the comprehensive Defamation Act, due to lack of support from any significant quarter, combined with near unanimous opposition by media groups. In place of the Uniform Defamation Act was salvaged a far narrower piece of the Act dealing solely with the issue of retraction, now known as the Uniform Correction or Clarification of Defamation Act (Correction Act). The Correction Act was recently approved by the Uniform Law Commissioners, with media groups either supporting, acquiescing in, or only passively opposing the notion of uniform, legislative modernization of the law of retraction. Should it be approved by the American Bar Association at its mid-winter meeting in February 1994, state legislative consideration of the Uniform Correction Act could begin at anytime thereafter.

LDRC plans to publish the text of the Correction Act, along with official commentary by the Commissioners, in its 1993-94 50-State Survey. In a special report to accompany the 50-State Survey, LDRC will also analyze the content of the Correction Act and its potential application in future media practice should it be enacted. In this Bulletin, in recognition of the significance of the proposed reforms that may be forthcoming, we present what is in effect an up-to-date snapshot of the state of the law of retraction just prior to approval of the Correction Act. Our review and analysis is based on a recent survey of retraction statutes and practice completed by LDRC in March 1993, as part of its final negotiations on the contours of the Correction Act.

II. LDRC'S RETRACTION SURVEY AND AN OVERVIEW OF ITS KEY FINDINGS

A. The LDRC Retraction Survey

In December 1992, LDRC undertook a comprehensive survey to analyze issues related to a proposed uniform correction and retraction act. Questionnaires were mailed to firms in all 50 states -- either firms belonging to LDRC's Defense Counsel Section or non-DCS firms that work each year on LDRC's 50-State Survey. Respondents in the 30 states with existing retraction legislation were questioned regarding the provisions, strengths, and weaknesses of their state's statute. Firms in the states lacking retraction statutes or with statutes that dealt only cursorily with retraction were asked to comment on the manner in which the issue of retraction was handled in their states as a

matter of common law and on the implications of the absence of a retraction statute in their local practice. All firms were also asked to evaluate the sections of what was then the most recent draft of the Uniform Defamation Act that dealt with retractions and corrections. Survey responses were received over the next two months and the results are compiled in a series of charts that are set forth in Part III of this Bulletin, infra at pages 15ff. A copy of the complete LDRC survey questionnaire is reproduced in II.C, infra at pages 11-14. For convenience, survey questions are cross-referenced in II.C to the responses appearing in Part III.

B. Key Findings of the Retraction Survey

According to LDRC's retraction survey, 33 states currently have statutes of one kind or another dealing with the issue of retraction. Salient findings from the 30 of these¹ that establish a full-blown statutory retraction scheme are presented in point 1 below. The three states (Texas, Washington, and Wyoming) that provide cursory coverage of retraction are included with the 17 jurisdictions² that lack any retraction legislation, and key findings from this group are set forth in point 2. An analysis of respondents' evaluations of the sections of what was then the most recent draft of the Uniform Defamation Act dealing with retraction is presented in point 3.

1. States with Retraction Statutes

a. Timing of the retraction demand.

Although 24 of the 30 retraction statutes discussed in part I of the LDRC survey were reported as imposing some requirement

¹Alabama, Arizona, California, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

²Alaska, Arkansas, Delaware, District of Columbia, Hawaii, Illinois, Kansas, Louisiana, Maryland, Missouri, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, South Carolina, and Vermont.

that plaintiff demand a retraction before bringing suit,³ in most jurisdictions defendants are given minimal advance notice of potential claims. Only six statutes measure the period within which the retraction demand must be made from the date plaintiff learns of the allegedly defamatory publication.⁴ Nine measure backwards from the commencement of the suit,⁵ thus essentially permitting plaintiffs to make the demand any time prior to expiration of the applicable statute of limitations, less the period specified, which ranges from only 3 to 11 days. Nine do not even specify the time within which the retraction demand must be made.⁶ Moreover, as is discussed infra in point 1b, although the failure to demand a retraction will reduce the damages available, in the great majority of states it does not preclude the plaintiff from bringing suit.

In addition to inquiring into the timing of the retraction demand, LDRC's retraction survey sought respondents' views as to the adequacy of the notice provided by their state's retraction legislation, a quintessentially subjective query, as is evident in the findings. For example, a 3-day lead time was considered adequate by the respondent from Indiana but inadequate by the respondents from Georgia and Iowa, and the respondent from North Dakota considered 5 days to be insufficient notice. Similarly, the respondent from Montana (who characterized his state's legislation as providing adequate notice) observed that the failure to comply with the statute precluded the plaintiff from recovery of punitive damages, whereas the respondents from Alabama and Iowa viewed their retraction statutes as deficient on

³Alabama, Arizona, California, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Utah, and Wisconsin.

In the other six jurisdictions - Connecticut, Maine, Massachusetts, Ohio, Virginia, and West Virginia - there are consequences of the plaintiff's failure to demand a retraction, in the form of a reduction of available damages, but the statute does not specifically set forth a requirement that plaintiff demand a retraction before initiating a suit.

⁴Arizona, California, Idaho, Nebraska, Nevada, and Oregon. The period is 20 days from knowledge in all but Nevada, where it is 90 days.

⁵Alabama, Florida, Georgia, Indiana, Mississippi, North Carolina, North Dakota, South Dakota, and Tennessee.

⁶Iowa, Kentucky, Michigan, Minnesota, Montana, New Jersey, Oklahoma, Utah, and Wisconsin.

the issue of notice because plaintiffs who failed to comply were nevertheless able to recover actual damages.

Despite the subjective nature of the inquiry, an overall consensus emerged, with 17 of 28 respondents viewing their state's notice mechanism as insufficient and only 5 respondents voicing unqualified support for the adequacy of the notice,⁷ although another 6 considered the notice to suffice in the majority of cases.⁸ The respondents who viewed their state's legislation as deficient on the issue of notice observed that the statute did not require -- or lacked meaningful sanctions for the failure to provide -- advance notice,⁹ neglected to specify a notice period¹⁰ or entirely lacked a notice mechanism,¹¹ afforded inadequate time for defendants to investigate claims,¹² or was insufficiently specific as to the wording of the retraction demand.¹³

By contrast, under the finally approved version of the proposed Correction Act, the timing and content of the notice is specified, the plaintiff who fails to demand a retraction within 90 days after learning of the alleged defamation would be limited to recovery of provable economic loss, and defendants would have

⁷Arizona, California, Idaho, Indiana, and Nevada.

⁸Mississippi, Montana, North Carolina, Tennessee, Utah, and Wisconsin.

⁹The respondents from Maine, Minnesota, Nebraska, and New Jersey characterized the notice as optional. The respondents from both Alabama and Iowa noted that plaintiffs who failed to demand a retraction were not precluded from recovering actual damages. Because, as is discussed *infra* in point 1b, only seven states treat the retraction demand as a condition precedent to suit, technically the demand is "optional" in the other 23 jurisdictions. That only seven respondents found this problematic is another measure of the subjectivity of the responses.

¹⁰Michigan and Oklahoma.

¹¹Kentucky, Massachusetts, New Jersey, Ohio, Virginia, and West Virginia.

¹²Connecticut, Florida, Georgia (broadcasting statute), and North Dakota.

¹³Connecticut, Minnesota, and Oklahoma.

45 days within which to issue a retraction.¹⁴ LDRC's survey suggests that such periods would be satisfactory to all or almost all of the survey respondents.

b. Effect of the retraction demand.

According to LDRC's survey, in only 7 of the 30 states with retraction statutes is it provided that the retraction demand serves as a condition precedent to suit,¹⁵ and in two of these,¹⁶ courts have interpreted the language of the statute only as precluding certain forms of damages. In the other 17 states whose statutes specify that a retraction be demanded, however, the failure to make the demand within the statutorily defined period bars recovery of punitive damages,¹⁷ and in 14 of these states, plaintiffs who fail to request a retraction are expressly limited to actual¹⁸ or special damages.¹⁹

By contrast, under the proposed Correction Act, plaintiffs who fail to demand a retraction within 90 days of actual knowledge of the allegedly defamatory publication would be under all circumstances limited to recovery of provable economic loss.

c. Timing of the issuance of retraction.

Following the plaintiff's demand, the time within which defendants must issue a retraction varies from 3 days in North Dakota, South Dakota, and Utah for a daily newspaper to 45 days

¹⁴As is discussed infra in point 1c, currently only Florida provides as much as 45 days for issuance of a retraction, and then only when the defendant is a monthly periodical.

¹⁵Florida, Indiana, Mississippi, North Carolina, North Dakota, South Dakota, and Wisconsin.

¹⁶Indiana and North Carolina.

¹⁷Alabama, Arizona, California, Georgia, Idaho, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, Oklahoma, Tennessee, and Utah. Punitive damages are not available in Oregon in any action.

¹⁸Georgia, Idaho, Iowa, New Jersey, Oklahoma, Tennessee, and Utah. Oregon precludes general damages if a retraction is not demanded.

¹⁹Arizona, California, Kentucky (only in broadcasting statute), Minnesota, Nebraska, and Nevada.

in Florida for a monthly publication (and the next issue if publication is less frequent than monthly). Eleven states require retractions to be published within 1 week,²⁰ although in eight of these states a later deadline is permitted for some (nondaily) publications.²¹ Six states require retractions within 10 days for all publications²² and two states impose the 10-day deadline on some publications.²³ Two states allow defendants 20 days to publish a retraction²⁴ and four states allow 3 weeks.²⁵ Eight states require the retraction to be published within a reasonable time,²⁶ and one state does not address timing.²⁷

By contrast, the proposed Correction Act would allow all defendants 45 days to publish a correction. Moreover, when the subsequent publication is scheduled to be issued more than 45 days after the retraction demand, the proposed Correction Act would provide an alternative mechanism for issuing the retraction, although still within the 45-day period.

²⁰Alabama, Georgia, Indiana, Kentucky, Minnesota, Montana, North Dakota, Ohio, Oklahoma, South Dakota, and Utah.

²¹In Kentucky, North Dakota, South Dakota, and Utah, the deadline is the next issue for other than daily publications; in Georgia, it is the next issue if this appears more than 7 days after the demand; in Montana, it is the first issue following 1 week of notice for all newspapers, magazines, and periodicals (with a 7-day deadline applying only to broadcasters); and in Indiana and Oklahoma, it is 10 days and 2 weeks, respectively, for weekly publications.

²²Iowa, Mississippi, North Carolina, Oregon, Tennessee, and Wisconsin.

²³Florida gives 10 days for daily publications and Indiana gives 10 days for weekly publications.

²⁴Florida (for semimonthly publications) and Nevada.

²⁵Arizona, California, Idaho, and Nebraska.

²⁶Connecticut, Maine, Massachusetts, Michigan, New Jersey, Virginia, Washington, and West Virginia.

²⁷Texas.

d. Effect of a properly issued retraction.

According to the LDRC survey, in 25 states a properly issued retraction can prevent recovery of punitive damages,²⁸ in 18 states the plaintiff is restricted to actual damages²⁹ or special damages,³⁰ and in 3 states evidence of a retraction may be introduced in mitigation of actual damages.³¹ In only seven jurisdictions, however, are these limitations absolute, that is, operative regardless of the publisher's fault.³² The remaining states either impose the conjunctive requirement that the original publication was made in good faith and with a reasonable belief in its truth,³³ or they separately provide for punitive damages, overriding the limitation, whenever the original publication was made with malice or an intent to injure.³⁴

In most states a retraction has no effect on the availability of actual, general, or presumed damages -- only in five states³⁵ will a retraction limit the plaintiff to recovery of provable economic loss, and only in two is this bar absolute.³⁶

²⁸Alabama, Arizona, California, Connecticut, Florida, Idaho, Indiana, Iowa, Kentucky, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Utah, and Wisconsin.

²⁹Connecticut, Florida, Georgia, Idaho, Indiana, Massachusetts, Mississippi, New Jersey, North Carolina, North Dakota, Oklahoma, Utah, and Wisconsin.

³⁰Arizona, California, Minnesota, Nebraska, and Nevada.

³¹Maine, Massachusetts, and Wisconsin.

³²Alabama, California, Idaho, Kentucky, Michigan, Nevada, and Wisconsin.

³³Florida, Georgia, Indiana, Maine, Massachusetts, Minnesota, Mississippi, Montana, North Carolina, North Dakota, South Dakota, Tennessee, and Utah.

³⁴Arizona, Connecticut, Nebraska, New Jersey, Oklahoma, and Oregon.

³⁵Arizona, California, Minnesota, Nebraska, and Nevada.

³⁶California and Nevada. When the original publication is not in good faith the bar is inoperative in Arizona and Nebraska, and Minnesota will allow general as well as special damages.

By contrast, under the proposed Correction Act, a proper retraction would limit plaintiffs' recovery to provable economic loss in all instances.

e. Extent of media coverage

According to the LDRC survey, only nine of the state retraction statutes apply to all media³⁷ and only one applies to all defendants.³⁸ Three apply only to newspapers,³⁹ five apply only to newspapers and periodicals,⁴⁰ six apply only to newspapers, radio, and television,⁴¹ and seven apply to assorted other groupings of media.⁴²

By contrast, the proposed Correction Act would apply not only to all media, but indeed to all defendants.

f. Effect of existing statutes upon the behavior of potential plaintiffs and defendants.

Although an admittedly subjective query, respondents to LDRC's survey generally believed that their state's retraction statute -- often despite its limitations and defects -- tended to encourage the publication of corrections or retractions, with only 3 of 30 respondents believing that the implicit admission of falsity flowing from such publication outweighed any consequent limitation on damages.⁴³

Respondents similarly were in general agreement that their state's retraction statute operated to diminish the likelihood of litigation. Of the 20 respondents who believed that their state's retraction statute affected plaintiffs' behavior, 17

³⁷Alabama, Connecticut, Florida, Georgia, Maine, Massachusetts, Michigan, Nebraska, and West Virginia.

³⁸West Virginia.

³⁹Minnesota, North Dakota, and South Dakota.

⁴⁰New Jersey, Oklahoma, Tennessee, Virginia, and Wisconsin.

⁴¹California, Idaho, Kentucky, Mississippi, Nevada, and Utah.

⁴²Arizona, Indiana, Iowa, Montana, North Carolina, Ohio, and Oregon.

⁴³Florida, Oklahoma, and South Dakota.

believed that they discouraged litigation,⁴⁴ one believed that it did not encourage litigation but was unsure whether it discouraged litigation,⁴⁵ and only two believed that it might encourage litigation;⁴⁶ the remainder believed that it had no effect either way.⁴⁷

2. States without Retraction Statutes

A general undercurrent among all of LDRC's survey respondents was the notion that the media most often issued retractions as a matter of professionalism, integrity, and credibility as much as an attempt to avoid damages in future litigation. In states lacking retraction statutes, survey respondents thus generally believed that corrections were issued by the media based on such journalistic considerations even in the absence of a formal statutory procedure for issuing retractions. Nonetheless, LDRC's survey also established that in 12 of the 20 jurisdictions lacking retraction statutes, there is either case law or rules of civil procedure that provide for some mitigation of damages when a retraction is issued.

The great majority of respondents in states without statutes indicated a belief that enactment of an effective retraction statute would have a positive effect in their jurisdictions, either by reducing the number of suits,⁴⁸ encouraging the publication of corrections,⁴⁹ or limiting damages.⁵⁰ Those respondents who believed a retraction statute would have little

⁴⁴Arizona, California, Georgia, Idaho, Iowa, Kentucky, Maine, Minnesota, Mississippi, Montana, Nebraska, Nevada, North Carolina, Ohio, Oregon, Utah, and Wisconsin.

⁴⁵Alabama.

⁴⁶Florida and Oklahoma.

⁴⁷Connecticut, Indiana, Massachusetts, Michigan, New Jersey, North Dakota, South Dakota, Tennessee, Virginia, and West Virginia.

⁴⁸Arkansas, District of Columbia, New Mexico, South Carolina, Texas, and Vermont.

⁴⁹Illinois, Kansas, Louisiana, Maryland, and Texas.

⁵⁰Vermont, Washington, and Wyoming.

or no effect⁵¹ explained, as noted above, that retractions were issued as a matter of professionalism rather than a shield against suit. Of course, defendants are frequently unaware of the need for a correction until a complaint is made; the respondent from Delaware indicated that plaintiffs frequently make no demand for a correction and then file suit as the statute of limitations is about to expire, complicating the defense and making far less likely the issuance of a timely and effective retraction.

3. Respondents' Comments on the Uniform Statute

In analyzing part III of the LDRC retraction survey, it must be recalled that the draft language upon which respondents were asked to comment has been significantly improved since the Uniform Law Commissioners withdrew the Uniform Defamation Act, retaining and modifying those sections dealing with retraction in a separate Correction Act. Nevertheless, a solid majority of respondents reacted positively to the prior draft, with 24 considering it an improvement over the retraction statute or practice in their state,⁵² only 15 believing it to be inferior,⁵³ and 9 having a mixed reaction.⁵⁴ Respondents in states lacking retraction statutes were more favorably disposed to the earlier draft language (by an 11 to 5 majority) than were respondents whose states had such legislation (although a 13-11 majority thought the draft an improvement).

