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LDRC Libel Defense Resource Center

LIBELLETTER

March 1997

In This Issue . . .

First Amendment Validates Newsroom Ban On Outside Political Activity

By P. Cameron DeVore
Gregory J. Kopta

On February 20, 1997, the Washington State Supreme Court ruled 5-4 that the First Amendment protects a newspaper's ability to ban high-profile outside political activity by reporters in the interest of maintaining the objectivity of its news coverage and its editorial credibility.

In *Nelson v. McClatchy Newspapers, Inc.*, ___ Wn.2d ___ (1997), the court affirmed a trial court dismissal of a reporter's challenge to her reassignment from an education beat to a copy editor position at the News Tribune in Tacoma. The newspaper had taken this action because the reporter actively and visibly campaigned for a gay rights initiative and other political causes and refused to reduce her activism. The reporter then sought to compel the newspaper to return

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$222 Million Awarded Against Wall Street Journal
Libel Verdict Is Highest Ever

On March 20 a federal jury sitting in Houston, TX, awarded over $222 million to a brokerage house that claimed a 1993 *Wall Street Journal* article contained falsehoods and helped drive it out of business.

Punitive damages make up $200,020,000 of the award, $200 million of which was assessed against Dow Jones & Co., with the remaining $20,000 to be paid by reporter Laura Jereski.

In addition, jury awarded the plaintiffs $22.7 million in actual damages, which alone would have placed seventh on LDRC's list of highest media libel verdicts. As it stands, the $222 million award far outdistances the $58 million award in *Feazell v. A.H. Belo Corp.*, another Texas case, which had been the previous highest award.

Plaintiffs alleged that a October 1993 article entitled, "Regulators Study Texas Securities Firm And Its Louisiana Pension Fund Trades," caused numerous

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Please Note . . .

Enclosed with this month's LibelLetter are:

- **Litigation Logs to be filled out and sent back to LDRC**
- **The 1997 DCS Directory**

LDRC To Honor Fred W. Friendly With the William J. Brennan, Jr. Defense of Freedom Award

LDRC is extremely proud to announce that the 1997 William J. Brennan, Jr. Defense of Freedom Award will be given to Fred W. Friendly. Mr. Friendly will be honored at the LDRC Fifteenth Annual Dinner on Wednesday, November 12, 1997 at the Waldorf Astoria in New York City. The evening's activities will include a "Fred Friendly Seminar" -- the extraordinary format that uses the Socratic Method to compel participants to face complex and challenging situations. Charles Nesson, Professor at Harvard Law School, has agreed to moderate. These Seminars, which Mr.

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Disclosure of Confidential Source Denied In Libel Suit Over Report On Militia Movement

Summary Judgment Granted For Defendant

In a libel and false light suit brought by the co-founder of a militia group against the Southern Poverty Law Center, a federal district court in Michigan denied disclosure of a confidential source used in the Center's report on racism in the nationwide militia movement. *See Southwell v. Southern Poverty Law Center*, No. 1:95-CV-444, 1996 U.S. Dist. LEXIS 19860 (W.D. Mich., Dec. 30, 1996) (to be reported at 949 F. Supp. 1303).

The court balanced, among other factors, the threat of physical harm to the source and impairment of the ability of the defendant to continue gathering information on underground groups against the "total lack of concrete evidence" provided by the plaintiff that the identity of the source would provide persuasive evidence on the issue of actual malice.

While the Sixth Circuit has yet to acknowledge a reporters privilege under the First Amendment, the court reached out to precident from other circuits and from Michigan law to support its position.

In addition to vacating a magistrate's order to disclose the identify of the confidential source, U.S. District Court Judge David W. McKeague also granted summary judgment on both the libel and false light claims brought by the plaintiff, a co-founder of the Northern Michigan Regional Militia.

Court Grants Summary Judgment, Finding No Evidence of Actual Malice

The Southern Poverty Law Center, through a project called Klanwatch, publishes the quarterly newsletter *Klan-*

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$222 Million Libel Verdict

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customers to cancel their business, forcing the company to close less than a month later.

Attorneys for Dow Jones contend that the real reason the company was forced to close was the fact that it was sued by its largest client, the Louisiana state pension fund, in November 1993. As Paul Steiger, managing editor of the *Journal* stated, "We were chronicling the difficulties of this company; we did not cause them."

U.S. District Court Judge Ewing Werlein, Jr. gave attorneys on both sides seven days to submit briefs on whether he should approve the verdict. •

THREAT OF A PRIOR RESTRAINT? USE YOUR INTERNET SITE

Dallas Newspaper Posts Controversial Oklahoma Bombing Confession on Its Web Site Prior to Paper Publication Avoids Issue of Injunction

LDRC members may have noticed the article in *The Wall Street Journal* on March 5, discussing the publication by the *Dallas Morning News* on the newspaper's website of what is alleged to be the confession of Timothy McVeigh, one of those charged with the Oklahoma bombing. What made that cyberspace publication interesting was that it preceded publication of the material in the newspaper the next morning.