⁵¹Arkansas, Delaware, Missouri, New Hampshire, and Pennsylvania.

⁵²Alabama, Arizona, Colorado, District of Columbia, Illinois, Kentucky, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.

⁵³California, Connecticut, Delaware, Hawaii, Idaho, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, Oregon, Rhode Island, and Wisconsin.

⁵⁴Alaska, Florida, Georgia, Iowa, Kansas, Maine, Maryland, Michigan, and Minnesota.

C. LDRC Retraction Survey Questionnaire (December 1992)

PART I. FOR STATES WITH RETRACTION STATUTES
(see Part II for states without statutes)

1. Please identify the current provisions of your state's retraction statute. (Please give official citation and attach copy of current statutory language to your completed survey.) Please confine your comments in this section to the statute identified. If you wish to comment on other state statute(s), please do so in narrative form on continuation sheets.)

[For responses, see pages 15-27]

2. Does your statute give publishers and broadcasters adequate advance notice of all potential libel claims? What is the notice mechanism?

[For responses, see pages 15-27]

3. Does it give plaintiffs an effective remedy to obtain a prompt and adequate correction or retraction? How?

[For responses, see pages 15-27]

4. Does it serve to encourage publishers and broadcasters to publish or broadcast a correction if the facts warrant it? Or does it actually discourage use of corrections? Please explain.

[For responses, see pages 28-38]

5. In practical terms, in your state's practice how onerous is the general requirement that a correction be published in substantially as conspicuous a place or manner as the original story? Is this requirement a fair trade-off for the benefits to the press in the statute? How could this practice be improved?

[For responses, see pages 28-38]

6. Is the coverage of the statute sufficiently broad, i.e., does it cover all forms of mass media? If so, how is this accomplished?

[For responses, see pages 28-38]

7. Does it act as a condition precedent to commencement of a libel suit?

[For responses, see pages 39-47]

8. Does it serve to discourage libel suits? Or does it in fact encourage bringing libel suits? Or neither?

[For responses, see pages 39-47]

9. Does it effectively reduce the amounts of damage awards? Punitive damages? Special damages? Any effect on damages?

[For responses, see pages 39-47]

10. What are the relative strengths and weaknesses of the statute?

[For responses, see pages 48-59]

11. What features would improve this state statute?

[For responses, see pages 48-59]

12. Do you have any other comments on the statute?

[For responses, see pages 48-59]

PART II. FOR STATES WITHOUT RETRACTION STATUTES

1. Please describe how the issue of retraction is handled in your state.

[For responses, see pages 60-66]

2. If you know, please explain why your state has not enacted a retraction statute?

[For responses, see pages 60-66]

3. Have there been previous attempts to enact retraction legislation? If so, please describe.

[For responses, see pages 60-66]

4. How would you assess the current implications for your state's media of the absence of a statute, in terms of their correction or retraction practices?

[For responses, see pages 67-71]

5. If a statute containing provisions similar to those in Sections 13-15 were enacted in your state, how would such media practices, or the course of libel litigation, be changed?

[For responses, see pages 67-71]

PART III. THE ULC'S RETRACTION PROPOSALS

(Note: From the perspective of your practice, as reflected in Parts I or II above, we would also like to have your comments on the attached, most recent draft of the provisions of the Uniform Defamation Act dealing with retractions and corrections. (Sections 13-15). The ULC Drafting Committee is likely to propose a Uniform Retraction Act based on these provisions, although it is expected that the Drafting Committee may be willing to make some revisions, possibly working with LDRC representatives, if LDRC ultimately determines to support implementation of an appropriate Act.) (Editor's note: Sections 13-15 referred to in the LDRC questionnaire were the retraction provisions of the former comprehensive Uniform Defamation Act. Both the numbering and the substance of those sections were substantially amended when the Uniform Defamation Act was withdrawn and the retraction provisions were codified separately in the Uniform Correction Act.)

1. How would you evaluate Sections 13-15 in light of the experience you have had with retraction statutes or the non-statutory issue of retraction?

[For responses, see pages 72-88]

2. To what extent are Sections 13-15 an improvement, or a step backward, from your current practice? Please be specific.

[For responses, see pages 72-88]

3. How could Sections 13-15 be improved from your point of view?

[For responses, see pages 72-88]

4. In your view, would implementation of Sections 13-15 require any other changes in your state's law?

[For responses, see pages 72-88]

5. In your view, if the ULC and media groups supported Sections 13-15, as currently drafted or as appropriately revised, would passage of such legislation be feasible in your state?

[For responses, see pages 72-88]

* * * * *

Please note your responses and comments on this Survey, and/or any necessary continuation pages, and return the Survey to LDRC for receipt by or before January 8, 1993. Thank you for your help.

LDRC RETRACTION SURVEY - PART I - RESPONSES

Questions Question 1:

1-3 Please identify the current provisions of your state's retraction statute. (Please confine your comments in this section to the statute identified. If you wish to comment on other state statute(s), please do so in narrative form on continuation sheets.)

Question 2:

Does your statute give publishers and broadcasters adequate advance notice of all potential libel claims? What is the notice mechanism?

Question 3:

Does it give plaintiffs an effective remedy to obtain a prompt and adequate correction or retraction? How?

ALABAMA: ALA CODE §§ 6-5-184 through 6-5-186 (1975).

No. There is no requirement that the plaintiff demand a retraction before recovery of actual damages is allowed. However, under §6-5-186, vindictive or punitive damages may not be recovered in a libel action unless the plaintiff has made a written demand upon the defendant for a public retraction of the charge at least five days before the commencement of the action and defendant has failed or refused to publish a full and fair retraction within five days of such notice.

Yes. Under §6-5-185, the newspaper or other publisher is allowed ten days following publication to publish a retraction in order to limit damages recoverable to only actual damages. This provides an incentive for retractions and thus can operate as a remedy for plaintiffs to obtain a prompt and adequate correction. Also, the statute requires that retractions be run in a prominent position.

ARIZONA*: A.R.S. §12-653.01 through 12-653.05 (1967).

Yes.

Yes.

* Statute declared unconstitutional by the Arizona Supreme Court. Boswell v. Phoenix Newspapers, Inc., 152 Ariz. 9, 730 p.2d 186 (1986).

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

CALIFORNIA: California Civil Code § 48a.

Yes. A plaintiff must demand a correction in writing within twenty days after knowledge of the publication or broadcast of the statements claimed to be defamatory.

Yes. The publisher or broadcaster must publish the correction within twenty-one days after the plaintiff has demanded a correction. If the correction is published in substantially as conspicuous a manner as the allegedly defamatory statements, then the plaintiff is limited to "special damages," i.e., actual economic losses.

CONNECTICUT: Connecticut General Statutes § 52-237. (This statute affects only damages, not liability. Seeking a retraction under it is not a precondition to instituting a suit for defamation.)

No. The statute itself does not give adequate advance notice of all potential libel claims. It does not require plaintiffs to identify precisely what claims are libelous. If they do not, however, the publisher can ask that they do so before considering the request. The request is usually contained in a letter sent Certified Mail, Return Receipt Requested. The statute does not specify the notice mechanism

Yes. If the publisher finds the charge to be incorrect, the statute contemplates his retraction of it "in as public a manner as that in which it was made."

FLORIDA: Chapter 770, Florida Statutes (1991).

There is disagreement here. Section 770.01, Florida Statutes (1991) provides for notice at least five days prior to instituting a civil action against a publisher or broadcaster. This period has been called inadequate to investigate and resolve. Section 770.02, Florida statutes (1991) provides that before liability for punitive damages may attach, notice must be served on newspaper periodical or broadcaster, and depending on the frequency of publication, a correction, apology, or retraction may be published within

Yes. However, because 770.02(1) stipulates, that the correction be published "in as conspicuous place and type as said original article, or, in the case of broadcast . . . at a comparable time," there are problems to the extent that the retraction may not be made in the same place. (i.e., the corrections section may be on page A-2 but the original error was on A-1).

LDRC RETRACTION SURVEY - PA. I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

FLORIDA: (Continued)

10-45 days of service of notice. If the correction, apology or retraction is published, only actual damages may be recovered.

GEORGIA: O.C.G.A. § 51-5-11 (limited to print media) (the "Georgia print retraction statute")

Both Georgia retraction statutes provide some advance notice of libel claims.

By permitting the jury to consider evidence of a media defendant's response to a retraction, the statutes encourage prompt and adequate corrections and retractions.

O.C.G.A. § 51-5-12 (limited to broadcast media) (the "Georgia broadcast retraction statute")

Under the print statute, either party may present evidence showing that the plaintiff did or did not make a written retraction request at least seven days prior to filing the action. O.C.G.A. § 51-5-11(a). If no written retraction request was made the plaintiff is precluded from recovering punitive damages. O.C.G.A. § 51-5-11(b) (2).

Under the print statute, a written demand for retraction is timely honored if, within seven days of receipt, a publication corrects or retracts the allegedly libelous statement "in as conspicuous and public a manner at that in which the . . . statement was published." If a regular issue of the publication is not published within seven days after receiving the demand, publication in the next regular issue is satisfactory. If the plaintiff so requests, an editorial specifically repudiating the allegedly libelous statement is also required.

The broadcast statute contains similar provisions, but it provides less notice for the defendant. The broadcast statute does not require the request to have been made in writing nor does it require that it have been made at least seven days prior to filing the action. If, however, the request is in writing, the broadcast defendant must make retraction within three days. This time period is often inadequate to assess the demand.

The Georgia broadcast retraction statute employs the same mechanism as the Georgia print retraction statute. Like a published retraction, a broadcast retraction must be made in an equally public manner, in a regular broadcast, and accompanied by an editorial if requested. O.C.G.A. §51-5-12(b).

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

IDAHO: Idaho Code § 6-712.

Yes. Notice must be given within twenty (20) days after plaintiff has knowledge of the publication or broadcast. The publisher or broadcaster then has three weeks to correct.

Yes. It provides an effective remedy because it provides an incentive for the publisher or broadcaster to retract in order to cut off rights to general and punitive damages. Plaintiffs retain the right to sue for actual damages.

INDIANA: IND. CODE § 34-4-14-1 through -2 (retractions by broadcast stations);
IND. CODE § 34-4-15-1 through -5 retractions by newspapers and news services).

Yes. The broadcast retraction statute requires the complaining party to give three days' written notice before filing suit; the newspaper/news service retraction statute requires four days' notice to a news service, six days' notice to a daily newspaper and eleven days' notice as a weekly newspaper. Magazines are not covered by the retraction statute. The written notice must specify "the factual statements in the article that are alleged to be false and defamatory, and correcting their falsity by reference to the true facts."

Yes. Once the mistake is brought to the attention of the publisher, station manager or bureau chief (in the case of a news service), the retraction must be published within three days by a news service, within five days by a daily newspaper, and within 10 days by a weekly newspaper, radio or television station. If a "full and fair retraction" is published, the aggrieved party is limited to recovery of only actual damages.

IOWA: Iowa Code § 659.2 et. seq.*

No. The statute specifies that a retraction demand is a prerequisite to recovery of special and exemplary damages but does not require a retraction demand or advance notice of libel claims before seeking actual damages.

In light of Jones, the statute likely does not provide sufficient incentive so as to represent an adequate remedy in and of itself despite the fact that it can open discussions on corrections, clarifications, or retractions.

* In Jones v. Palmer Communications Inc., 440 N.W.2d 884, 889 (Iowa 1989), the Iowa Supreme Court found significant portions of the retraction statute to be unconstitutional. However, the practice by lawyers representing libel plaintiffs in Iowa generally is to follow the retraction statute and make retraction demands and media defendants generally follow the statute requirements with respect to the timing and placement of a retraction when retraction demands are honored.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE	2. NOTICE MECHANISM	3. PLAINTIFF'S REMEDY
<u>KENTUCKY:</u> Kentucky Rev. Statutes § 411.051 (Michie 1991) - Newspapers Kentucky Rev. Statutes §411.061 (Michie 1991) - Broadcasters	No notice mechanism.	Yes. Kentucky's statutes provide plaintiffs with an effective remedy.
<u>MAINE:</u> 14 Me. Rev. Stat. Ann Sec. 153.	No. Publishers do not always receive advance notice of potential claims because providing notice is voluntary and not mandatory to the institution of a libel suit. According to the statute, notice consists of any reasonable notification in writing.	Yes. However, the remedy is effective to the extent that it calls for retraction within a reasonable period of time, by a denial of the truth of the original misstatement in a manner that is as public and as full as the original misstatement. In sum, for those who choose to invoke the statute, it does provide an appropriate retraction.
<u>MASSACHUSETTS:</u> 231 M.G.L. § 93.	No.	No.
<u>MICHIGAN:</u> MCLA 600.2911(2)(b), MSA 27A.2911 (2)(b).	Not necessarily. The statute has no time limitation for demanding retractions. In some instances a retraction demand may not be sent until almost the expiration of the one-year statutes of limitations for defamation.	Yes. The remedy is effective to the degree that sophisticated publishers realize that a demand will be an exhibit to any subsequent complaint and a cavalier or mishandled response will be a problem throughout the litigation.
<u>MINNESOTA:</u> Minn. Stat. § 548.06.	No. Suits have been commenced without a demand for retraction. The statute requires a written demand, "specifying the statements claimed to be libelous, and requesting that the same be withdrawn." In practice, the "specifications" often amount to little more than a reference to the headline and date of publication.	When the demand is sent reasonably soon after initial demand, it can open discussions on an appropriate correction or retraction. Other claimants regard the statute as a procedural "hoop" and are not interested in anything except the newspaper's denial of their retraction demand.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

MISSISSIPPI: Miss Code Ann. § 95-1-5 (1972).

Yes. Ten days is generally sufficient in cases when more time is needed to investigate and respond, opposing counsel gives extensions of time to respond and/or publish a correction or retraction.

Written demand for a retraction must be given at least ten days before suit is filed unless the publication: (a) is about a candidate for public office and is made within ten days of the election; or (b) is in an editorial or any regularly published column of opinion.

Yes. Within ten days after receipt of the retraction notice, a media defendant is entitled to publish a "full and fair correction, apology and retraction . . . in the same edition or corresponding issues of the newspaper in which said article appeared, and in as conspicuous place and type as was said original article, or was broadcast or telecast under like conditions correcting an honest mistake" Miss. Code Ann. § 95-1-5(2) (1972). If this is done, the plaintiff "shall recover only actual damages." Id.

MONTANA: 27-1-818 through 27-1-821, Montana Codes Annotated.

Yes. Notice of the alleged defamatory statements and statements of what are claimed to be true facts and sources must be given or the claimant may not recover punitive damages.

Yes. Section 27-1-820, MCA, contemplates that publication of the defamed person's statement constitutes a correction within the meaning of the statute.

NEBRASKA: Neb. Rev. Stat. § 25-840.01 (Reissue 1989)

No. Not all claims provide adequate notice, since retraction demand is optional. Notice of demand for retracting must be sent by certified or registered mail, within 20 days after knowledge of publication.

Yes. Correction is motivated by major limitation of damages, unless malice is proved against publishers.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

NEVADA: Nevada Revised Statutes Annotated
§§ 41.336-.338.

Yes. A potential plaintiff must demand a correction within 90 days after learning of the publication or broadcast of the allegedly defamatory statements. The demand must be in writing and must specify what statements were defamatory. Nev. Rev. Stat. Ann. § 41.336.

Yes. A plaintiff is entitled to seek general, special, and exemplary damages if a correction is properly demanded and the publisher or broadcaster fails to publish or broadcast a correction must be published or broadcast in substantially as conspicuous a manner as the allegedly defamatory statements. Id. § 41.337. If this is done within 20 days of the correction demand, the plaintiff is limited to special damages, i.e., actual economic losses.

NEW JERSEY: N.J.S.A. 2A:43-2. (Provides that a plaintiff can only recover his actual damage proved and specially alleged in the complaint unless he proves either malice in fact or that defendant, after having been requested by plaintiff in writing to retract the libelous charge in as public a manner as that in which it was made, failed to do so within a reasonable time.)

No. A retraction demand is not a prerequisite to suit. There is no notice mechanism.

Not necessarily. See response to question #4 below.

ORTH CAROLINA: N.C. Gen. Stat. § 99-1 and § 99-2.

Yes. The ten day retraction period is usually sufficient for the types of claims that are straightforward enough to be likely to lead to a retraction. The notice must be served in writing, specifying the article and statements alleged to be false and defamatory.

Yes. It provides a practical incentive for a publisher/broadcaster to provide a prompt and appropriately conspicuous retraction or correction.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

NORTH DAKOTA: North Dakota Century Code § 14-02-08.

No. The statute does not give publishers adequate advance notice of all potential libel claims. The statute allows a plaintiff to file a complaint after just three days notice demanding a retraction, not enough time to check out the demand, check the facts involved, perhaps consult with an attorney, and print the retraction. A 10-15 day notice might be more effective in allowing a publisher to investigate the problem and perhaps work out a settlement with the complainant that would not involve a lawsuit. Notice is usually given by letter.

No. It's not effective for plaintiffs because of the 3 day limit. Newspapers either don't publish a retraction since they don't have time to determine if one is needed, or print a very perfunctory retraction. If more time were allowed, a better and more plaintiff-satisfying retraction might be printed.