Mr. McVeigh's lawyer, Stephen Jones, was quoted by the *Journal* as stating his belief that the Dallas paper published first on its website to preempt what it feared was going to be his attempt to enjoin its publication. According to the *Journal*, neither the newspaper nor its counsel, Paul Watler of LDRC member firm Jenkens & Gilcrist, would acknowledge that this was the reason for the cyber-publication.

But whether or not the *Dallas Morning News* decision was on that basis or not, the idea of using the instantaneous nature of publication on the Internet to prevent the possibility of an injunction is an interesting tactic to keep in mind for the appropriate circumstance. Obviously it allows for publication at virtually any time of the day or night.

Is the Reporter with a Law Degree and License Under Different Standards?

Another interesting side note to this incident arises from the fact that the reporter on the story has a law degree and a license to practice, although his license has been inactive for several years, and he does not practice law. In an article published in *Texas Lawyer* in March on the publication of the confession and the fallout, there is a sidebar discussion of the reporter and whether or not his newsgathering in this story may be subject to the Texas Disciplinary Rules of Professional Conduct that apply to lawyers. McVeigh's lawyer, who has accused the reporter and his paper of stealing the document off of his computer files, apparently has also said that he would ask for an investigation of whether the reporter should be sanctioned as a member of the bar.

Some of the Texas Disciplinary Rules, according to an ethics specialist quoted by the magazine, Charles F. Herring, Jr., apply to lawyer's conduct even when they are not acting as lawyers. Indeed, Mr. Herring opined that any journalist/attorney who decided to misrepresent himself or received stolen property in the course of reporting on a story might have some issues under the Disciplinary Rules to contend with.

The Dallas Morning New has denied that it committed any crime in reporting McVeigh's alleged confession. Rather, the paper contends that the information upon which the story was based had been lawfully obtained through "routine newsgathering techniques," and that the paper's decision to publish the story came only after satisfying itself that the information was "accurate and authentic." •

Long Arm Jurisdiction Denied Despite Internet "Contact"

As reported by Alexander Gigante in *Virtual Uncertainty: Unresolved Issues of Personal Jurisdiction Over Internet Defamations*, published in the February, 1997 *LibelLetter*, at least two courts found it appropriate to extend personal jurisdiction over non-resident defendants based upon the accessibility of Internet sites in the forum state and upon finding that the published material met the "effects" test from *Calder v. Jones*, 465 U.S. 783 (1984). In the two cases cited, the plaintiff-corporations both had their principle places of business in the forum states.

Naxos v. Southam, 1996 WL 635387 (C.D. Cal. 1996) is another recent entry in the cyberspace-jurisdiction decisions. The court found that the distribution by the Canadian defendant-publication on LEXIS was sufficient under the limited jurisdiction test to constitute knowing dissemination in California and "purposeful availment" of the privileges of conducting business in the state, albeit only with a "barely...sufficient showing." But the plaintiff, a California-based subsidiary of a Canadian company, failed to meet the *Calder* "effects" test requiring that defendant "knew and intended that the 'brunt' of the injury caused by their actions would be felt in the forum state." *Slip op* at 5.

Finding that the article, published in Canada to a primarily Canadian circulation, did not actually refer to the California company, but was intended to discuss the dealings of the Canadian parent, the court stated that it could not conclude that the article, or its harm, was directed primarily at the California plaintiff.

Earlier in the opinion, the court rejected plaintiff's contention that circulation by the defendant of the allegedly defamatory material on the Internet, LEXIS and WESTLAW was sufficient to establish general jurisdiction on a non-resident publication

To find otherwise, the Court said, "publishers like Southam would be vulnerable to lawsuits in every state even for activities unrelated to the state." *Slip op.* at 3.•

Two Courts Uphold Block on Cyberspace Junk Mail

Injunction Granted To Compuserve To Bar Junk E-Mail

Two recent decisions, *Cyber Promotions, Inc. v. America Online, Inc.*, 25 Media L. Rep. 1193 (E.D. Pa. 12/19/96) and *CompuServe Incorporated v. Cyber Promotions, Inc.*, Case No. C2-96-1070 (S.D. Ohio 2/3/97), both involving Internet "junk mail" advertiser Cyber Promotions, Inc., ("Cyber") have held that on-line services are *not* "public forums" to which access is mandated by the First Amendment. To the contrary, apparently breaking new ground, one of these cases holds and the other suggests in *dicta*, that on-line servers have an actionable property interest in their systems which protects them and their subscribers from "invasion" by unsolicited electronic mail.

"Junk Mail" Advertiser Claims AOL's System is a "Public Forum"

In *Cyber Promotions, Inc. v. America Online, Inc.*, a motion for reconsideration of the Court's earlier ruling in favor of on-line provider, America Online (AOL), AOL had placed a block on its system to stop the flow of unsolicited e-mail to AOL subscribers. Challenging AOL's action, Cyber invoked the First Amendment, also alleging violation of the Computer Fraud and Abuse Act, intentional interference with contractual relations and a number of common law claims of tort.