LDRC RETRACTION SURVEY - PAH. I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

OHIO:

Ohio Rev. Code § 2719.03
(Page 1992) - Broadcasters.
Ohio Rev. Code § 2739.13-2739.16
(Page 1992) Newspapers.

There is no notice mechanism.

As applied to broadcasters, Ohio Revised Code § 2739.03 (C) provides that upon demand of any person/persons affected, the station shall broadcast any statement setting forth in proper language the truth which the affected person/persons has offered the station for broadcast. Once demand has been made, the station shall broadcast the statement within forty-eight hours of receiving the statement. This broadcast shall be broadcast in as prominent a manner and at as prominent a time as the original broadcast. Ohio Rev. Code § 2739.03(D). In addition, the statute provides that no broadcasting station shall refuse to broadcast any statement as required by the above provisions. Ohio Rev. Code § 2739.03(F).

As applied to newspapers, Ohio Revised Code § 2739.13 provides that upon demand of any persons affected, the newspapers shall print, publish and circulate any statement setting forth in proper language the truth which the affected person shall offer to the newspaper for publication. Once demand has been made, the newspaper shall print and circulate the statement in the next regular issue or within forty-eight hours following the receipt

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

<u>OHIO:</u> (Continued)		<p>of the statement. The statement is to be published in the same color of ink, with headlines of equal prominence and is to be given the same publicity in all respects as the original article. Ohio Rev. Code § 2739.14.</p> <p>In addition, the statute provides that no newspaper shall refuse to publish any statement as required by the above provisions. Ohio Rev. Code § 2739.16(A).</p> <p>If the broadcasting station or newspaper refuses to publish these retractions, the statute provides for fines. Ohio Rev. Code § 2739.99.</p>
<u>OKLAHOMA:</u> Okla. Stat. tit. 12, Section 1446a. Okla. Stat. tit. 12, Section 1447.5.	<p>No. Section 1446a has no time limit (other than the one-year statute of limitations) for the person allegedly defamed to demand retraction and applies only to newspapers and periodicals. The statute is vague regarding how particular the demand must be or whether the person making the demand must supply supporting information. The demand can be either oral or written. Section 1447.5 (which is undoubtedly unconstitutional) would require the broadcast of whatever the person demanded.</p>	<p>Probably not. Section 1446a does not offer much more than what a responsible publisher would do anyway and there is little incentive for a publisher to comply with the statute rather than follow its own retraction policies (see No. 4). No broadcaster has apparently ever agreed to comply with a demand under Section 1447.5.</p>

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

OREGON: ORS §§ 30-160-30.175 (1992).

(a) The notice provision operates as a condition precedent to commencement of a libel suit because plaintiff must demand a retraction to be eligible to recover general damages, unless plaintiff proves defendant intended to defame.
(b) A defamed person, or the person's attorney, must demand a correction or retraction, in writing, within 20 days of actual notice of the defamatory statement. The notice must identify the false or defamatory statement and request a correction or retraction. The notice may refer to sources from which true facts may be ascertained with accuracy.

It provides for a prompt retraction because the publisher has two weeks to investigate and publish the correction or retraction. It may not provide an adequate remedy from a plaintiff's perspective because the publisher must only publish the retraction in "substantially as conspicuous manner" but need not reach "substantially the same audience."

SOUTH DAKOTA: SDCL 20-11-7. Retraction request is prerequisite in libel action against newspaper (or employee); retraction in a timely manner when error printed in "good faith" precludes recovery of punitive damages.

There is a three-day minimum notice of of an impending suit. The notice must be "served", indicating that it should be in writing.

It provides such a remedy only if the defendant believes that the benefit of retraction (possibly limiting recovery to compensatory damages) merits compliance with the demand.

TENNESSEE: Tennessee Code Ann. § 29-24-103

The statute applies only to newspapers and periodicals, not to broadcasters. It provides for written notice five days prior to filing suit, but does not preclude a cause of action when notice is not given. The only consequence of a failure to give notice is that the plaintiff is limited to compensatory damages.

Yes. The statute requires that within 10 days or the next regular edition, a "full and fair correction, apology or retraction" be printed on the front page of a newspaper or in a conspicuous place in a periodical.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE

2. NOTICE MECHANISM

3. PLAINTIFF'S REMEDY

TENNESSEE: Tennessee Code Ann. 29-24-103 (1980) provides: Notice of action against periodical -- Effect of retraction -- (a) Before any civil action is brought for publication, in a newspaper or periodical, of a libel, the plaintiff shall, at least five (5) days before instituting such action, serve notice in writing on the defendant, specifying the article and the statements therein which he alleges to be false and defamatory. (b)(1) If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within 10 days after the service of said notice, or in the next regular edition of said newspaper or periodical, if more than ten (10) days from date of notice, a full and fair correction, apology, or retraction was published in the same editions, and in the case of a daily newspaper, in all editions of the day of such publication, or corresponding issues of the newspaper or periodical in which said article appeared; and in the case of newspapers on the front page thereof, and in the case of other periodicals in as conspicuous a plat or type as was said original article, then the plaintiff shall recover only actual and not punitive damages. (2) Said exemption from punitive damages shall not apply to any article about or affecting a candidate for political office, published within ten (10) days before any election for the office for which he is a candidate.

The statute gives adequate advance notice of many, but not all, potential libel actions to publishers of "newspaper(s) or periodical(s)." Notice is required for plaintiff to preserve his ability to claim punitive damages, but no notice is required if only actual damages are sought. Notice is not required by the statute to be given to publishers of any other type of publication, or to broadcasters.

The value of the "remedy" to plaintiffs is theoretically problematical. The incentive to publishers provided by the statute is that they are afforded a state law mechanism to "cut off" plaintiff's ability to claim punitive damages. In light of the constitutional requirement that plaintiff prove actual malice before the issue of punitive damages is submitted to the jury, in cases where it can be readily determined that no actual malice can be proved, there is little real incentive to retract.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

1. CURRENT STATUTE	2. NOTICE MECHANISM	3. PLAINTIFF'S REMEDY
<u>UTAH:</u> Utah Code Annotated Section 45-2-1 (1992) (Newspapers). Utah Code Annotated Section 45-2-1.5 (1992) (Broadcast).	Yes, except in publications involving complex stories where 3 days is insufficient time to determine whether to retract.	Yes. Retraction must be made within 3 days.
<u>VIRGINIA:</u> Section 8.01-48, Code of Virginia. Retraction may be proved in mitigation of punitive damages and general damages other than actual pecuniary damages.	No. There is no notice mechanism.	The statute is purely an evidentiary damage mitigation allowance, and is not designed to give plaintiffs any remedy.
<u>WEST VIRGINIA:</u> West Virginia Code § 57-2-4.	No.	No.
<u>WISCONSIN:</u> § 895.05(2), Wis. Stats.	The statute does not cover and is therefore inadequate as to broadcasters. The statute provides for adequate notice of potential libel claims against any "newspaper, magazine or periodical," The notice mechanism is a writing specifying the article challenged and the statements therein claim to be false, which notice must also contain a statement of what are claimed to be the "true facts."	Yes. To ensure compliance with the statute, the publisher's response must be prompt (within one week from receipt of the notice for a daily publication) and must either retract the earlier publication or, in the circumstances described, repeat the claimant's version of the "true facts."

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

Questions 4-6	<u>Question 4:</u> Does it serve to encourage publishers and broadcasters to publish or broadcast a correction if the facts warrant it? Or does it actually discourage use of corrections? Please explain.	<u>Question 5:</u> In practical terms, in your state's practice how onerous is the general requirement that a correction be published in substantially as conspicuous a place or manner as the original story? Is this requirement a fair trade-off for the benefits to the press in the statute? How could this practice be improved?	<u>Question 6:</u> Is this coverage of the statute sufficiently broad, i.e., does it cover all forms of mass media? If so, how is this accomplished?
<u>ALABAMA:</u>	Yes. It seems to encourage publishers and broadcasters to publish or broadcast corrections if the facts warrant because, under §6-5-185, if the publisher provides a retraction pursuant to § 6-5-184 within ten days of the publication, then the plaintiff can recover only actual damages and not punitive or vindictive damages.	It is onerous because the statute is vague when specifying the positioning and size of the retraction. This generally requires publisher to run a retraction in a position of prominence greater than that of the original erroneous publication.	No. The statute does not explicitly state that it applies to the broadcast media as well as the print media. However, under Alabama case law, the word "libel" encompasses all radio and television broadcasts of defamatory matters. Thus, the presence of the word "libel" in the retraction statute indicates that it would be applied to all mass media.
<u>ARIZONA:</u>	The statute encourages correction in appropriate instances. The statute does not discourage corrections.	The statute was not considered onerous as to publication of the correction in substantially as conspicuous a place or manner (except in the minds of a few editors). It was generally regarded as a reasonable trade-off in terms of the benefits which accrued to the media.	The statute specifically covers print and broadcast media by its terms.

LDRC RETRACTION SURVEY - PAK. I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

CALIFORNIA: It serves to encourage the publication of corrections where warranted. If a proper correction is published, plaintiff cannot cover damages for loss of reputation, emotional distress, nor to punish the defendant.

To date, the only way to obtain summary adjudication of the substantially conspicuous issue has been to place the correction in the same place as the offending statements. California case law holds that the substantially conspicuous requirement is ordinarily an issue of fact for a jury rather than an issue of law for a judge. It would be helpful if the law was changed to make it a question for a judge.

It is unclear whether the statute covers magazines. It should be revised to make it clear that it covers all publications as long as they meet the requirement that the correction be published within twenty-one days of the plaintiff's demand.

CONNECTICUT: The statute encourages publication of corrections when warranted in order to avoid the possibility of punitive damages in any subsequent suit.

No. Connecticut's practice not at all onerous. Most newspapers have a particular page where corrections or clarifications are usually found, and the public has become accustomed to looking to those pages, so that publication on those pages is generally considered to be "in as public a manner" - publication. It is a fair trade-off. No known improvements.

There is no differentiation among types of media. However, General Statutes Section 52-239, exempts from liability for defamation the owner, licensee, or operator of a visual or sound radio broadcasting station or network, or his agents, or the owner, licensee or operator of a cable system or his agents, unless the person willfully, knowingly and with intent to defame participated in the broadcast of the defamatory statement.

FLORIDA: Retractions are discouraged in many cases because publication of a retraction only restricts punitive damages and retractions frequently are not regarded as sufficiently "full and fair." The retraction can become the primary admission of liability without providing any benefit to the publisher.

Yes. The statute is very onerous in practice. It could be improved with objective criteria defining whether a retraction is full and fair (i.e., require publication on the same page at the same time or allowing for the placement of corrections in a dedicated correction box to appear on the same page of the newspaper each day).

Yes. It uses the terms "publication or broadcast" and "newspaper, periodical or other medium" which is sufficiently broad to cover all forms of mass media.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

<u>GEORGIA:</u>	The statutes encourage publishers and broadcasters to publish or broadcast corrections when factually warranted to the extent that this insulates media companies from possible punitive damage liability. However, a media defendant must also prove it did not publish the allegedly libelous statement with "malice."	Many publications typically publish their corrections, whether or not made pursuant to a retraction demand, in the same place in every issue. Although this should be sufficient, the question has never been judicially resolved in Georgia. An ideal retraction statute would permit such publication to serve as an effective response.	Yes. The two retraction statutes cover all forms of mass media. The broadcast retraction statute was enacted in 1989 to fill the gap in coverage left when the Georgia print retraction statute was interpreted as being inapplicable to broadcast media. <u>Williamson v. Lucas</u> , 171 Ga. App. 695, 320 S.E.2d 800 (1984).
<u>IDAHO:</u>	It encourages corrections by limiting the damage remedies, and by stating that no exemplary damages may be awarded without a showing of actual malice.	It is not significantly onerous, and is a fair trade-off.	Yes. It is sufficiently broad in that it covers newspapers and radio and television broadcasts.
<u>INDIANA:</u>	The statute encourages retractions by taking away the risk of punitive damages. Publication of a retraction is admissible evidence for a defendant as tending to reduce the plaintiff's damages. <u>White v. Sun Publishing Co.</u> , 164 Ind. 426, 73 N.E. 890, 891 (1905). However, if a retraction is made in a manner other than as prescribed by the statute, there can be an inference of actual malice by that variance. <u>Bandido's v. Journal Gazette Co.</u> , 575 N.E.2d 329 (Ind. App. 1991).	Yes. It is onerous given the holding in <u>Bandido's v. Journal Gazette Co.</u> , 575 N.E.2d 324, 329 (Ind. App. 1991), that making a retraction presents a genuine issue of material fact on the issue of actual malice that will preclude summary judgment. This is especially true now, in light of most newspapers' practice of having a regular "correction" column which arguably is better read than many other sections of the newspaper. The practice could be improved by allowing the retraction or correction to be published in the regular "correction" columns, if one exists.	No. The retraction statutes cover only those media expressly named: radio and television stations, newspapers or new services. It does not include magazines or other publications not named in the statute. <u>Christopher v. American News Co.</u> , 171 F.2d 275 (7th Cir. 1948).

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

<u>IOWA:</u>	Yes. The statute encourages corrections. It specifies where, how, and when a retraction should be made, helping publishers and broadcasters understand what is likely to constitute an adequate retraction.	It is occasionally onerous or impossible because of difficulty in meeting the requirements that newspapers publish in "as conspicuous a place and type in said newspaper" and that broadcasters broadcast "at a time considered as favorable as that of the defamatory statement."	The Iowa retraction provisions cover newspapers and broadcasters. The statute does not specifically refer to emerging technologies such as satellite transmitted data or computer retrieval systems.
<u>KENTUCKY:</u>	<p>Yes. Kentucky's statutes encourage publishers and broadcasters to publish or broadcast a correction if the facts warrant it.</p> <p>The newspaper statute provides that the defendant may plead the publication of a correction in mitigation of damages. Punitive damages may be recovered only if the plaintiff shall allege and prove publication with legal malice and that the daily or other newspaper failed to make conspicuous and timely publication of a correction after receiving a sufficient demand for correction.</p> <p>The Broadcasting statute provides that the plaintiff shall recover no more than special damages unless he shall allege and prove that he made a sufficient demand for correction and that the radio or television broadcasting station failed to make conspicuous and timely publication of said correction.</p>	In practical terms, the requirement that a correction be published in substantially as conspicuous a place or manner as the original story is not particularly onerous. The requirement would appear to be a fair trade-off for the potential benefits to the media provided in the statutes.	The statutes specifically cover newspaper publishers and radio or television broadcasting stations.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

<u>MAINE:</u>	Because the statute is not coercive to either side, it does encourage notice of a false report and the opportunity to correct it. It does not appear to discourage appropriate corrections.	The statute ignores that most publishers now have a specific box or page where all significant corrections are made. Frequently, the corrections made in that manner receive more note than if they were spread throughout the paper.	Yes, by not being restrictive or specific to any branch of the media, the statute by its terms, is broad enough to apply to all mass media.
<u>MASSACHUSETTS:</u>	It may have a slight encouraging effect -- evidence of retraction can be offered in mitigation of damages.	The statute does not specify that the correction must be published in a particular manner. But a 1908 case holds it must be "complete in character and conspicuous in position." <u>Ellis v. Brockton Publishing Co.</u> , 198 Mass. 538, 542 (1908)	It presumably covers all mass media, but the statute is not explicit -- and might be read as referring to print media (it refers to a copy of the retraction).
<u>MICHIGAN:</u>	It certainly does not discourage corrections. However, it is our experience that publishers issue corrections out of a sense of ethical responsibility and not because of the retraction statute. However, the statute does provide that a retraction is evidence of the publisher's "good faith."	It is not particularly onerous because because most corrections appear on a specific page of the newspaper which in some instances is a more prominent part of the newspaper than the complained of article. Statutorily permitting corrections to be published in a prominent portion of the publication reserved for corrections and clarifications probably would be beneficial to all concerned.	Yes.
<u>MINNESOTA:</u>	When it is possible to open discussions sufficiently to determine whether the facts do warrant a correction, the statute encourages publication of a correction.	This is occasionally onerous and even impossible, when the same page does not exist in the later publication as existed in the original publication. Publications which publish all corrections in a consistent format and location should be permitted to publish statutory retractions there as well (perhaps with an exception for retraction of front-page stories).	It covers only actions against newspapers.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

<p><u>MISSISSIPPI</u>: Yes. The retraction statute encourages the publication of corrections and retractions where appropriate because it provides that when the publisher or broadcaster has followed the statute, the plaintiff's recovery is limited to actual damages.</p>	<p>We have counseled the media and counsel opposite that this general requirement is unenforceable under the United States Supreme Court's decision in <u>Miami Herald Publishing Co. v. Tornillo</u>, 418 U.S. 241, 41 L. Ed. 2d 730 (1974). We have nonetheless advised our clients to attempt to comply with the spirit of this requirement. At a minimum, the publisher or broadcaster routinely handles a correction or retraction in the same manner and place as other corrections and retractions.</p> <p>Assuming this requirement is constitutional, it appears to be a fair trade-off if a media firm will in fact be insulated from a claim for punitive damages as a result of its compliance with the statute.</p>	<p>Mississippi's retraction statute has been interpreted to apply to newspapers, radio and television stations, wire services, and other forms of news reporting services such as news magazines and cable or satellite news transmissions. <u>Pannell v. Associated Press</u>, 690 F. Supp. 546, 549 n.2 (N.D. Miss.), 15 Med. L. Rptr. 2054 (1988). Some of these entities are not expressly identified in the Mississippi retraction statute. For purposes of clarity, a "model" retraction statute which specifically lists these and possibly other types of publishers would be advisable.</p>
<p><u>MONTANA</u>: Yes. The statute encourages retractions/corrections. If the alleged defamatory statement was published under honest mistake and correction is made, the media defendant has a complete defense against punitive damages.</p>	<p>There is no burden at all. Such corrections are routinely done "in a position and type as prominent as the alleged libel and at the same time of day as the broadcast complained of."</p>	<p>The statute covers newspapers, magazines, periodicals, radios, television, or cable television systems. 27-1-818, MCA.</p>
<p><u>NEBRASKA</u>: Yes. Normally correction is well worth doing unless you are not sure original story was wrong - it would be an admission of error of course.</p>	<p>Not onerous at all. Yes, its a trade-off. Improvement - allow corrections <u>either</u> in a regular "corrections place" or in similar places the original story.</p>	<p>Probably - the term used is "publication" -- and it is taken broadly.</p>

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

NEVADA: Yes. It serves to encourage the publication of corrections where warranted. If a proper correction is published, plaintiff cannot recover damages for loss of reputation, emotional distress, or to punish the defendant.