Central to Cyber Promotion's First Amendment claims was that AOL's system was a "public system". In both its original decision and in the motion for reconsideration, the Court unequivocally rejected this contention, holding: (1) that "neither the Internet itself nor AOL's access to the Internet involve the exercise of any of the municipal powers or public services traditionally exercised by the State;" (2) "[n]o single entity, including the State, administers the Internet;" (3) "AOL has not opened its own private accessway to the public by performing any municipal power or essential public service;" and (4) that, as in certain of the so-called "shopping center" cases, such as *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), the plaintiff had alternative means of communication, including the World Wide Web, other commercial online services, and traditional non-Internet means of communication. 25 Media L. Rep. at 1197.

Rejecting the related contention that "AOL exercises a constitutionally impermissible bottleneck over a critical pathway of communication," the Court distinguished *Turner Broadcasting Sys. Inc. v. Federal Communications Comm.* 114 S. Ct. 2445. 22 Media L. Rep. 1865 (1994) and *Associated Press v. United States*, 326 U.S. 1 (1945), holding that;

> AOL has never sought to control the exchange of ideas and communications over the Internet itself. Rather, AOL has sought to control its own pathway or channel leading to the Internet in order to protect its own private property, reputation and subscribers from Cyber's mass e-mail advertisements.

25 Media L. Rep. at 1200.

Moreover, in *dicta* (there appears to have been no counterclaim by AOL) the Court, noting that AOL had received a "plethora" of complaints from its subscribers regarding unsolicited e-mail, went on to suggest in that AOL *itself* might have an actionable property right for invasion of *its* system. "Given that adequate alternative avenues of communication exist for Cyber to reach AOL's subscribers," the Court noted, " we find that it would be an unwarranted infringement of AOL's-property rights for it to have to receive Cyber's mass e-mail advertisements over its private system." *Id.* at *1199*.

Ohio Court Sustains CompuServe's Trespass Claim Against Cyber Promotions

In *CompuServe Incorporated v. Cyber Promotions, Inc.*, Case No. C2-96-1070, (S.D. Ohio 2/3/97), Cyber was the

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Two Courts Uphold Block on Cyberspace Junk Mail

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defendant in a trespass claim brought by on-line provider, CompuServe, also based on Cyber's unsolicited e-mail advertisements.

Relying on *Cyber Promotions, Inc. v. America Online, Inc.*, 25 Media L. Rep. 1193 (E.D. Pa. 12/19/96), the Ohio court rejected, for the same reasons, Cyber's claim that CompuServe was a "public system" and that its attempts to prevent defendants from sending their e-mail violated defendants' First Amendment rights. It rejected defendants attempts to analogize the system to state actors or those private actors, such as private shopping centers, in which others have been allowed to enter for First Amendment purposes. And it found that enforcing the neutral trespass laws against defendants also did not impair defendants' Constitutional rights. The better analogy, the court seems to suggest, are to those cases holding that the First Amendment rights of message sender stopped at the mailbox of the unwilling recipient.

Trespass to Chattel

In this case, however, the Court actually found that the complained of e-mail constituted actionable trespass to chattel and granted CompuServe's motion for a preliminary injunction barring the defendant from sending any unsolicited advertisements to any e-mail address maintained by CompuServe.

In sustaining CompuServe's claim, the Ohio court was compelled to adapt the state law claim of trespass into the intangible universe of cyberspace. The Court made two key findings. First, that on-line systems are "chattels" for purposes of a trespass claim. Second, that the requisite "invasion" had occurred. It drew the elements of the claim from the Restatement (Second) of Torts § 217 as Ohio law on the subject of trespass to chattels was slim.

Relying on computer "hacking" cases, the Court found that "[e]lectronic signals generated and sent by computer have been held to be sufficient physically tangible to support a trespass cause of action." Evidently extending these decisions, the Court found that a provider's on-line system was property for purposes of a trespass claim.

Next, the Court addressed Cyber's claim that its use of the CompuServe system was not an actionable invasion. Noting that trespass includes "[a]n unprivileged use or other intermeddling with a chattel which results in actual impairments of its physical condition, quality or value to the possessor," the Court went on to hold that, even in the absence of actual *physical* impairment, "[t]here may be situations in which the value the owner of a particular type of chattel may be impaired."

Forcing the CompuServe systems to process their mailings was found to use resources that, as a result, would not then be available to serve valid subscribers to the system. Moreover, CompuServe not only received hundreds of complaints from subscribers about the unwanted junk e-mail (and the costs they were forced to incur to sift through and dispose of them), but a number of subscribers terminated their accounts over the issue. While defendants alleged that there were ways for the subscribers to delete themselves from defendant's mailing lists, the subscribers claimed that such methods cost them money on the system and were ineffective. As a result, the court found, defendants' activities caused harm to plaintiff's business reputation and goodwill with its customers, damage that was actionable under the Restatement (Second) of Torts § 218(d).

The court rejected defendants' argument that by connecting to the Internet, CompuServe had to welcome all comers. Businesses can restrict access to their property that is otherwise open to the public, as CompuServe did in this instance. It specifically notified the defendants that it did not consent to their use of its property. Any use beyond that, the court stated, was a trespass.