No case has clarified this issue. The sufficiency of a correction (which would include the adequacy of its placement) is a question of fact for the jury, rather than a question of law that a judge would decide. See Nevada Indep. Broadcasting Corp. v. Allen, 664 P.2d 337, 345 (Nev. 1983). A clear standard regarding placement would more likely result, and thus eliminate the guesswork for publishers and broadcasters, if the issue were one of law.

The statutes expressly extend to newspapers, radio, and television. It is unclear whether they apply to magazines. No Nevada court has addressed this issue. The statutes should be revised to ensure that magazine publishers are also protected from general and exemplary damages if they publish a timely retraction.

NEW JERSEY: It may, to some extent, serve to encourage publishers to publish a correction if the facts warrant it (especially where there is a possibility that a jury would find actual malice). However, since the primary purpose of the New Jersey retraction statute is to permit punitive damages where a retraction is not appropriately made, the statute has limited force after Gertz since libel plaintiff must still prove actual malice in order to recover punitive damages, except in purely private cases not involving public concern pursuant to Greenmoss Builders v. Dun & Bradstreet.

It is difficult to answer this question since retractions tend to be fairly rare in New Jersey. If other adjustments were to be made in the statute (which would create a greater incentive for publishing retractions), then this requirement might present a fairer trade-off. For example, if compliance with the retraction statute would limit actual damages or affect liability, then its use would be more frequent and the trade-off more appropriate.

No. It covers newspapers, magazines, periodical, or other publications. It does not, for example, specifically cover TV or radio broadcasters.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

NORTH CAROLINA: Although there are factual situations in which one might argue that the statute discourages a retraction because it becomes an admission of falsity, the general view is that as a practical matter, it usually encourages corrections and retractions when an honest mistake of fact has been made.

The "conspicuousness" requirement, although sometimes inconvenient to a publisher (as in a minor mistake made on page 1A or the local front), has not been particularly onerous. It is (and is perceived by judges to be) a fair trade-off for the various protections provided the press at common law and otherwise.

The North Carolina retraction statute specifically covers publishers of "newspapers and periodicals," as well as radio and television stations. There are no cases addressing whether it would cover other forms of media.

NORTH DAKOTA: Yes. It encourage publishers to print corrections since a printed correction, while perhaps giving a potential plaintiff the idea to sue, also goes toward mitigation of damages and would probably serve the same purpose as a printed retraction in eliminating punitive damages.

The exact location issue has never really been an issue here, so it can't be too onerous. Usually, the same page does the trick. It's not a fair trade-off. Rather than same place language, the requirement should be noticeable or conspicuous only.

No. It only covers newspapers. The issue of coverage of other media has never arisen.

OHIO: The statutes encourage publishers and broadcasters to publish or broadcast a retraction if the facts warrant it by providing for fines for a refusal to broadcast or publish and by providing immunity to publishers and broadcasters for anything in the retractions. See Ohio Rev. Code §§ 2739.03(E), 2739.15(B).

In practical terms, the requirement that a correction be published in substantially as conspicuous a place or manner as the original story is particularly onerous. The requirement would appear to be a fair trade-off for potential benefits to the media in the statutes.

The statutes specifically cover owners, licensees, and operators of a visual or sound radio broadcasting station or network as well as newspaper and magazine publishers.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

<p><u>OKLAHOMA:</u> It discourages retractions. If a responsible publisher or broadcaster knows that it has erred, it will retract (if a retraction can be done timely) regardless of the statute. If there is a substantial doubt that the information published or broadcast was wrong, the statute gives little incentive to retract. The retraction would admit falsity, but the statute would not reduce damage exposure. Actual damages remain recoverable; there are several exceptions to the statute (e.g., political candidates and, arguably, information from confidential sources); and if enough reckless disregard of truth exists to support punitive damages, the statute no longer applies to cut off a punitive damage claim.</p>	<p>It is not terribly onerous, but it is a fair trade-off for what is gained. The publisher or broadcaster should be left to exercise editorial judgment within reason, regarding how and when a retraction is made, especially if a retraction could under particular circumstances be as harmful as the original publication.</p>	<p>No. 1446a applies only to newspapers and periodicals.</p>
<p><u>OREGON:</u> It encourages retractions and corrections because failure to publish a retraction or correction upon demand entitles a plaintiff to recover general damages in subsequent litigation.</p>	<p>Yes. The statute is onerous because it does not clearly define the procedures necessary for an adequate retraction. Therefore, a less ambiguous statute may be helpful; however, there have been no suits challenging a publisher's retraction.</p>	<p>The statute covers most forms of mass media, e.g., newspaper, periodicals, other printed periodicals, radio, television and motion pictures. The statute specifically lists the above-mentioned forms of mass media in the sections pertaining to damages and retraction.</p>
<p><u>SOUTH DAKOTA:</u> There is very little incentive, unless there is some likelihood that the plaintiff will be satisfied with that relief . . . certainly not compelled by statute.</p>	<p>There hasn't been any meaningful litigation involving this issue.</p>	<p>Ostensibly applies only to newspapers.</p>

LDRC RETRACTION SURVEY - PART 1 - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

<u>TENNESSEE</u> :	The statute encourages a correction in cases in which punitive damages are a realistic possibility. The statute also encourages retraction when it is believed that a retraction will settle the matter.	The Tennessee statute requires that a newspaper publish the retraction on the front pages, no matter where the allegedly libel article appeared. We believe this is not unfair to the press.	The statute only covers newspapers and periodicals.
<u>TENNESSEE</u> :	As a practical matter, the statute encourages correction because, even given the actual malice requirement for submission of punitive damages, publishers want to avail themselves of every defense to punitive damages, including that afforded by the retraction statute.	The statute requires newspapers to publish corrections <u>on the front page</u> . This "placement" requirement is particularly onerous. Other "periodicals" are only held to the "as conspicuous a place as that of the original defamatory article," which, in my view, should be applicable to newspapers as well.	No. See response to no. 2.
<u>UTAH</u> :	The statute encourages retractions or clarifications in practice.	Not onerous -- fair trade-off.	No. The statute's coverage is limited to newspapers, radio, and television. It does not cover magazines, fliers, newsletters, etc.
<u>VIRGINIA</u> :	If anything, the statute would encourage corrections. As a practical matter, publishers appear to be anxious to correct if they know they are wrong, and probably are not aware of the statute.	At least some of the larger papers have a standard location in their editions for printing corrections. Whether this will suffice has not been tested in any reported decision, but it seems to be a desirable approach for larger papers.	The statute does not cover broadcast media.
<u>WEST VIRGINIA</u> :	It may provide minimal encouragement.	This question is difficult to answer in the West Virginia context. The state's two major newspapers publish "corrections" in a particular spot in the newspapers, regardless of where the initial article ran.	Yes. The statute refers to "any action for defamation."

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

4. ENCOURAGE/DISCOURAGE?

5. PUBLICATION REQUIREMENTS

6. MEDIA COVERED

WISCONSIN: The statute is ineffective as to broadcasters. However, it encourages publishers to publish a correction if the facts warrant. Compliance with the statutes protects the putative defendant from punitive damages and limits the claimant's recovery to "actual damages," which may themselves be mitigated by the publication of the retraction/correction. In general, publishers never hesitate to publish either a full retraction or, when appropriate, a correction when satisfied that a prior publication was capable of defaming the claimant and arguably was false, or even when accurate but possibly unfair.

The requirement that the correction published "in a position and type as prominent as the alleged libel" has not proven to be onerous and in most instances is readily and easily complied with. This requirement occasionally creates practical difficulty because frequently the correcting story is simply not as large as the original and therefore does not support as large or broad a headline as appeared in the original. A difference in space given to or size of the correcting headline has never been held to disqualify a correction otherwise in compliance with the statute.

No. The statute is not sufficiently broad. At the least, it should be amended to include broadcasters. Efforts to encourage such an amendment approximately five years ago were unsuccessful.

LDRC RETRACTION SURVEY - PAK. I - RESPONSES (Continued)

Questions 7-9	<u>Question 7:</u> Does it act as a condition precedent to commencement of a libel suit?	<u>Question 8:</u> Does it serve to discourage libel suits? Or does it in fact encourage bringing libel suits? Or neither?	<u>Question 9:</u> Does it effectively reduce the amounts of damage awards? Punitive damages? Special damages? <u>Any</u> effect on damages?
<u>ALABAMA:</u>	No. But in order to recover punitive damages, the plaintiff must first demand a retraction. So in that sense, it operates as a condition precedent.	The statute does not encourage litigation. It is unclear whether it discourages suits.	Yes. It can operate to bar recovery of punitive damages if a demand for retraction isn't properly made. More importantly, if the proper retraction is published within ten days of the date of publication of the original, erroneous publication, then the plaintiff in such cases may recover only actual damages.
<u>ARIZONA:</u>	No. However, failure to demand correction limited recovery to special damages only.	The statute discourages libel suits, either because there are no special damages or because the period for correction demand is permitted to elapse.	The statute effectively reduces damage awards. It avoids general and punitive damages where no demand is made prior to the suit and also sets forth a specific requirement that publication must be proven to be with actual malice "and then only in the discretion of the court or jury."
<u>CALIFORNIA:</u> No.		The California correction statute discourages lawsuits.	Yes. If the plaintiff fails to make a proper demand, then he or she is limited to special damages. If the publisher publishes a proper correction, then the plaintiff also is limited to special damages.
<u>CONNECTICUT:</u> No.		Neither.	Plaintiff limited to actual damages that are specially alleged and proved.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

FLORIDA: Yes.

This is unclear. It may encourage suits by providing an obvious mechanism for lawyers to get the suit started.

Yes. Punitive damages are barred by statute, but retractions are rarely regarded as sufficient to bar a punitive damage claim.

GEORGIA: No.

In general, the statutes discourage suits by promoting pre-suit retraction requests from potential libel plaintiffs and by encouraging considered responses by media defendants.

By promoting demands prior to suit, and thus effectively providing the media an opportunity to take defensive action prior to suit, either with a correction or other thoughtful response, the statutes may tend indirectly to reduce potential damages.

IDAHO: No.

It should discourage libel suits.

Yes. It eliminates all but actual damages.

INDIANA: While the statute certainly reads that way, it has been held not to act as a condition precedent to commencing suit. Estill v. Hearst Pub. Co., 186 F.2d 1017, 1021 (7th Cir. 1951).

It does not discourage libel suits, because there does not seem to be any awareness among the plaintiff's defamation bar that it exists. As a consequence, libel suits often are brought without any request for retraction as provided by the statute. However, the statute does not encourage bringing libel suits, either.

The effect on damages is speculative, because there have been few libel cases tried to judgment in which a retraction demand was made. While there is no reported case on point, libel defense practitioners operate under the theory that if a plaintiff fails to make a demand as prescribed under the retraction statute, punitive damages are not available. Technically, the statute says the plaintiff is limited to actual damages only if a full and fair retraction is published.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

IOWA:

No, and in light of the Jones decision a libel plaintiff cannot shift burdens of proof following the procedure.

If, after Jones, recovery of more than actual damages cannot occur without first making a retraction demand, libel suits may be discouraged. To the extent a potential plaintiff provides a defendant with an opportunity to respond to alleged inaccuracies, the statute also may discourage libel suits. However, because it does not impose prerequisites to the filing of a lawsuit, standing alone, it does not discourage such litigation.

In light of Jones, the provisions that shift burdens and impose damages because of the failure to issue a retraction have been deemed unconstitutional. However, it remains arguable that the provision that requires a retraction demand as a precondition to recovering more than actual damages remains enforceable. If that provision remains enforceable, the statute can effectively reduce the amount of damage awards if a plaintiff proceeds to litigation without first making a retraction demand.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

KENTUCKY: No.

In practical terms, it would appear that Kentucky's statutes are neutral in this respect. However, to the extent that the parties can begin a dialogue regarding a proposed retraction or correction, that dialogue can often provide a vehicle to resolve disputes and prevent libel suits.

Under the newspaper statute, the defendant newspaper may plead the publication of a correction in mitigation of damages. Punitive damages may be recovered only if the plaintiff shall allege and prove publication with legal malice and that the daily or other newspaper failed to make conspicuous and timely publication of a correction after receiving a sufficient demand for correction.

The broadcasting statute provides that the plaintiff shall recover no more than special damages unless he shall allege and prove that he made a sufficient demand for correction and that the radio or television broadcasting station failed to make conspicuous and timely publication of said correction. Further, "special damages" are defined as pecuniary damages which the plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession, or occupation and proves he has expended a proximate result of the alleged defamation), and no other.

LDRC RETRACTION SURVEY - PAR. 1 - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

<u>MAINE</u> : No.	It may discourage some suits by permitting publishers to make timely corrections of misstatements and thus diminishing the dollar value of libel claims in the eyes of plaintiff's counsel.	It probably reduces damage awards for no other reason than the fact that the trial judge will instruct the jury the publisher "may in mitigation of damages that the plaintiff failed to notify the defendant of the libel in a timely fashion and that the defendant was therefore unable to lessen damage to plaintiff's reputation." It is also unlikely that a publisher that complied with the voluntary revisions of the retraction statute would get hit with punitive damages by a Maine jury.
<u>MASSACHUSETTS</u> : No.	It probably has no impact one way or the other.	No. The only effect is on mitigation of actual damages -- it is defendant's burden to convince the jury of the effect of the mitigation.
<u>MICHIGAN</u> : No.	The statute itself probably does not encourage or discourage litigation. Certainly at least some potential plaintiffs who request and receive meaningful corrections are less likely to proceed to the next step of filing a complaint.	Notwithstanding the language of the statute, there are no punitive damages in defamation actions in Michigan. If a correction is published, the plaintiff may not recover exemplary damages, and the retraction is admissible in evidence in mitigation of exemplary damages.
<u>MINNESOTA</u> : No, but it does bar recovery of certain forms of damages if a retraction is published or was not requested.	To the extent that the retraction opens meaningful comment, the statute discourages libel suits.	It can eliminate punitive damages.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

MISSISSIPPI: Yes. See Brocato v. Mississippi Publishers Corp., 503 So. 2d 241, (Miss. 1987), 13 Med. L. Rptr. 2080

Overall, the statute helps to weed out non-meritorious claims prior to filing suit and therefore allows publishers to save legal fees and expenses and it also serves as an informal method of alternative dispute resolution. The publisher has the opportunity, through its counsel, to advise the requester of the circumstances leading to the publication as well as the defenses that are available to the publisher in the event that a suit is filed. This process ultimately prevents from 25 to 33 percent of the retraction demands from maturing into a filed libel action.

If the retraction statute is properly followed, the libel plaintiff "shall recover only actual damages." Miss. Code Ann. § 95-1-5(2) (1972). There are no reported provisions that address this feature of the Mississippi statute.

MONTANA: No. The former statute, however, which in effect between 1961 and 1979 operated as a condition precedent. The section was stricken as an unconstitutional deprivation of the right to access to courts in 1978.

The correction mechanism does seem to discourage the filing of defamation actions, particularly when no compensatory damages exist. Moreover, the correction does mitigate the plaintiff's losses.

Yes, it operates as a complete bar in most cases.

NEBRASKA: No.

Yes. It limits damages effectively, removes animus sanctions.

Yes, it reduces damages. We don't allow punitive damages, and specials are still allowed, as defined.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

NEVADA: No.