Finding that the plaintiff had supported the elements for preliminary injunctive relief, an injunction was entered barring defendants from sending any unsolicited ads to CompuServe addresses during the pendency of the litigation. This was an extension of a TRO earlier entered by the court. That TRO also barred defendants from inserting false references to a CompuServe account in any message it sent or falsely representing in any message that it was sent or originated from CompuServe or a CompuServe account. The court, earlier in the opinion, found that these latter provisions were actionable under the Lanham Act and the Ohio Deceptive Trade Practices Act, and relying on the reasons articulated in its TRO, it continued those injunctions as well.

Mississippi Supreme Court Restricts Opinion Protection In Non-Media Case

Voting 6-0, with three justices not participating, the Mississippi Supreme Court has refused to reconsider *Roussel v. Robbins*, No. 90-CA-0536 Miss. Sup. Ct. Oct. 6, 1996), an October 1996 non-media decision expressly overruling *Meridian Star, Inc. v. Williams*, 549 So.2d 1332 (Miss. 1989), which relied upon the language of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), to find that expressions of opinion are absolutely immune from defamation liability. Rather, as the Mississippi Supreme Court stated in its earlier opinion that, "[f]or correct statements of libel law with regard to opinions, consult *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-21 (1990)."

The case arose out of a dispute over the rezoning of a parcel of land from residential use to commercial use on March 1, 1983. Hunter Roussel, who owned land across the street from the property, opposed the rezoning and appealed the decision, without success, all the way to the Mississippi Supreme Court. Attorney John Robbins, Jr. represented the town during the course of Roussel's appeals. In January of 1988, Roussel discovered that in the course of his appeal his attorney had made a motion to strike a Supplemental Abstract of Record filed by Robbins on the ground that it was "inaccurate or at best misleading."

Based on the motion to strike, Roussel decided that Robbins had made false statements to the Supreme Court and subsequently initiated a bar complaint against Roussel. The bar complaint, however, was dismissed by the Complaints Committee less than a year later without a hearing.

Undeterred, Roussel filed suit against Robbins in Rankin County Circuit Court alleging that Robbins had committed a civil fraud against him, had violated the attorney's oath and had caused "serious economic damage" through his negligence. Following the filing of the suit Roussel was interviewed by the *Rankin County News* for an article which described the suit against Robbins. The article read in part:

> In a Monday afternoon telephone interview, Roussel said that Robbins had allegedly changed the meaning of sentences included in the abstract of record, by eliminating certain words. "Because of that, I lost to the Supreme Court," Roussel

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Summary Judgment Granted in Case Over Article Discussing Suspected Arsonist

by John Borger

Whether, when, and to what extent to identify a suspect in a criminal investigation before charges have been brought or an arrest made are some of the hottest topics in journalism at the moment. That heat did not help one suspect in Minnesota, who claimed in a libel suit that a newspaper article made him appear guilty of committing arson on a neighbor's home.

The Minnesota Court of Appeals gave that claim a chilly reception in an unpublished mid-winter decision. (*Knaeble v. Cowles Media Co.*, 1997 WL 33021, No. C3--96-1738 (Minn. Ct. App. Jan. 28, 1997) (unpublished), *petition for review filed* February 26, 1997.)

The article that prompted the claim appeared in the *Star Tribune* on March 13, 1994, and described the tribulations of Steven and Jane Goede, who were trying to build a dream home on a lakeshore in northern Minnesota before Jane died of cancer. Three separate fires occurred on the property, with the second fire completely destroying what had been built to that time. Law enforcement officials suspected arson in all three fires.

A neighbor, Ray Knaeble, Jr., had been interested in buying the Goede land, and on more than one occasion after the Goedes purchased the parcel, he had been seen walking on or near the property. At the third fire, Goede, firefighters, and sheriff deputies all noticed tracks in the newly fallen snow, leading from the fire scene down the driveway to plowed pavement, and reappearing on the road near Knaeble's driveway and leading to his house. Deputies considered Knaeble a suspect in the arson, interviewed him, obtained a search warrant, and took various items from his house for testing that proved inconclusive.

The newspaper article included statements from Knaeble acknowledging that he "understood" how he could be a suspect in the case, but denying any involvement and stating that he had been told by a deputy sheriff that he was no longer a suspect in the case. It also included statements from his friends that they did not believe he was involved in the fires, as well as statements by Goede that he had "wondered about" Knaeble from the outset of the fire situation and that he had guessed the tracks in the snow would lead to the Knaeble residence.

The libel complaint against the newspaper, its reporter, and Goede, alleged that the article accused Knaeble of committing arson, and denied that he was guilty of arson. Defendants answered that any statements of fact in the article were substantially true and were

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Summary Judgment in Suspect Case

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based upon official court records (including an affidavit in support of a warrant to search the Knaeble residence), and that Goede's statements would be understood as clearly his own opinions. The district court agreed with defendants, and granted their motions for summary judgment.

The Minnesota Court of Appeals affirmed summary judgment for all defendants. The court accepted that "defamation by implication" is a tenable cause of action in private-figure plaintiff actions in Minnesota, following *Toney v. WCCO Television*, 85 F.3d 383 (8th Cir. 1996). However, it refused to allow the plaintiff free rein in defining the allegedly defamatory implication, noting that "it is for the courts to determine whether a claimed defamatory innuendo is reasonably conveyed by the language used."

In this particular situation, the court as a matter of law found no defamatory message. It concluded that the "article, while noting that appellant was a suspect and that Goede believed he had set the fires, could not reasonably be considered defamatory when read within its entire social and literary context. . . . Overall . . . the article characterized the origin of the fires as an 'ugly mystery.'" The court held that the article's specific descriptions, such as the tracks in the snow, were substantially accurate, and that Goede's statements were opinions -- "there is no indication that [Goede was] asserting facts, rather than merely offering a theory on the origin of the fires." The court endorsed the rule that "if it is plain that the speaker is expressing a subjective view, an interpretation, a theory, a conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable," citing *Haynes v. Alfred A. knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993). •

John Borger is with DCS member firm Faegre & Benson in Minneapolis, MN.

Mississippi Supreme Court Restricts Opinion Protection In Non-Media Case

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said. "Even though my lawyer filed, saying that it was misleading, they [the Supreme Court] let it stand. I feel like that I would have won."

In response, Robbins filed a countersuit alleging libel, slander, and intentional infliction of emotional distress arising out of the *Rankin County News* article. Robbins also petitioned for and received permission for filing a claim of malicious prosecution and circulation of the bar complaint in accordance with Mississippi state rules.

Roussel's claims were subsequently dismissed upon Robbins' motion for summary judgment. Robbins' counterclaims, however, were permitted to go before a jury in September of 1990. On September 26, 1990 the jury returned a $150,000 compensatory damage verdict in favor of Robbins. Roussel's motions for JNOV, new trial and remittitur were denied and Roussel appealed.

On appeal, Roussel argued, among other things, that his comments to the newspaper were statements of opinion which should have been granted absolute immunity from a defamation suit under the State Supreme Court's decision in *Meridian Star, Inc. v. Williams*, 549 So.2d 1332 (Miss. 1989). *Meridian Star*, citing the Supreme Court's decision in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), held that "[e]xpressions of opinion, however unreasonable or vituperative, cannot be the subject of a defamation suit. Statements of opinion are entitled to absolute immunity from defamation suits under the First Amendment to the United States Constitution."

In its October 1996 opinion, however, the Mississippi Supreme Court noted that Roussel's reliance on *Meridian Star, Inc.*, was misplaced. Rather, the court held that subsequent decisions by the Supreme Court, notably *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), illustrated that the Supreme Court "found that the *Gertz* language relied upon in *Meridian Star, Inc.*, was mere dictum." The court then noted that because the Supreme Court in Milkovich had deemed the opinion privilege "nonexistent" it had "no alternative but to overrule and vacate *Meridian Star, Inc.* and any cases relying thereon and *Gertz*."

The decision caused members of the media to take notice and an amici curiae brief, written on behalf of over twenty newspapers, television stations, and trade associations was filed following Roussel's petition for rehearing. In the brief the amici argued that the Mississippi Supreme Court misapplied *Milkovich* by "leap[ing] to the erroneous conclusion that *Milkovich* provides *no* protection for opinion." *Amici brief* at 2 (emphasis in original). Rather, the brief pointed out "*Milkovich fully protects statements of* opinion." *Amici brief* at 1.

The brief continued to note that the Mississippi Supreme Court's decision failed to recognize that "[n]othing in Milkovich suggests that pre-Milkovich fair comment and opinion decisions are to be jettisoned in post-Milkovich cases addressing the opinion defense." *Amici brief* at 8.

Despite the Mississippi Supreme Court's denial of reconsideration on March 6, defense counsel in Mississippi can still argue that as a non-media case, *Roussel* does not apply to suits involving a newspaper or broadcast defendant. The fair comment defense which was neither raised nor addressed in the decision is another avenue open to defense counsel. The decision is also not binding on Mississippi's federal courts as it is based solely on the State Supreme Court's interpretation of the First Amendment. •

California First District Court of Appeal Holds Anti-SLAPP Statute Embraces News Reports Within "Right of Free Speech"

California's Fair Report Privilege Encompasses Closed As Well As Open Proceedings

A newspaper series reporting on alleged wrongdoing in a state university-run medical program was held by a California appeals court to fall within the scope of California's anti-SLAPP statute. *Odelia S. Braun v. The Chronicle Publishing Co. et. al.*, No. A073121 (Cal. Ct. App. 1 Dist. Feb. 18, 1997). In thus affirming the trial court's dismissal of a defamation claim against the paper and its reporter, the court expressly rejected the holding in *Zhao v. Wong*, 48 Cal. App. 4th (Cal. Ct. App. 1996), in which a different division of the same appellate district had confined the anti-SLAPP statute to conduct involving traditional rights of petition before a government body on public self-governance issues. *Slip op.* at 8-12. *See also LDRC LibelLetter*, September 1996, at 9; November, at 4, reporting on *Zhao*.