It discourages libel suits by giving giving publishers and broadcasters an opportunity to resolve a dispute over an allegedly false statement before a lawsuit is filed. A demand for correction of specific statements allows a publisher or broadcaster to evaluate whether the threat of general and exemplary damages, and the costs of defending a lawsuit, make correction a wise choice. If an adequate correction is published or broadcast, a plaintiff may recover only special damages, which are those damages the plaintiff can prove he or she sustained in respect to his or her property, business, trade, profession, or occupation, including out-of-pocket losses. Nev. Rev. Stat. Ann. § 41.335, 41.337.

Yes. General and exemplary damages are unavailable if the plaintiff fails to demand a retraction within 90 days of learning of the allegedly defamatory statement, id. § 41.336, or if the publisher or broadcaster makes an adequate correction within 20 days of receiving the demand, id. § 41.337.

NEW JERSEY: No.

Neither.

Yes. Punitive damages are unavailable if a timely and adequate retraction is published.

NORTH CAROLINA: Although the statute, on its face, purports to require at least five days' written notice to the defendant prior to instituting a libel action, the North Carolina Supreme Court has held that failure to give notice only relieves a publisher of punitive damages.

The statute does not encourage the bringing of libel suits. It may, in some instances, discourage them. (See No. 10).

The retraction statute eliminates recovery of punitive damages in libel actions when a "full and fair correction, apology and retraction" has been published or broadcast in an equally "conspicuous" location or time as the alleged defamation, so long as the original publication/broadcast was in good faith, due to an honest mistake of the facts, and made with reasonable grounds for believing that the statement was true.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

NORTH DAKOTA: Yes.

It neither encourages nor discourages libel suits.

It eliminates punitive damages and may mitigate actual damages.

OHIO: No.

In practical terms, it would appear that Ohio's statutes are neutral in this respect. However, to the extent that the parties can begin a dialogue regarding a proposed retraction or correction, that dialogue can often provide a vehicle to resolve disputes and prevent libel suits.

Evidence of a retraction does not prevent a party from alleging and proving actual malice on the part of the publisher or broadcaster nor does it prevent a party from proving special damages. Evidence of the retraction may be offered at trial as a mitigating circumstance to reduce damages and a voluntary retraction/correction made without demand may be used to rebut any presumption of malice.

OKLAHOMA: No.

Probably neither. However the mention in 15446a of "honest mistake" as a jury question may encourage plaintiffs in some way.

No effect on damages (see question 4).

OREGON: Yes. A plaintiff may not recover general damages without pleading and proving: (1) defendant intended to defame plaintiff; or (2) defendant failed to publish a retraction upon demand.

It discourages libel suits because it requires a plaintiff to plead and prove defendant failed to publish a retraction upon demand as a condition to recovering general damages, a retraction is considered in mitigation of damages, and there is no provision granting punitive damages.

Plaintiff is not entitled to damages unless he proves defendant failed to publish a retraction or defendant intended to defame. The statute does not provide for recovery of punitive damages.

SOUTH DAKOTA: Apparently (although it would be a problem if the statute of limitations were to run).

Not known.

Supposedly eliminates punitive damages in the event publication was made with belief in the truth of the matter published.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

7. CONDITION PRECEDENT?

8. EFFECT ON SUITS

9. EFFECT ON DAMAGES

<u>TENNESSEE</u> : No. State courts have held that under the statute a party failing to give such notice may maintain a libel action for compensatory, but not punitive damages. See Langford v. Vanderbilt University, 287 S.W. 2d 32 (Tenn. 1956).	Neither.	Obviously, if a retraction is printed, it limits damages to compensatory.
<u>TENNESSEE</u> : No. See response to no. 2.	To the extent that matters are sometimes worked out between publishers and potential plaintiffs in the retraction process, the statute has some tendency to prevent the occurrence of libel actions.	Where the publisher complies with the statute in issuing a correction, it provides, as a matter of state law, an absolute bar to an award of punitive damages.
<u>UTAH</u> : No.	The making of a retraction has served to discourage the filing of libel actions.	No. A retraction only limits any recovery to "actual damages" which is not defined. Thus, general reputational damages are probably recoverable as well as attorney fees.
<u>VIRGINIA</u> : No.	Neither.	The statute could reduce damages in a given case, but no case can be pointed to in which this has happened.
<u>WEST VIRGINIA</u> : No.	Neither.	If used effectively, it has the potential to reduce both special and punitive damage awards.
<u>WISCONSIN</u> : Yes. Compliance with the statute is a predicate to suit and non-compliance has been held to be grounds for dismissal upon motion.	The statute facilitates well-publicized correction of erroneous news accounts therefore tends to discourage libel suits because the injured party is able to have the record set straight through a mechanism well short of litigation. It certainly does not encourage litigation.	Yes. The publisher's compliance with the statute eliminates any claim for punitive damages and is considered evidence admissible on the question of mitigation of actual damages.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

Questions 10-12	<u>Question 10:</u> What are the relative strengths and weaknesses of the statute?	<u>Question 11:</u> What features would improve this state statute?	<u>Question 12:</u> Do you have any other comments on the statute?
<u>ALABAMA:</u>	<p><u>Strengths:</u> A newspaper or other medium may take preventive action to limit the damages recoverable to only actual damages, provided it retracts within ten days or within five days of first receiving notice of the plaintiff's demand for a retraction.</p> <p><u>Weaknesses:</u> It is that it is vague in some instances (e.g., breadth of application; substance, size and positioning of the retraction). However, the substance, size and positioning of the retraction are not clearly outlined in the statute and what the retraction request must contain is unclear.</p>	More clarity as to application and preventive measures that the newspaper or broadcast medium can take in order to protect itself would help improve this statute.	-----
<u>ARIZONA:</u>	The statute has been deemed unconstitutional.	-----	-----
<u>CALIFORNIA:</u>	California has an excellent correction statute. It is a useful model for other states. See also No. 11 below.	Other provisions of the California statute that could be improved have already been discussed. See Nos. 5 and 6 above. The requirement that a plaintiff know of the defamatory publication before the time limit on demanding a correction is triggered should be eliminated.	-----
<u>CONNECTICUT:</u>	It would be preferable if the statute were a condition precedent to the institution of suit, rather than to the obtaining of punitive damages.	See No. 10.	-----

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

<p><u>FLORIDA:</u> <u>Strengths:</u> It provides a technical hurdle which plaintiffs' lawyers frequently overlook and occasionally induces plaintiffs to miss the statute of limitations.</p> <p> <u>Weaknesses:</u> There is no definition of what is a full and fair retraction. The time to retract is short. The statute does not bar compensatory damages and there is no bar of the use of the retraction as evidence of liability of malice.</p>	<p>The weaknesses identified in question 10 should be rectified and additionally, the statute would be improved if the requirement for corrections to appear in as conspicuous place and type as the original article or at a comparable time as the original broadcast were eliminated.</p>
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<p><u>GEORGIA:</u> <u>Strengths:</u> Their practice effect of promoting pre-litigation retraction demands, which provides some opportunity to media defendants to either resolve a complaint prior to litigation or to prepare for litigation.</p> <p> <u>Weaknesses:</u> they do not flatly require retraction requests as a prerequisite to suit and cannot be relied upon to bar punitive damages, given their "malice" window. In addition, the broadcast retraction statute requires a retraction to be broadcast within three days, which is not a meaningful response period.</p>	<p>See No. 10.</p>
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<p><u>DAHO:</u> <u>Strengths:</u> Discourages libel suits by limiting damages where the broadcaster or publisher has provided appropriate mitigation.</p> <p> <u>Weaknesses:</u> Lack of detail for the content of the required retraction demand state the specific reason why the statement is claimed to be incorrect or defamatory.</p>	<p>The content of the required retraction should be more detailed and the statute should include a provision requiring the retraction demand to state the specific reason why the statement is claimed to be incorrect or defamatory.</p>
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LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

INDIANA:

Strengths: It requires the aggrieved party to specify the factual statements that are false, and correct them with reference to the true facts. It prevents the aggrieved party from making vague allegations that something in the article is not correct, while not specifying what the correct information is. Note this requirement only applies to newspapers and news services, by virtue of a 1986 amendment. The broadcast retraction statute was not amended in 1986, and thus retains the language that formerly appeared in both statutes, that the aggrieved party's written demand must specify "the words or acts which he or they allege to be false and defamatory."

Weaknesses: In practice, it does not force plaintiffs to attach a copy of their retraction demand to the complaint, and making the complaining subject to dismissal if the retraction demand a) has not been made or b) is not attached. Alternatively, there should be express language that where no retraction demand is made, punitive damages may not be considered.

The statute should be amended to require plaintiffs to attach a copy of their retraction demand to the complaint, and making the complaint subject to dismissal if the retraction demand: a) has not been made; or b) is not attached. Alternatively, there should be express language that where no retraction demand is made, punitive damages may not be considered.

LDRC RETRACTION SURVEY - PAI - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

IOWA: Strengths: It can open dialogue and prevent suits. It may eliminate recovery of more than actual damages if a retraction is not requested prior to institution of litigation.

Major weaknesses: The two-week time frame for printing or issuing retraction upon request may be unreasonable. It does not require that the claimant specify the particular false and defamatory statements and that the claimant produce facts to support the claim that the statements are false. The overall applicability of the statute is in question in light of the Jones opinion.

Minor problems: Requirements with respect to the location of the retraction are no longer in keeping with the actual practice of publications. Statute ignores the constitutionalization of libel law. Iowa Code § 659.4 imposes special duty with respect to candidates for political office that a retraction with respect to candidates be published on "the editorial page." The constitutionality and practicality of this requirement are both in question. Iowa Code § 659.4 makes the retraction provisions inapplicable to "libel imputing sexual misconduct to any persons."

In light of the Jones decision, legislative reenactment of a retraction statute to cure the constitutional deficiencies is needed. An additional provision requiring specification of the libelous statements and the factual basis for the claim that each statement is false would be helpful.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

KENTUCKY: The statutes are relatively clear and therefore, the parties are generally able to comply with the provisions of the statute. However, the lack of a notice mechanism and/or a condition precedent provision are relative weaknesses in Kentucky's statutory structure.

The implementation of a notice mechanism or condition precedent provision would improve the statute.

MAINE: The strength is that it brings voluntary coercion on potential plaintiffs to bring misstatements to the attention of publishers for timely correction. The probable weakness is that it does not mandate such notice by making it a condition of suit.

The statute should mandate notice as condition of a suit.

MASSACHUSETTS: It is a weak statute that has probably had very little impact. It mostly restates the common law position that a retraction may be considered in mitigation of damages.

MICHIGAN: From the defense standpoint, receipt of a retraction provides the opportunity to review the complained-of coverage generally while the events are fresh in the reporter's mind and before the pressures of litigation. From the plaintiff's standpoint, if there is in fact an error, most publishers will correct it upon request from the potential plaintiff. If the statute has any weakness, it is that it does not require a demand for retraction be sent within any specific and relatively short time period.

See No. 10.

LDRC RETRACTION SURVEY - PART 1 - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

MINNESOTA: Strengths: Can open dialogue and prevent suits; eliminates punitive damages entirely if retraction is published. Major weaknesses: Does not set reasonable time period after publication for service of demand for retraction; does not require, strongly enough, that claimant specify the particular false and defamatory statements and that claimant produce facts to support claim that statements are false; one-week period for publishing retraction is often too short, particularly if initial demand is vague.

Minor problems: Requirements regarding location of retraction are no longer in keeping with actual statute of publications; statutory language is convoluted and confusing; exception for "any libel impugning chastity to a woman" is archaic.

1) Set deadline for serving retraction notice. 2) Extend time for publishing retraction. 3) Extend statute to all libelous statements. 4) Require that the retraction demand specify each statement claimed to be libelous and the factual basis for the claim that each statement is false. -----

MISSISSIPPI: Strengths: The ten-day notice requirement is a condition precedent to filing a defamation action against a publisher or broadcaster. The State Supreme Court has held that the ten-day notice requirement "must be satisfied within the statutory limitation period (of one-year)." Brocato v. Mississippi Publishers Corp., 503 So. 2d 241, 242-43 (Miss.), 13 Med. L. Rptr. 2080 (1987). Another strength is that the statute appears to limit the plaintiff's right of recovery to actual damages if the media defendant follows its requirements.

The statute could be more explicit in identifying the types of media defendants that are entitled to its benefits. It should require a requester to ask for a retraction as a condition precedent to filing suit. It should also eliminate the requirement that a publisher or broadcaster must prove that the original misstatement or error was the result of "an honest mistake" before limiting recovery to actual damages. -----

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

MISSISSIPPI:

(Continued)

Weaknesses: The statute does not explicitly require a requester to ask for a retraction as a condition precedent to filing suit; it only requires notice of the alleged defamation. This can lead to an unsophisticated publisher or broadcaster failing to comply with the statute due to a lack of knowledge about the statute's requirements and benefits. We have seen this happen in at least one instance. The criteria for determining whether a publisher or broadcaster has complied with the statute should be clearer and written in terms that would enable a media defendant to obtain summary judgment on this issue where appropriate.

MONTANA: The statute is constitutionally valid and does discourage libel actions. It does not contain a requirement that the notice be made within certain prescribed time limits and correction requests can come as long as shortly before the statute of limitations runs.

A time limit on notices.

NEBRASKA: Strengths: Very effective as to minor errors, and where damages are all subjective the plaintiff defangs.

Disallow all suits unless retraction is requested and denied.

Would be very difficult politically to strength it.

Weaknesses: Actual malice is statute refers to common-law, not constitutional. Plaintiffs can always at least make a run at common law malice.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

NEVADA: This statute is very similar to the California correction statute, Cal. Civ. Code § 48a, except it gives a potential plaintiff 90 days to demand a retraction (in contrast to the 20 days California allows). The 90-day period is excessive. A shorter period is more in line with the policy behind a retraction statute -- that is, to encourage swift mitigation of damages to a harmed party's reputation.

The requirement that a plaintiff know about the defamatory statement before the 90-day demand period begins running should be eliminated. The statutes should specifically identify the person or persons who may be served with a demand for retraction, to ensure that the demand reaches the ultimate decisionmaker, rather than a reporter or editor's wastebasket. The statutes also should be explicitly extended to magazines and perhaps other forms of mass media. The 90-day demand period should be shortened, and the sufficiency of a correction should be a question of law, not fact.

NEW JERSEY: The statute has limited applicability post-Gertz because it focuses principally on limiting punitive damages. As noted, it also appears to apply only to print news media. It may, however, in cases where a retraction is made, deter a lawsuit.

The statute would be more effective if if compliance therewith limited actual damages and/or affected liability. It also might be preferable to make a demand for retraction a prerequisite to suit.

There is a lack of clarity in our case law as to the timeliness required of a retraction, and the relevance of failure to retract on issue of actual malice. See Schwartz v. Warral Publications, 258 N.J. Super. 493, 610 A.2d 425 (App. Div. 1992).

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

NORTH CAROLINA: It is debatable whether, in cases that involve matters of "public concern," this statute provides any protection greater than the First Amendment protection enunciated in Gertz v. Welch. Nonetheless, compliance with the statute apparently matters tremendously in negotiations with plaintiffs or potential plaintiffs and in the attitude of judges who are considering motions to dismiss and summary judgment motions. (A refusal to publish a correction/retraction when there has been an honest factual mistake would not favorably impress many judges in this state.) Perhaps the greatest strength of the statute is its very existence. It puts even plaintiffs (and legal counsel) with no knowledge of the ramifications of Gertz on notice that they will receive no windfall punitive damages from a simple, honest mistake, however unloved the newspaper or broadcaster may be in the relevant jurisdiction. Its greatest weakness is that it arguably leaves as questions of fact the determination of whether the original article was published in "good faith" and whether there were "reasonable grounds for believing it to be true." In addition, the requirements of a "full and fair correction, apology and retraction" make the wording of normally straightforward corrections somewhat cumbersome. The statute could be improved by streamlining some of that language and by removing the "good faith" and "reasonable grounds" language.

See No. 10.

LDRC RETRACTION SURVEY - PART 1 - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

NORTH DAKOTA: It doesn't cover all of the media and the time frames are too short. The special requirements for politicians are not practical and probably unconstitutional. Its strengths are condition precedent and the mitigation of damages. Additionally, at least in North Dakota, plaintiffs demand the retraction well before they are ready to sue. Thus, publishers do have some chances to negotiate themselves out of a suit.

Improvements would include longer time frames, elimination of special provision for politicians, and additional media coverage.

It probably needs general updating.

OHIO: Ohio's statutes are relatively clear and, therefore, the parties are generally able to follow and comply with the provisions of the statutes. However, the lack of a notice mechanism and/or a condition precedent provision are relative weaknesses in Ohio's statutory structure.

See No. 10.

OKLAHOMA: No known strengths. §1447.5 may be unconstitutional.

Nothing could improve § 1447.5 except its repeal. If § 1446a were simplified -- eliminate "honest mistake" language, do away with exceptions -- and if it were a condition precedent to suit, it might be useful and reflect a fairer trade-off to the media. It should also be modified to cover broadcasters as well as print media.

They are virtually ignored in Oklahoma.