Overlapping its holding on the anti-SLAPP statute's application in the case, the court also ruled that Civil Code § 47(d), a codification of the fair report privilege, encompassed reports prepared by The Chronicle about the state auditor's investigation of the program, even though the audit was confidential and the auditor lacked enforcement powers. The court reasoned that to limit fair report privilege to public meetings would be contrary to the purpose of the privilege, namely to allow to public to monitor the workings of government. *Slip op.* at 16.

Paper Reports Allegations of Malfeasance

The litigation stemmed from a series of reports on allegations of malfeasance in the management of the Center for Pre-Hospital Research and Training at the University of California at San Francisco. The center served to support emergency medical services in the community. Following allegations of misuse of state funds at the center, the state auditor undertook an investigation. The Chronicle, in a series of five articles published in 1994, four of them written by reporter and co-defendant Ben Wildavsky, described the investigation, the allegations against the center's management, and the State Auditor's final report. *Slip op.* at 3-5.

Dr. Odelia Braun, director of the center from its inception until closure, sued the Chronicle Publishing Company and others for defamation. On appeal from the dismissal of her claims against the media defendants Braun argued that the anti-SLAPP statute did not apply to the defendants' activities and that even if the defendants made a prima facie case under the anti-SLAPP provision, she could show a probability of success at trial. *Slip op.* at 8.

Anti-SLAPP Statute Designed to Further Rights of Free Speech andPetition

Describing the background to California's anti-SLAPP statute, the court noted that its purpose is to "nip SLAPP litigation in the bud by striking offending causes of actions which 'chill the valid exercise of the constitutional rights of freedom of speech and petition . . . .'" *Slip op.* at 4 (*citing* CAL. CODE OF CIV. PROC. § 425.16(a)). Under §425.16(b), a cause of action arising "from any act" of a person "in furtherance of the person's right of petition or free speech . . . in connection with a public issue" is subject to a motion to strike, unless the plaintiff establishes a probability of prevailing on the claim.

The statute defines acts "in furtherance of a person's right of petition or free speech . . . in connection with a public issue" as including (1) "any oral or written statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law," (2) "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law," or (3) "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." § 425.16 (e). *Slip op.* at 4.

The court agreed with The Chronicle and its reporter that the stories were "writings made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law," and thus fell squarely within the second clause of § 426.16(e).

In so doing, the court characterized as "misread[ing] and needlessly mistinterpret[ing] the statute" the two California Court of Appeal decisions cited by Braun for the proposition that the "free speech" activity contemplated by the statute does not include press reports made in connection with a governmental investigation but are limited to the defendant's to exercise of petition rights. *Slip op.* at 6.

Anti-SLAPP Statute Embraces More Than Petitioning Activities

In rejecting the analysis in *Church of Scientology v. Wollersheim*, 42 Cal. App. 4th 628 (Cal. Ct. App. 1996), the court said there was "nothing in the [anti-SLAPP] statute to imply that the first and second clauses — concerning writings made (1) *before* the defined official proceedings, or (2) *in connection with* matters under review or consideration by the defined body or proceeding — embrace only petitioning activity, to the exclusion of free speech. In fact the plain wording of the statute specifically includes both." *Slip op.* at 7 (italics in original). Moreover, the court went on to note, insofar as *Wollersheim* was a petition case, involving the successful prosecution of tort claims against the Church of Scientololgy, the decision was dicta with respect to the scope of the first two clauses of § 425.16(e). *Id.*

The court agreed with *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, 37 Cal. App. 4th 855 (Cal. Ct. App. 1995), which held that news reporting is "free speech" and that § 425.16 motions can apply to media defendants in libel actions. *Id.* at 7-8; *see also LDRC*

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California Anti-SLAPP Decision

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LibelLetter, August 1995, at 3; October 1996, at 6.

Again citing *Lafayette Morehouse*, the court rejected the analysis of the Court of Appeal in *Zhao v. Wong*, 42 Cal. App. 4th 1114 (Cal. Ct. App. 1996), which, like *Wollersheim*, sought to confine § 425.16 to petition-clause-related efforts:

> We agree with *Morehouse* that within the scope of this clause are news reports made in connection with an issue under consideration or review by an authorized official proceeding which reports are published by media defendants. Further, news reporting activity *is* free speech. Nothing in any portion of subdivision (e), which is unambiguous on its face, confines free speech to speech which furthers the exercise of petition rights."

Slip op. at 9 (italics in original).

Criticizing *Zhao* for its assertion that the anti-SLAPP statute protects only activities that "meet the lofty standard of pertaining to the heart of self-government," the court observed that the unambiguous language of first two clauses of § 425.16(e) reach "*any* writing or statement made in, or in connection with an issue under consideration or review by, the specified proceeding or body." *Id.* at 9–10 (italics in original).

While thus holding that the anti-SLAPP statute protected not only activities directed at advancing self-government but "conduct aimed at more mundane pursuits," the court pointedly observed that the defendants' activities fit comfortably in the former category:

> While the Chronicle was not exerting its *own* petition rights, it *was* advancing the "highest rung" of First Amendment values. As the Chronicle points out, Braun ignores the crucial role of the press in *informing* the citizenry, so that it can responsibly engage in self-governance.