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES

11. NEEDED IMPROVEMENTS

12. OTHER COMMENTS

<p><u>OREGON:</u> <u>Strengths:</u> No general damages without a retraction or intentional defamation and no punitive damages. Plaintiff obtains a prompt retraction if notice is given. The notice provision puts defendants on notice of most potential libel suits.</p> <p><u>Weaknesses:</u> The statute only covers mass media communications. There is no clear definition of "substantially as conspicuous a manner" to guide the publication of retractions. Defendant has two weeks to investigate and publish a retraction.</p>	<p>Less ambiguous language governing how to publish an adequate retraction. Extending the statute to non-mass media media communications. Extending the length of time defendant has to publish publish a retraction.</p>	<p>-----</p>
<p><u>SOUTH DAKOTA:</u> Obviously, retraction doesn't serve much purpose, except in cases in which punitives could be recovered; however, the requirement that to take advantage of retraction, the publisher must have a good faith belief in the truth would generally eliminate the prospect of punitives anyway. In short, its value is severely limited.</p>	<p>Almost anything would be an improvement.</p>	<p>-----</p>
<p><u>TENNESSEE:</u> The strength of the statute is that it allows publishers to avoid liability for punitive damages when a mistake has been made. Weaknesses of the statute are that it does not apply to broadcasters and that it does not affect compensatory damages.</p>	<p>Expanding the applicability of the statute to broadcasters would be an improvement.</p>	<p>No.</p>

LDRC RETRACTION SURVEY - PART I - RESPONSES (Continued)

10. STRENGTHS/WEAKNESSES	11. NEEDED IMPROVEMENTS	12. OTHER COMMENTS
<u>TENNESSEE</u> : The omission of broadcasters and other publishers, the "front page" placement requirements for corrections, and the fact that the statute is not interpreted as a condition precedent to instituting a libel action are the principal weaknesses.	Include broadcasters and other publishers within the statute. Eliminate the "front page" placement requirement for corrections, and interpret the statute as a condition precedent to instituting a libel action.	- - - -
<u>UTAH</u> : <u>Strengths</u> : The statute encourages plaintiffs to make retraction demands and thus gives newspapers the opportunity to retract or otherwise negotiate a resolution without litigation. <u>Weaknesses</u> : The statute doesn't apply to all media, and it appears to preclude only punitive damages.	The response period should be increased. All damages should be banned except special and the "good faith" requirement for retraction to become effective should be eliminated.	It is outdated and does not deal with defamatory connotations.
<u>VIRGINIA</u> : The statute merely permits the fact that a retraction was made to come in as evidence. It does not mean that a jury will give that fact any consideration.	If the statute cut off damages other than actual pecuniary damages it would be enormously improved, but that is wishful thinking.	-----
<u>WEST VIRGINIA</u> : <u>Strengths</u> : It gives media broad discretion as to application of statute. <u>Weaknesses</u> : The demand for retraction or apology is not a pre-condition to suit.	Making a demand for an apology or retraction a precondition for suit.	It is rarely used.
<u>WISCONSIN</u> : The statute works well and has had a salutary effect both upon publishers and prospective plaintiffs in Wisconsin. It requires requestor to state true facts and sources. Publication of corrections is an absolute defense against punitive damages. However, a major and glaring weakness is its failure to include broadcasters among those protected by the statute.	See No. 10.	The statute has been interpreted in several published opinions as requiring notice to prospective defendants who, while not themselves publishers, are the source of information subsequently published and on the basis of which a libel claim is asserted. In other words, sources are protected to the same extent as the newspaper publisher.

LDRC RETRACTION SURVEY - PART II - RESPONSES

<p>Questions 1-3</p>	<p><u>Question 1:</u> Please describe how the issue of retraction is handled in your state.</p>	<p><u>Question 2:</u> If you know, please explain why your state has not enacted a retraction statute?</p>	<p><u>Question 3:</u> Have there been previous attempts to enact retraction legislation? If so, please describe.</p>
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<p><u>ALASKA:</u></p>	<p>In the absence of a retraction statute, there is by definition no uniform treatment of retraction demands. However, there is consistency, if not unanimity, in approach. When a complaint is received, the matter is reviewed and any appropriate correction or clarification is promptly made. Most, at least the larger papers, utilize a standing "correction box." Some automatically involve counsel. Most handle it through the reporter who did the story in the first instance, and usually through an editor as backup or for final authority. All say their practice of running corrections would not change if there were a retraction statute, because they make corrections now based on consideration of professionalism, institutional integrity, and credibility in their communities. Some also acknowledge an awareness that prompt and fair attention to retraction demands probably has a significant bearing on whether a suit will be filed, and feel it will impact potential damage awards. All said that inability to gain assurance that no suit would be filed, or that a retraction would not be used as an admission against them, has never been the basis for withholding a correction or retraction.</p>	<p>There is no strong constituency favoring such a provision and consequently the legislature has little interest. Libel suits are so infrequent (only one news organization recalls having more than two libel suits in a twenty-year period) that there is nothing to trigger the enthusiasm and momentum necessary to push a statute through.</p>	<p>No.</p>
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LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

1. NON-STATUTORY RETRACTION

2. WHY NO STATUTE?

3. PRIOR LEGISLATIVE ACTIVITY?

ARKANSAS: The Arkansas Supreme Court has stated that evidence of retraction can be submitted to support a defense of mitigation of damages. Dun & Bradstreet, Inc., v. Robinson, 233 Ark. 168, 345 S.W.2d 34 (1961).

The issue has apparently never been presented to the Arkansas Legislature.

No knowledge.

DELAWARE: Plaintiffs tend not to ask for a retraction then wait until the statute of limitations is about to expire to file suit. This makes the suit difficult to defend because witnesses disappear, memories fade, etc. When a retraction is requested the defendant is put on notice that there may be a problem.

A bill has never been presented.

There has been discussion, but a bill has never been presented.

DISTRICT OF COLUMBIA:

No statutory or common law mechanism is in place with respect to handling retractions and determining their impact on defamation claims. As a result, the issue of retractions is presently handled on an ad hoc basis by news organizations and counsel, which determine on a case-by-case or client-by-client basis how to utilize retractions and respond to retraction demands.

There is little case law on the subject of the impact and use of retractions. However, media defendants who have published retractions can mitigate or eliminate damages, and even arguably liability. See, e.g., American Postal Workers Union v. United States Postal Service, 830 F.2d 294, 307 n.22

There have apparently been no efforts to adopt a retraction statute, at least in the last 15 years.

No knowledge -- for at least the last five years.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

1. NON-STATUTORY RETRACTION

2. WHY NO STATUTE?

3. PRIOR LEGISLATIVE ACTIVITY?

DISTRICT OF COLUMBIA:

(Continued)

(D.C. Cir. 1987) (in dicta, court states "any harm that might be presumed to have resulted from [published] statements must equally be presumed to have been largely or wholly dissipated by [a] retraction"); Hoffman v. Washington Post Co., 433 F. Supp. 600, 605 (D.D.C. 1977) ("it is significant and tends to negate any inference of actual malice on the part of the Post Company that it published a retraction on the indisputably inaccurate portions" of the article), aff'd, 578 F.2d 442 (D.C. Cir. 1978).

HAWAII:

No statutory requirement. Each media handles request for retraction on case-by-case basis. It is often an ethical retraction legal problem.

No one has seen any need for one.

There have been no serious bills, only ones introduced by angry legislators who were subjects of unfriendly stories.

ILLINOIS:

Illinois law provides little guidance on the retraction issues. Case law on retractions is sparse and ancient. E.g., Storey v. Wallace, 60 Ill. 51 (1871). A prompt retraction will not absolve the publisher of liability but is evidence of mitigation of damages. Id.

The paucity of case law is a probable result of two factors:

- 1) The retraction issue would most likely arise in a reported decision involving an appeal from an adverse jury verdict. The focus of most appeals is on fault and truth, and if truth was in doubt (i.e., a retraction made) the case was probably disposed of before trial -- indeed, early on.

Though we can only speculate, probably does not have a statute because publishers have never pushed for it. The Illinois Press Association (IPA) reports that there has been little effort to push a retraction statute.

The only time it has been considered recently is when the Uniform Defamation Act was introduced in 1990 and 1989. The IPA opposed the Uniform Act but took the position that a retraction statute may be a good idea. The discussion never really went anywhere.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

1. NON-STATUTORY RETRACTION

2. WHY NO STATUTE?

3. PRIOR LEGISLATIVE ACTIVITY?

ILLINOIS: 2) The conventional wisdom among a number of publishers used to be that a retraction was an admission of liability and would only be used against you. Accordingly, our sense was that retractions used to be rare.

(Cont)

Today, retraction, clarification, or correction is more prevalent. For example, the Chicago Tribune has a full time Public Editor to deal with complaints about "accuracy, honesty and fair play." Media lawyers have also come to realize that retractions in cases where there is in fact an error are helpful in litigation. Several years ago an Illinois trial judge set aside a \$2 million verdict against Dow Jones ordering a new trial on damages in Crinkley v. Dow Jones, a case where there had been a next day retraction, and while the trial judge wrote no opinion, it is believed that the retraction was a factor in setting aside this large verdict.

KANSAS: If a retraction is published, it can be cited as evidence in mitigation of damages.

A retraction statute has apparently never been proposed.

Not known.

LOUISIANA: On an ad hoc basis. Cases hold that retraction is a "mitigating factor," i.e., reducing damages and tending to disprove ordinary malice.

Not known.

Not known.

MARYLAND: It is a factor to be considered in mitigation of damages.

There has been no push for such legislation, and no untoward trial results generally which would provide an incentive for such legislation.

Not known.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

1. NON-STATUTORY RETRACTION

2. WHY NO STATUTE?

3. PRIOR LEGISLATIVE ACTIVITY?

MISSOURI: There appears to be no case which discusses the effect of a retraction. Presumably, however, a retraction would be admissible into evidence to mitigate the damages suffered by the plaintiff. Missouri Rule of Civil Procedure 55.20 allows the defendant to assert in his answer "any mitigating circumstances admissible in evidence to reduce the amount of damages; and . . . he may give in evidence any mitigating circumstances."

Uncertain. However, to our knowledge there has never been any significant force from the media or the legal profession towards adoption of a statute.

Not known.

NEW HAMPSHIRE: In one case involving a retraction or correction, the defense argued that the correction, which the plaintiff conceded accurately reported his position, contained the same sting as the original article about which the plaintiff had complained. The jury rejected the argument and awarded plaintiff \$300,000 in damages. In the final analysis, the correction probably had no impact on liability or damages.

NEW MEXICO: Retraction may be considered as an issue for consideration of damages.

There has been no legislative support for such a bill.

Yes. It died in committee.

NEW YORK: Evidence of a full and complete retraction is admissible generally as evidence of good faith, but may be limited to the issue of punitive damages. Evidence of an insufficient retraction may be introduced to show bad faith and may aggravate compensatory damages. Failure to retract should not be evidence of malice, but some courts have held that it is.

Presumably because of insufficient support in the legislature and trial bar opposition.

Not known. However, efforts are underway in the Media Law Committee of the State Bar Association.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

1. NON-STATUTORY RETRACTION

2. WHY NO STATUTE?

3. PRIOR LEGISLATIVE ACTIVITY?

PENNSYLVANIA: Informally, as part of settlement discussions, or voluntarily when press entity feels it is justified.

Not known.

Not known.

RHODE ISLAND: There is no mandatory process; retractions are voluntary.

Not known.

Not known.

SOUTH CAROLINA: Retraction is a matter to be considered in mitigation only. See Rogers v. Florence Printing Co., 233 S.C. 567, 106 S.E. 2d 567 (1959) (Mitigation of punitive damages).

South Carolina is generally oriented to providing as many remedies as possible to claimants. A retraction would eliminate a long-standing remedy.

Not known.

TEXAS: A retraction may be shown in mitigation of damages, but it does not defeat a plaintiff's claim of libel or slander. Texas Civil Practice & Remedies Code Section 73.003.

Texas has had its statutory libel scheme since the turn of the century, with the last major change occurring in 1925. No retraction statute was sought at that time, and no major effort has been mounted to enact a retraction statute. It has not been considered a high priority item.

See No. 2.

VERMONT: The issue is governed by common law principles. The Vermont Supreme Court has never addressed the concept of retraction, either as a prerequisite to suit or as a factor bearing on liability. Without statutory directives, the Court would likely view retraction as a factor bearing on damages, at best.

There has probably been no lobbying effort made. Such "pre-suit" might get a chilly reception in the Vermont legislature, which is a "citizens" legislature with only two or three attorneys at present.

No.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

1. NON-STATUTORY RETRACTION

2. WHY NO STATUTE?

3. PRIOR LEGISLATIVE ACTIVITY?

WASHINGTON: Only one appellate decision, Coffman v. Spokane Chronicle Publishing Co., 65 Wash. 1, 117 P.596 (1911), addresses retraction in any depth. It stated in dicta:

When a newspaper has libeled a person the duty is imposed upon it to make a full and complete retraction. If it does so, it may plead and show such retraction in mitigation of damagesAn offer to the person libeled to publish any reasonable or truthful statement he may desire will not of itself constitute a correction of the wrong, nor will it deprive the libel party of his right to recover damages if he does not avail himself of the offer.

65 Wash. at 10, 117 P. at 600. Coffman rejected the defendant's contention that the plaintiff had a duty to demand a retraction, and a subsequent case, Carey v. Hearst Publications, Inc., 19 Wash. 2d 655, 662, 143 P.2d 857, 861 (1943), has cited Coffman with approval on the point.

So far as we are aware, the legislature has not given active consideration to a retraction statute within the last thirty years. Although it is hard to attribute reasons for this or any other legislative inaction, we can identify some reasons why the news media have not pressed for a retraction statute. First, the Washington Supreme Court has generally been quite receptive to the media's arguments for the need to limit defamation liability and damages to ensure that speech is protected. Second, punitive damages are not recoverable in Washington in defamation suits or any other type of lawsuit. As a result of these two factors, there has been relatively little exposure to defamation liability in Washington, and a retraction statute consequently has been a low legislative priority for Washington media.

Not known.

WYOMING: Based upon a review of applicable statutes and case law, the issue has not been directly addressed.

Not known.

Not known.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

Questions
4-5

Question 4:

How would you assess the current implications for your state's media in the absence of a statute, in terms of their correction or retraction practices?

Question 5:

If a statute containing provisions similar to those in Sections 13-15 were enacted in your state, how would such media practices, or the course of libel litigation, be changed?

ALASKA:

Many of the news organizations say they already "err" on the side of caution, at least where the integrity of the organization is not compromised, by printing a correction when a demand is made. It seems likely that passage of a retraction statute may lead to retractions in a few more marginal cases. There would be substantial benefits for the media in terms of minimizing exposure for potential damages, but there probably would be minimal effect in terms of correction or retraction practices. There was speculation on the part of a couple of editors that having a statute in place might embolden some of the more timid. However, the consensus -- including these editors -- was that behavior will continue to be shaped by the same forces at work now, ranging from professional ethics to fear of displeasing advertisers.

It is questionable whether media practices would be changed if there were a retraction statute, for the reasons noted above. As a practical matter, a number of news organizations would probably develop more routines for dealing with retraction and correction requests because the existence of the statute would probably spur the filing of more such requests. A number of editors or news directors anticipate that with a statute, there will be an increase in retraction demands by those unhappy with news coverage, without respect to merits. Libel litigation might be affected positively -- from the defense perspective -- particularly if the statute adopted contained a provision similar to §48a.1 of the California Civil Code with a self-executing deadline for making retraction demands.

ARKANSAS:

Most newspapers will print a correction or retraction of a factual error. Broadcast media are less likely to do so.

Few libel actions have been filed against media defendants in this state over the past several years. However, if a retraction statute such as the one described in § 13-15 were enacted, fewer libel lawsuits would be filed against media defendants.

DELAWARE:

Media will correct or retract when requested and if appropriate.

Would have little effect.

DISTRICT OF COLUMBIA:

The absence of any statutory or common law retraction procedures creates the potential for confusion regarding the employment of corrections and retractions. Decisions with respect to retractions are made with little basis to determine the impact that they might have on discouraging or terminating litigation or on mitigating damages.

A similar retraction statute -- particularly with the modifications set forth -- would seem to offer the media a means to minimize and defuse libel litigation. For example, a properly written retraction statute might afford media the opportunity to stave off litigation by recognizing the "implication" of certain publications without conceding that such an implication was intended or had been communicated.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

4. CURRENT NON-STATUTORY PRACTICE?

5. POTENTIAL IMPACT OF UDA?

<u>HAWAII:</u>	The decision to correct or retract should not be statutorily imposed.	There would be dramatic changes, as there are now no legal requirements, benefits, or deterrents with regard to deciding whether to retract.
<u>ILLINOIS:</u>	Our sense is that the media, at least the newspapers, are publishing clarifications and corrections more frequently.	A retraction statute would encourage corrections and clarifications and, if crafted properly, could provide needed guidance. If there is a limitation on pecuniary recovery in a retraction case, you will see more retractions and less litigation.
<u>KANSAS:</u>	The media in Kansas generally publish corrections/clarifications if warranted by the facts, and without overriding consideration of its potential litigation.	The media would probably publish a few more retractions than they do currently, in instances where they have previously considered a retraction unwarranted.
<u>LOUISIANA:</u>	Generally, the flexibility in handling corrections and retractions without statutory standards outweighs advantages of a retraction statute.	It would, in effect, require compliance with statutory standards for retraction for fear of getting stuck with attorneys' fees per Section 11.
<u>MARYLAND:</u>	Most responsible publishers in this state currently publish retractions without legislative incentive. However, a properly drafted retraction statute that leaves little room for judicial interpretation and for using a broad and ill-defined set of complaint allegations to escape the requirements of draft Section 13(a) will prove beneficial in encouraging quick resolution, and limiting damages on both sides.	See (4). However, the complaint alternative in Section 13(b) should be refined so that the allegations of the Complaint comply with the particulars set forth 13(a).