Id. at 9–10 n.5 (italics in original).

Braun's assertion that the issues reported on were not "public" because the investigation was a confidential one was also rejected. The court said the investigation was an authorized official proceeding, and while the audit itself was confidential, its subject matter, the actual conducting of the investigation and the documents relied on by the state auditor were not. *Id.* at 12.

Nor, the court went on to observe, did the confidential nature of the audit somehow strip it of its status as an official activity. Whether or not it was open to the public, the audit was government sponsored and provided for by statute. *Id.*

Fair Report Privilege Is Not Limited to Reports of Legislative or Judicial Proceedings

In arguing that California's statutory fair report privilege did not apply to the newspaper series, Braun advanced many of the same arguments rejected by the court in connection with determining the scope of the anti-SLAPP statute. California's statutory fair report privilege protects "fair and true report[s] in a public journal of (1) a judicial, (2) legislative, or (3) other public official proceeding, or (4) of anything said in the course thereof." CAL. CIV. CODE § 47(d).

Braun first argued that the fair report privilege could not apply to the audit because it was confidential and the search warrant, affidavit, and documents obtained through the warrant had all been under seal until after the auditor issued his report. The court held that the fair report privilege covered not only the official proceeding but also background coverage about the proceeding.

Nor, held the court, does the availability of the privilege depend upon how or when this background information was obtained, provided that the report is accurate and fair:

> When and how the Chronicle learned that a search warrant was sought, issued and executed, and that certain fruits were forthcoming, are not in issue. What does matter is whether the Chronicle published a "fair and true" account of these events and whether they related to a "public official proceeding." They did and they do.

Id. at 14, n.6.

Braun next argued that an audit conducted under the Reporting of Improper Government Activities Act could not qualify as an "official proceeding," citing an appellate court opinion for the proposition that an "official proceeding" under § 47(d) is confined to proceedings that resembled a judicial or legislative proceeding. *Citing Fenelon v. Superior Court*, 223 Cal. App. 3d 1476 (1990). In rejecting *Fenelon* as "unduly narrow," the court noted that the decision had not been followed by other appellate courts and had been regularly criticized. *Id.* at 15

Finally, the court rejected Braun's argument that the fair report privilege was inapplicable because the investigation was closed to the public, holding that to confine the privilege to proceedings open to the public would be contrary to the policy underlying § 47(d), namely to allow the public to monitor the workings of government. The investigation was a "public official proceeding" because it concerned a formal governmental process, and did not have to be open to the public to come within the privilege. *Id.* at 16.

Award of Attorneys' Fees and Denial of Additional Discovery Upheld

The court also held that the trial court did not abuse its discretion in denying discovery on the media defendant's motion to strike pursuant to the anti-SLAPP statute, because Braun did not make a "timely or properly noticed motion for discovery, supported by a showing of good cause." *Id.* at 16–17. Additionally, the court upheld the awarding of attorney's fees and costs to the Chronicle and its reporter, pursuant to the anti-SLAPP statute. CAL. CIV. CODE § 425.16(c).

The defendants were represented by Neil Shapiro of Landels Ripley & Diamond, LLP. •

NINTH CIRCUIT STRIKES DOWN FEDERAL LAW BANNING THE BROADCAST OF ADVERTISEMENTS FOR CASINO GAMBLING

By Rex S. Heinke and Lincoln D. Bandlow

On February 25, 1997, the Ninth Circuit held that a federal statute and its implementing regulations, which criminalized the broadcast of advertisements for casino gambling, violated the First Amendment's protection of commercial speech. *Valley Broadcasting Company v. United States*, 1997 WL 76254 (9th Cir. 1997).

The underlying circumstances in the case appeared to be directly analogous to those in the Supreme Court's most recent commercial speech decision, *44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495 (1996), *i.e.*, the government was seeking to address perceived harms of a particular activity by banning advertisements for that activity. After *44 Liquormart*, some commentators have questioned the validity and/or application of *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557 (1979), the leading case setting forth the standards for determining whether commercial speech is protected by the First Amendment, in cases involving these kind of circumstances. The Ninth Circuit, however, made only a passing reference to the "[in]coherent framework" of *44 Liquormart*, and then struck down the regulations applying the traditional *Central Hudson* test.

In addition, many commentators have expressed the view that *44 Liquormart* sounded the death knell for *Posadas de Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328 (1986), in which the Supreme Court upheld legislation enacted by Puerto Rico that prohibited the advertisement of casino gambling aimed at residents of Puerto Rico. The Ninth Circuit, however, implicitly recognized the continued validity of *Posadas*, choosing rather to distinguish *Posadas* from the facts of its case.

Valley Broadcasting involved a challenge brought by Nevada corporations that own and operate television stations in Las Vegas and Reno, Nevada. These organizations alleged that 18 U.S.C. § 1304 and its implementing regulation, 47 C.F.R. § 73.1211, which ban the broadcast of advertisements of private casino gambling, violated the First Amendment.