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

4. CURRENT NON-STATUTORY PRACTICE?

MISSOURI:

As far as editorial policies of the media, the absence of a retraction statute seems to have little effect. Most of our media clients are professional and expeditious in handling requests for retraction, realizing the important journalistic and legal implications for promptly correcting any errors. However, the absence of a retraction statute means that in many instances, the first awareness that our media clients have of any inaccuracy is after the filing of a lawsuit. Given the length of the statute of limitations, there is often little that can be done in the way of mitigating damages at that point in time. For that reason, we believe that any retraction request requirement should be mandatory. (See #5).

5. POTENTIAL IMPACT OF UDA?

These provisions from the proposed statute do not seem to require that a retraction request be made and do not set forth a time frame in which the request for retraction must be made. Accordingly, few of the concerns addressed in response to question #4 above, would be resolved. We feel that any proposed Retraction Statute must include provisions mandating a request for retraction within a reasonable time (i.e., 30 days), and in the event such a request is not made, the plaintiff either should be precluded from pursuing a defamation action altogether or limited in the types of damages which he or she can receive.

Specifically, a plaintiff not requesting a retraction should be limited to the recovery of special damages (i.e., out of pocket damages actually proven to have occurred as a direct and proximate result of the alleged defamation). This would provide a nonrequesting plaintiff with a remedy for actual economic loss resulting from a defamation, but would limit his remedies for intangible loss such as emotional distress, mental anguish, etc. arising from the defamation. It is reasonable to limit such damages where plaintiff has not requested a retraction because it is reasonable to conclude that a plaintiff emotionally distressed by a defamation would attempt to correct the situation by way of a request for a retraction. If he fails to do so, then he should be consequently limited in the damages which he can seek.

NEW HAMPSHIRE: The absence of a retraction statute has probably not had a significant impact on the New Hampshire media. They follow the rule that if their original article is incorrect and they become aware of the error, they will correct it without regard to potential legal consequences, because they believe it is required by good journalistic practices.

For the reasons stated in the preceding answer, the adoption of the model retraction statute would not have a material impact on New Hampshire media. They will continue to publish retractions for journalistic, not legal, considerations.

On the other hand, adoption of the model retraction statute would have a material impact on trial of libel cases in New Hampshire because it would significantly alter, and curtail, the relief to which a libel plaintiff is entitled. Indeed, it might even discourage the filing of libel actions where the retraction was published almost immediately after the original article, and the plaintiff could not show special damages.

LDRC RETRACTION SURVEY - PART II - RESPONSES (Continued)

4. CURRENT NON-STATUTORY PRACTICE?

5. POTENTIAL IMPACT OF UDA?

NEW MEXICO: There is no real incentive to retract.

It would significantly reduce the amount of libel litigation.

NEW YORK: A retraction statute would be desirable, because it would limit a plaintiff's recovery to special damages where a retraction is published or broadcast. In practice, many retractions are negotiated in exchange for a release or agreement not to sue. However, retractions now mitigate damage claims, even in the absence of a statute.

The media would be forced to decide promptly whether to publish or broadcast a retraction. Broadcasters and daily newspapers would benefit, but monthly publications and book publishers would find it difficult to comply with the time limit and the "same audience" provisions.

PENNSYLVANIA: Lack of statute has probably not had any effect on retraction practices.

Some media might feel a greater incentive to retract to escape the fears of punitive damages, but on the whole, there probably would be not much of a change.

RHODE ISLAND: Retractions, corrections or clarifications are published when warranted and they very often satisfy the complainant.

Not known.

SOUTH CAROLINA: Generally speaking both the print and broadcast media will provide either a correction or a retraction of improper material. Such is only useful as mitigation of punitive damages.

Media practices probably would not be changed, however it would affect the right of a potential plaintiff to bring an action. That would be a significant change.

TEXAS: The lack of a retraction statute does not affect the correction or retraction policies of most of the state's media. The practice of most media is to print a correction or a retraction where it is shown that a mistake has been made. Sometimes those are done with the approval of the potential plaintiff and sometimes not.

If a statute containing Sections 13-15 were enacted, it would have the potential to reduce libel claims. The media in Texas have generally been willing to correct errors when they occur and to make it clear where implications may arise that were not intended. A provision that would allow a retraction to foreclose a libel claim would be an improvement because it would allow the media to foreclose claims instead of just mitigating damages. It might also encourage retractions or corrections where they might not be made today for fear of being considered an admission.

LORC RETRACTION SURVEY - PART II - RESPONSES (Continued)

4. CURRENT NON-STATUTORY PRACTICE?

5. POTENTIAL IMPACT OF UDA?

TEXAS:

(Cont.)

For the retraction statute to be effective, however, it would have to clearly apply to claims for false light invasion of privacy.

One of the dangers of such a statute, however, may be the temptation to back off stories or provide a retraction to the plaintiff where no false statement or false implication had occurred simply to avoid the cost of a libel suit. Despite these dangers, however, such a retraction statute would probably benefit potential libel defendants in Texas.

VERMONT:

Clearly, the media would be assisted by a retraction statute. Presently, there is no requirement that a retraction be sought preliminary to bringing suit.

It would be beneficial. It would reduce libel litigation and restrict damages.

WASHINGTON:

The absence of a retraction statute has little effect on the correction or retraction practices of the Washington media. The news media as a rule want to be sure that their publications are accurate and fair, and therefore are quick to correct any incorrect or misleading statements, even when not defamatory, in the interest of fulfilling their obligation of informing the public. The absence of a retraction statute probably does make it more difficult for a media outlet to establish the extent to which a correction or retraction has mitigated the plaintiff's damages.

Enactment of Sections 13-15 would probably not affect the frequency with which the Washington media publish corrections or retractions in the absence of a statute. It would, however, probably change the course of libel litigation for several reasons.

First, Section 13(a) would require the plaintiff to specify exactly what he or she objects to in the publication, something that under current practice sometimes is not clear from a plaintiff's demand for retraction. Second, Section 15 would provide greater certainty as to when a retraction is sufficient to mitigate damages.

WYOMING:

The effects of retraction will be determined pursuant to common law.

The enactment of these provisions would obviously provide a means of limiting exposure for libel beyond those available under common law.

LDRC RETRACTION SURVEY - PART III - RESPONSES

Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Alabama (S)	Unclear	YES, an improvement: 1) Provides a detailed notification procedure in §13A. 2) Longer period of time to publish retraction. 3) Not as burdensome with regard to positioning & prominence of retraction. 4) §15's description of sufficiency of retraction, definite improvement over Alabama statute.	1) Make requester include wording of requested retraction.	NO	MAYBE, Media groups in Alabama have been historically reluctant to ask for legislation. However model act, seems reasonable and could have a reasonable chance of passage.
Alaska (NS)	CON's: A good retraction statute would give complainants a stronger incentive than §'s 13-15 to request retraction. A statute that incorporates a provision like Cal. §48a1 with superior provisions of the ULC draft.	YES, an improvement. 1) The availability of a retraction statute, in the form of §13-15 would be an improvement in cases where there is any potential exposure for damages & expenses beyond litigation. NO, not an improvement. 2) If it limits availability of other defenses it may be a step backward, not an improvement.	1) §14 is unclear, need to clarify how proposed retraction statute would fit into any libel suit. 2) Without UDA the language of §14 is inadequate & confusing. It should include within its limitations any related tort that can be justified. 3) Include a deadline for making retraction demand. 4) §13a should be changed to require complainant to lay out their "side of the story" 5) Introduce more objective standards that can be resolved by the court on a motion. 6) Maybe, introduce provisions for obtaining benefits of retraction statute while preserving confidentiality of the source.	YES, May affect Alaska's prevailing party attorney fee rule (Alaska R.Civ. p.82). There is also usually some variation or refinement of a "tort reform" bill which may raise ? about coalition backing such a bill.	NO, no great confidence that retraction statute would pass Alaska legislature.

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Arizona (S)	PRO's: Before the Arizona retraction statute was declared unconstitutional, it gave adequate advance notice of potential libel claims and provided effective remedy for prompt correction.	YES, an improvement. 1) Believes § 13-15 to be a reasonable approach to the problem. However, it could not succeed in Arizona.	No response to Ques. 3	YES, it could not succeed in Arizona without constitutional amendment.	NO, a statute containing provisions similar to those of § 13-15 of the Uniform Laws Commission would not be adopted in Arizona.
Arkansas (NS)	No response for Part III of the survey.	No response for Part III of the survey.	No response for Part III of the survey.	No response for Part III of the survey.	No response for Part III of the survey.
California (S)	PRO's: URA is an improvement over Cal. law to the extent that it is applicable to all defamatory communications. CON's: Otherwise, it is not an improvement over Cal. law.	NO, not an improvement. 1) URA should specify who must be served with the correction demand. 2) There should also be a limited period in which to demand a correction.	1) Make it clear that whether a correction demand was adequate is a question of law for a judge not a jury to decide.	YES, it would require repeal of Cal. Civ. Code. § 48a.	Doubtful, the URA is unlikely to receive much media support in California.
Colorado (NS)	CON's: Retraction demands as prescribed by § 13 when directed at an investigative piece, do not readily lend themselves to a meaningful reinvestigation. A request for retraction should also require a complete statement of the correct facts as known to the requestor and the names & addresses & tel. #'s of persons known to the requestor who can confirm facts as claimed.	YES, an improvement. 1) They would improve current practice because they would more precisely define the damage mitigating effects of a retraction.	1) § 14 should provide that the limitation of remedies applies not only in an action against a defendant who has published a retraction, but in an action in which the plaintiff has failed to provide an adequate request.	NO	YES
Connecticut (S)	PRO's: It is an improvement. CON's: It requires greater specificity on behalf of the requestor and is a condition precedent to the institution of a suit.	NO, not an improvement. 1) § 13(b) is a step backward, because it permits institution of suit to constitute a request for retraction.	See Response to Ques. 2.	YES, It would require amendment or repeal of General Statutes § 52-237.	YES

LDRC RETRACTION SURVEY - PART III - RESPONSES

Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Delaware (NS)	CON's: § 13-15 would not be helpful.	NO, not an improvement. 1) Step backwards or sideways.	1) Must require retraction request within 30 days of notice of alleged libel or of publication. 2) Lawsuit should not constitute a request for retraction.	NO	MAYBE
D.C. (NS)	PRO's: A uniform retraction statute would represent a positive development and may introduce some level of clarity.	YES	1) Should not contain references to the impact that retractions would have on other proposed uniform defamation laws. 2) Proposed statute should make a retraction demand an absolute precondition to bringing defamation litigation. 3) Statute should require a reasonable amount of specificity for the retraction demand itself. 4) In connection with No. 3 above it should require the complainant to provide reasonably sufficient evidence of falsity as a means of reducing potential abuses. 5) Statute should provide a means for publisher to invoke the protection of that statute by publishing a retraction disclaiming an intention to communicate the alleged implication of statements in question. 6) Statute should limit recovery from actual pecuniary harm.	NO ANSWER	YES, A retraction statute with widespread media support would also have a reasonable chance of success.

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Florida (S)	NO ANSWER	<p>YES, an improvement.</p> <p>1) More time to retract.</p> <p>2) Pecuniary loss seems (unclear) than compensating damages.</p> <p>NO, not an improvement.</p> <p>1) Recognizes libel by implication.</p> <p>2) Allows suit as long as any demand is made.</p>	<p>1) Eliminate libel by implication.</p> <p>2) Eliminate all subjective standards for retractions.</p> <p>3) Do not allow summons & complaint to suffice for notice.</p> <p>4) Define pecuniary loss to exclude emotional distress & general reputational injury.</p>	YES, it would require repeal of Section 770.	MAYBE, although Florida already has retraction statute, and would therefore make it a low priority.
Georgia (S)	See Responses to Ques. 2.	<p>YES, an improvement.</p> <p>1) § 15 is a plus in its treatment of implication and innuendo claims as well as its provision for a 30-day response time.</p> <p>NO, not an improvement.</p> <p>1) § 13 does not require a retraction request prior to suit.</p> <p>2) § 14 should be expanded to prevent recovery of punitive damages altogether.</p> <p>3) § 14 by limiting recovery to pre-retraction damages may discourage timely retraction requests.</p> <p>4) § 15 inadequately recognizes publications that do not cycle within 30-day period.</p>	<p>1) To be consistent with § 15, § 13 should require retraction demands be made at least 30-45 days prior to suit.</p> <p>2) Require a request within 30 days of publication.</p> <p>3) See Responses to Ques. 2 re: §§ 14 & 15.</p>	YES, it would require repeal of existing Georgia retraction statutes.	YES. Note: When the Georgia Press Assoc. first attempted to extend the response period in the Georgia print retraction statute from 3 to 7 days, it had to be killed after the House voted to add a provision making publication of unsigned editorials a criminal offense.
Hawaii (NS)	CON's: Would prefer no statute.	NO, not an improvement.	1) By killing it.	NO	UNSURE
Idaho (S)	CON's: § 13b gives plaintiff too much time to make a retraction demand compared with Illinois which requires demand within 20 days.	NO, not an improvement.	1) By eliminating Section 3b and including in Section 13b a time limit within which a request for retraction must be made.	NO	YES

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Illinois (NS)	See Responses to Ques. 2.	YES, an improvement. 1) § 14's limitation of damages, anything that prohibits presumed or punitive damages is a step forward. 2) § 15's specification of sufficient retraction is helpful.	Would like to see entire current draft of Uniform Act before commenting. Concern that if ULC retraction statute is pushed, the issue of Uniform Act will be raised again. Uniform Act several years ago was heavily slanted against Media and very pro-plaintiff.	NO	NO, effort should be made, but plaintiff's bar would kill it. Issue when previously raised got nowhere.
Indiana (S)	CON's: Under Indiana statute, complaint is not deemed to be a retraction demand, and thus possibility of punitive damages is not revived when plaintiff who has failed to make a retraction demand files suit. § 13 would seem to do that. PRO's: Time limits in § 15 are more expensive and therefore preferable to Indiana statute.	NO, not an improvement. 1) § 13 should be amended to require a specification of the factual statements alleged to be false and defamatory and that the statements be corrected with reference to the true facts. 2) See Responses to Ques. 1.	See Responses to Ques. 1.	NO	YES
Iowa (S)	PRO's: Overall, a slight improvement.	YES, an improvement. 1) § 13(a) is an improvement, except for § 3 as noted below. NO, not an improvement. 1) § 14 should be limited to the provisions on actions for damages. 2) § 15(b)(2)(iii) may contradict judicially created reporter's privilege concerning confidential sources. 3) § 3 of 13(a) may appear to recognize defamation by implication. 4) § 13(b) eliminates the chance for dialogue, and discourages early retraction requests.	1) Eliminate § 13(c)(3) after "specific circumstances giving rise to it." 2) Eliminate § 13(b). 3) Limit § 14 to provisions in actions for damages. 4) Add provision for setting a deadline for sending retraction demand. 5) Eliminate requirement in § 15 that retraction identify the "other person" to whom defamatory statement is attributed.	YES, would need to supersede the existing retraction provisions of Iowa Code § 659 and comply with Iowa Supreme Court Opinion in Jones.	YES, in the Senate. MAYBE, in the House.

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Kansas (NS)	PRO's: In general, it offers a reasonably good compromise between competing interests. CON's: Wording is vague and ambiguous.	YES, an improvement. 1) Effective in avoiding litigation where a true mistake has been made. NO, not an improvement. 1) Complicates libel litigation by creating new issues such as sufficiency of the retraction demand and nature of damages included within "pecuniary loss."	1) Reasonable time should be specified within which a retraction request must be received. 2) Sufficient retraction request should be precondition to lawsuit. 3) Sufficiency should first be decided by a judge. 4) Claims should be limited to claims sufficiently enumerated on the request.	NO.	Unknown. Does not believe the media in Kansas currently feel a need for retraction statute.
Kentucky (S)	PRO's: In light of experiences with Kentucky statutes, would favorably evaluate § 13-15 from an overall perspective.	YES, an improvement. 1) Proposed precondition provisions 2) Notice provisions 3) Limitation or cut-off of damages provisions.	No specific suggestions.	See prior responses	Yes, passage of § 13-15 would appear to be feasible in Kentucky.
Louisiana (S)	CON's: Favors Louisiana's non-statutory approach.	NO, not an improvement. 1) Threat of attorney's fee award if statute isn't complied with.	1) Eliminate linkage to attorney's fees. 2) Clarify that implied defamation isn't necessarily actionable under state law. 3) Require retraction demand to state the alleged truth.	YES, attorney's fees not currently recoverable by plaintiffs.	MAYBE, Depends on revisions.
Maine (S)	CON's: Not significantly different from what Maine's statute does with substantially less verbiage.	YES, an improvement. 1) Specifically cuts off claim for pecuniary loss after the date of the retraction. NO, not an improvement. 1) Above cut off may encourage delay in seeking the retraction.	1) Add some incentive (coercion) to require a potential plaintiff to give notice earlier than the statute of limitations.	Not very much substantially.	MAYBE, support by media groups would be Kiss of Death. However, if brought forward by the ULC it might pass.

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Maryland (NS)	<p>PRO's: It would be helpful.</p> <p>CON's: Not urgently needed.</p>	<p>YES, an improvement.</p> <p>1) A properly drafted retraction statute that leaves little room for judicial interpretation and for using a broad & ill defined set of complaint allegations to escape requirements of draft § 13(a) will encourage quick resolution and limit damages on both sides.</p> <p>NO, not an improvement.</p> <p>1) Complaint alternative in § 13(b) should be refined so allegations of the Complaint comply with particulars set forth in 13(a).</p>	<p>1) Refine § 13(b) so allegations of the Complaint comply with particulars set forth in 13(a).</p> <p>2) Clear explanation regarding punitive damages.</p>	<p>YES, Maryland has enacted cap on compensatory damages for non-economic injury which must be reconciled with the terms of the Act.</p>	<p>Unknown.</p>
Massachusetts (S)	<p>No Response for Part III of the survey.</p>	<p>No Response for Part III of the survey.</p>	<p>No Response for Part III of the survey.</p>	<p>No Response for Part III of the survey.</p>	<p>No Response for Part III of the survey.</p>
Michigan (S)	<p>PRO's: It contains specific requirements as to demand for retraction itself.</p> <p>CON's: Demands for retractions are sometimes vague and lead to problems for both potential plaintiff and the publisher.</p>	<p>See Response to Ques. 1.</p>	<p>1) Ideally, there should be a relatively short time limitation on demand for retraction.</p>	<p>NO.</p>	<p>Current libel statute is acceptable. Inviting Michigan legislature to revisit this issue raises the possibility that any amendment actually approved by the legislature will be different from proposed bill.</p>

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non- statutory issue of retraction	Ques. 2: To what extent are § 13- 15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Minnesota (S)	PRO's: Overall, a slight improvement.	YES, an improvement. 1) § 13(a), except for § 3 as noted below. NO, not an improvement. 1) § 14 should be limited to the provisions on actions for damages. 2) § 15(b)(2) (iii) may contradict the Shield statute where an alleged defamatory statement is attributed to a confidential source. 3) § 3 of 13(a) may appear to recognize defamation by implication. 4) § 13(b) eliminates the change for dialogue, and discourages early retraction requested.	1) Eliminate § 13(c)(3) after "specific circumstances giving rise to it." 2) Eliminate § 13(b) 3) Limit § 13 to provisions in actions for damages 4) Add provision for setting a deadline for sending retraction demand. 5) Eliminate requirement in § 15 that retraction identify the "other person" to whom defamatory statement is attributed.	NO.	YES.

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Mississippi (S)	CON's: §'s 13-15 implicitly recognize certain substantive torts of defamation that do not exist under Miss. laws e.g. libel by innuendo and libel by implication. Also, submission of a written retraction request to a media defendant should be a condition precedent to filing a defamation suit. To do otherwise discourages & inhibits informal resolution.	NO, not an improvement. 1) § 13(a)(2) should read "article, broadcast or telecast" instead of "publication." 2) § 13(a)(3): Miss. does not recognize libel by implication or innuendo. What is libel by sarcasm or conduct? 3) § 13(a)(4) seems redundant of § 13(a)(2). 4) § 13(b): The written retraction request should be a condition precedent to filing of a suit. 5) § 14 should explicitly state that damages for injury to reputation and for mental & emotional distress and punitive damages are not recoverable of retraction is timely and sufficient. Phrase "damages under Section 9" should read "defamation". 6) § 15(a): 30 days is too long. 7) § 15(b)(1) reads as though retraction process is not also available to the broadcast media. 8) § 15(b)(2)(iii): See comments about § 13(a)(3). 9) § 15(b)(2)(iii) encroaches on common law privileges available to a media defendants.	1) Remove substantive torts from the statute. 2) Submitting a written retraction request should be a condition precedent to filing a defamation suit. 3) Statute should clearly apply to broadcasters as well as publishers. 4) 30 day response period should be shortened. 5) No retraction of statements protected by common law privileges.	YES, it would require repeal of present retraction statute.	NO, serious doubts as presently drafted.

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Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Missouri (NS)	CON's: Proposed statute does not require that a retraction request be made and does not set a time frame in which request for retraction must be made. A plaintiff not requesting a retraction should be limited to recovery of special damages (e.g., out-of-pocket damages).	NO, not an improvement. 1) Provides no incentive for potential plaintiff to request a retraction. Sole benefit is that it limits damages when a retraction is requested and printed. However, in our experience, persons who request and receive retractions are not likely to pursue a libel claim.	1) Require plaintiff to seek a retraction within a reasonable time. 2) § 13(a)(4) should require that plaintiff specify precisely the details of the alleged defamatory material and specify how it is false. 3) If plaintiff fails to request a retraction within a reasonable time, the damages should be limited to special damages. 4) If plaintiff requested a retraction and it was made, no post retraction damages should be allowed, but he should be allowed to recover all other types of damages from the time of defamation to retraction. 5) If no retraction is published, plaintiff should be permitted full gamut of damages.	NO.	Unknown, would probably not recommend clients support the statute as presently stated.
Montana (S)	CON's: Provisions of 13(b) would discourage pre-litigation correction. Also, a defamation claimant could sit on his rights for statute of limitations, depriving the defendant from mitigating plaintiff's loss.	See Ques. 1	1) Eliminate § 13(b). 2) Put time limit on requests for corrections.	YES.	NO, existing Montana act, in most cases, is more effective than § 13-15.
Nebraska (S)	CON's: Too lenient as to timing of request - "sue first," that leaves the demand for retraction.	NO, not an improvement. 1) Backward - the "vindication" suit is <u>terrible</u> . The lax timing requirement hurts.	No Response to Ques. 3.	YES, "vindication" reference would. Can defend privacy actions with retraction statute, not sure if ULC would handle those.	YES, but we (media) would not support it.

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Nevada (S)	PRO's: An improvement only to the extent that it applies to all defamatory communications, not just those that are published or broadcast.	NO, not an improvement. 1) URA fails to specify who must be served with the correction demand. 2) URA contains no time limit to serve correction demand. 3) Does not make clear that adequacy of a correction demand is a question of law for court to decide, not a jury.	See Responses to Ques. 2.	YES, it would require repeal of Nevada Revised Statutes §§ 46.336 - .338	NO, Doubtful. URA is unlikely to receive much media support in Nevada because it is not really an improvement over Nevada law. It is likely to be vigorously opposed by the plaintiff's trial bar.
New Hampshire (NS)	CON's: Does not believe absence of a retraction statute has had a significant impact on N.H. media which he represents.	Unclear. Respondent replies "They would be an improvement" and refers you to Part II, Ques. 5 which in part reads: "I do not believe the adoption of the model retraction statute would have a material impact on N.H. media.	1) Make clear that it applies to all publishers of defamatory material. 2) § 13(a)(4) should be amended to require the retraction requester to specify reasons why they claim statement is false. 3) § 14's reference to "pecuniary loss" may lead to unnecessary litigation if its meaning varies from state to state and from state to federal law.	NO	Unsure.
New Jersey (S)	PRO's: It is certainly preferable to the existing statute in N.J.	YES, an improvement. 1) §'s 13-15 more effectively limit actual damages, and create a greater incentive for compliance.	1) A demand for retraction should be a prerequisite to suit. 2) A demand for retraction should be required to be made within a defined period after publication.	NO, other than repeal of N.J.S.A. 2A:43-1.	Unsure, NJ has active trial lawyers lobby, active in expanding tort causes of action.
New Mexico (NS)	PRO's: It appears workable.	YES, an improvement. 1) No ability at present time to prevent libel suits.	It's fine.	NO	NO, probably not.

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New York (NS)	CON's: Some litigation will still occur over sufficiency of the retraction. PRO's: Requirement that defamatory matter be described with particularity in the demand is especially good.	YES, an improvement. 1) More retractions will continue to be negotiated. 2) In questionable cases, more retractions will be broadcast or published than they are today.	1) It would be desirable, yet unlikely to provide that a full and fair retraction extinguishes the right to sue for damages.	NO	Hopefully, recent experience with legislature authorizing cameras in the courts, suggests that the legislature views granting additional rights to media somewhat negatively.
North Carolina (S)	PRO's: They are straightforward, and practical.	YES, an improvement. 1) 30 Day period after notice. 2) Provision of "sufficiency" establishes adequacy of retraction. 3) Eliminates cumbersome "apology" language, as well as "good faith" and "reasonable grounds for believing" language. 4) Deals with "implied" statements of fact and republication of defamatory statements by third persons.	No response at this time.	No response at this time.	Unsure. N.C. Press Assoc. has been reluctant in recent years to tinker with laws of interest to the press.
North Dakota (S)	PRO's: § 13-15 are generally improvements over current retraction statutes.	YES, an improvement. 1) Eliminates the same location language. 2) Eliminates special treatment for politicians. 3) Eliminates specific days after publication printing requirements. 4) Limits damages in cases of retraction.	1) Eliminate provisions allowing filing of complaint to serve as notice of request for retraction.	YES, would have to repeal current retraction statute.	YES, believes it would be feasible in N.D.
Ohio (S)	PRO's: Would favorably evaluate § 13-15 from an overall perspective.	YES, an improvement. 1) Proposed precondition provisions. 2) Notice provisions, and 3) Limitation or cut-off of damages provision.	No specific suggestions.	See prior responses.	YES; appears to be feasible in Ohio.

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Oklahoma (S)	PRO's: Oklahoma's retraction statutes are not very useful, therefore proposed act would be an improvement.	YES, an improvement. 1) Requires requester to be specific about what is allegedly false. 2) It effectively cuts off damages, where Oklahoma's statutes don't.	1) Language needs to be revised so that it is a free standing act rather than part of larger act, e.g. eliminate reference in § 14 to vindication actions. 2) § 13(b) should be changed to prevent commencement of any action unless retraction demand is made and refused. 3) If retraction is published and requester believes it inadequate, he should be required to give publisher notice and additional opportunity to retract before filing suit.	NO, other than repeal of existing statutes.	YES, Oklahoma has readily adopted numerous uniform acts.
Oregon (S)	CON's: § 13-15 are a step backwards from Oregon's current statute. Proposed Act permits complaint to serve as request for retraction. Does not provide an incentive for demanding a retraction prior to filing a lawsuit. § 14 limits plaintiff's damages to pecuniary loss. This may encourage plaintiff to elect on holding off on demand as long as possible to build his pecuniary damages. Also, permitting plaintiff to demand a retraction by filing a complaint permits plaintiff to maximize the publicity attendant upon filing a complaint.	NO, not an improvement. See Responses to Ques. 2.	1) Delete § 13(b). 2) Amend § 13(b) to require request for a retraction to be submitted within 20 or 30 days after victim becomes aware of defamation. 3) Alternatively, amend § 14 to provide that if plaintiff has not demanded retraction within 20 or 30 days after becoming aware of defamatory statement, all damages are cut off until demand is made and no outstanding retraction is published.	YES, would require changes in Oregon Rules of Civil Procedure to the extent that a retraction demand contained in the complaint suspends the requirement of filing an answer.	Unsure, because media groups would not likely support § 13-15 when they weaken existing law. Yet, if they did support it, there is a reasonable chance it could be enacted.

LDRC RETRACTION SURVEY - PART III - RESPONSES

Ques. 1-5	Ques. 1: Evaluate § 13-15 in light of the experience with retraction statutes or non-statutory issue of retraction	Ques. 2: To what extent are § 13-15 an improvement or not, from the viewpoint of your current practice?	Ques. 3: How could § 13-15 be improved from your point of view?	Ques. 4: Would implementation of § 13-15 require any changes in your state's law?	Ques. 5: If the ULC & Media groups support § 13-15, as currently drafted or appropriately revised, would passage be feasible in your state?
Pennsylvania (NS)	PRO's: Affords protection from punitive damages. CON's: Need work.	YES, an improvement. 1) The prohibition of punitive damages would deter lawsuits after retractions have been made.	1) Require retraction prior to filing suit, rather than permitting complaint to serve as retraction demand. 2) Clarify what constitutes a sufficient retraction. 3) Define "pecuniary loss" in § 14.	NO	NO
Rhode Island (NS)	PRO's: seems fair and balanced.	No, not an improvement. 1) Not sure that formalizing the process will change anything. 2) The burden of attorney's fees should not be added when a request is refused.	1) The requester should be required to state the basis for the claim that the statement of issue is false.	No.	Hard to predict.
South Carolina (NS)	The adoption of § 13-15 would significantly alter current practice in S.C.	YES, an improvement. 1) They could potentially eliminate many claims which are now being made.	They are adequate.	NO. However, they would necessitate changes in practice (i.e. inability to initiate claims).	Probably not.
South Dakota (S)	CON's: Retraction has not been much of an issue. PRO's: Improvement in terms of giving lawyer something workable and functional.	YES, an improvement. 1) Provides specificity in all aspects of law.	No response.	YES, it would replace SDCL 20-11-7 and SDCL 20-11-8.	NO, I sincerely doubt it.

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Tennessee (S)	CON's: § 13 would lessen the ameliorative impact of retraction statutes that require notice to be given to the publisher prior to the institution of suit. The Act should encourage the procedure of notice prior to suit, and should plainly state it. § 14 is unclear in the use of "pecuniary loss."	Yes, an improvement 1) § 14 provides some additional protection if pecuniary loss means economic loss only, and serves to cut off damage occurring after correction. 2) § 15 provides relief in that it would do away with Tennessee's "front pego" placement requirements for corrections. No, not an improvement 1) Step backward from Tennessee practice because it does not require notice as a condition precedent to maintenance of any part of plaintiff's claim.	1. Statute needs to require notice prior to institution of suit.	No	The politics of this type of proposal are not readily ascertainable.
Texas (S)	PRO's: § 13-15 would provide media new tool to avoid significant expense of defending libel actions. A statute that would foreclose claims based on retracted statements would be a substantial statement.	YES, an improvement. See response to Ques. 1.	1) Make it clear that § 13-15 would apply to false light invasion of privacy claims as well.	YES, minor changes in Chap. 73 of the Texas Civil Practices and Remedies Code to reflect influence of § 13-15.	YES
Utah (S)	PRO's: Would be preferable to existing statute.	YES, an improvement. 1) In terms of damages limitations and time provided for retracting.	1) Make retraction request a condition precedent to filing suit. 2) Require retraction demand to be more timely. Otherwise, plaintiff could strategically wait on retraction demand to be in better position to prove damage.	NO	YES
Vermont (NS)	No Response for Part III of the survey.	No Response for Part III of the survey.	No Response for Part III of the survey.	No Response for Part III of the survey.	No Response for Part III of the survey.

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Virginia (S)	CON's: Not had much experience with legal ramifications of retraction. Will statute encourage unfounded requests?	YES, an improvement. 1) Cutting off damages other than pecuniary loss. NO, not an improvement. 1) § 13-14 seems to encourage plaintiffs to wait until last minute to bring suit.	1) Delete § 13(b). 2) Impose time after discovering the defamation within which retraction must be requested.	NO	NO, unlikely, influence of plaintiffs' bar is such that a discovery deposition cannot be used to support a motion for summary judgment.
Washington (S)	PRO's: If they can be enacted without modification, they would be an improvement over current practice.	YES, an improvement. 1) § 13 requires specificity in request for retraction, and provides complaint be deemed a request. 2) § 14 provides greater mitigation of damages. 3) § 15 provides guidance as to what constitutes sufficient retraction.	No suggestions at this time.	NO	YES, however legislature may amend or add language of a proposed uniform law.
West Virginia (S)	PRO's: Requirement that a retraction be sought as a precondition to suit would be useful.	See Response to Ques. 1.	No comment.	NO	YES
Wisconsin (S)	CON's: § 13-15 carelessly uses a number of ambiguous terms and reflect a number of tradeoffs which, in my judgment, unnecessarily penalize both sides of typical defamation dispute.	NO, not an improvement. 1) § 13(a) is a step backward because it does not require defamation claimant to identify what the true facts are. 2) § 13(b) encourages claimant to file a complaint in advance of a retraction demand, and allows the complaint to serve as the retraction demand. 3) § 14 appears to eliminate any opportunity to recover general damages if the publisher publishes an appropriate retraction.	See Responses to Ques. 2	YES, it would require cancellation of Section 895.05(2) Wis. State.	NO

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Wyoming (NS)	<p>PRO's: The statutes create retraction defenses not generally available under common law.</p> <p>CON's: Libel actions have not been a significant source of litigation in this state.</p>	<p>YES, an improvement.</p> <p>1) The proposed provisions would simplify the defense of and reduce exposure in those libel actions which do arise.</p>	<p>The Sections as drafted are adequate.</p>	<p>NO</p>	<p>YES</p>