Central Hudson Applied — Substantial Government Interests

The Ninth Circuit held that the regulations were unconstitutional. The court applied the four-part *Central Hudson* test for regulations on commercial speech. The parties agreed that the first prong of this test was met, *i.e.*, the advertising at issue was lawful and not misleading. The court then turned to whether the asserted governmental interests were substantial. The government asserted that two interests supported the regulations: (1) the "interest in reducing public participation in commercial lotteries," and (2) the "interest in protecting those states that choose not to permit casino gambling within their borders."

Regarding the first interest, the government argued that the regulations discouraged public participation in commercial lotteries, thereby "minimizing the wide variety of social ills that have historically been associated with these forms of gambling." The district court rejected this interest outright, holding that the government had presented no specific evidence in support of this assertion. The Ninth Circuit disagreed, holding that, although the government may not rely on mere speculation or conjecture, the government's burden does not "rise to the level of strict scrutiny" rather, it is subject to a more relaxed inquiry.

Applying this standard, the Ninth Circuit was "persuaded that the harms sought to be avoided are real," citing government hearings that had indicated that "a link exists between casino gambling and organized crime." Moreover, the Ninth Circuit cited *Posadas*, in which the Supreme Court recognized as substantial an interest similar to that asserted in this case. Thus, in light of the evidence presented by the government, the holding in *Posadas*, and the "historical tradition of the regulation of commercial lotteries," the Ninth Circuit held that the asserted interest in discouraging participation in games of chance was substantial.

The Ninth Circuit then turned to the government's second asserted interest: assisting states that prohibit casino gambling by regulating activities such as broadcasting that are beyond the powers of individual states to regulate. The Ninth Circuit held that this was also a substantial interest, citing *Champion v. Ames*, 188 U.S. 321 (1903), which held that Congress had the authority to prohibit the interstate transport of lottery tickets. The Ninth Circuit held that the *Champion* case "suggest[ed] that the government may indeed legitimately favor the interests of non-casino states." Recognizing that broadcast signals cannot be contained within state borders, the Ninth Circuit pointed out that "[w]ithout the assistance of the federal government, non-casino states will have no effective means to protect their residents from such spillover; their antigambling policies would thus be compromised."

Regulations Do Not Directly Advance Interests

Although agreeing that both of the asserted governmental interests were substantial, the Ninth Circuit went on to hold that the Central Hudson test could not be met because the regulations did not directly advance these interests. In so holding, the Ninth Circuit took "special note" of *44 Liquormart*, but stated that this badly splintered decision "fail[ed] to present a coherent framework for reviewing" a government claim that an interest is directly advanced. The Ninth Circuit appeared to be unsure of what, if anything, *44 Liquormart* added to the commercial speech analysis. Rather, without further clarification, the court merely stated that following the decision in *44 Liquormart*, "the government's asserted interest in reducing demand for casino gambling seems less likely to succeed."

One other recent Supreme Court

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NINTH CIRCUIT STRIKES DOWN CASINO GAMBLING ADVERTISEMENT BAN

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decision regarding commercial speech, however, did play an important role in the Ninth Circuit's decision. In determining whether the interests were directly advanced, the Ninth Circuit turned to *Rubin v. Coors Brewing Co.*, 115 S.Ct. 1585 (1995), in which the Supreme Court held that regulations, which prohibited brewers from disclosing on labels the alcohol content of their beers, were inconsistent with the First Amendment because numerous exceptions to the regulations defeated any claim that the government's interest was directly advanced by the regulations.

The Ninth Circuit found similar problems with the "numerous exceptions" in the broadcast regulations. Although the government had asserted "an extremely broad" interest, *i.e.*, "reducing public participation in all commercial lotteries," the regulations permitted advertisements over the airwaves by, *inter alia*, state-run lotteries, fishing contests, not-for-profit lotteries, and any gaming conducted by Indian Tribes.

The Ninth Circuit, citing *Rubin*, held that the flaws that doomed the alcohol regulations similarly doomed the government's broadcast regulations regarding casino advertisements: "because section 1304 permits the advertising of commercial lotteries by not-for-profit organizations, governmental organizations and Indian Tribes, it is impossible for it materially to discourage public participation in commercial lotteries."

Posadas Distinguished

Finally, the Ninth Circuit did note that the Supreme Court, in *Posadas*, "squarely rejected" the argument that because the challenged regulation permitted some forms of gambling to be advertised, it could not advance the government's interest. The Ninth Circuit, however, distinguished *Posadas*. First, the Court noted that after the Supreme Court's decision in *44 Liquormart*, the reasoning in *Posadas*, "especially its unquestioning acceptance" of a state's assertions that a regulation directly advances an asserted interest, was "no longer as compelling."

Second, the Ninth Circuit pointed out that in *Posadas*, the government had defined its interest narrowly as the reduction of demand for *casino gambling* by the residents of Puerto Rico. Allowing other forms of gambling to be advertised, *i.e.*, horse racing, did not undermine this interest. Here, the government's first interest was defined as reducing public participation in all commercial lotteries. The government allowed, however, a variety of commercial lotteries to advertise, which "without doubt undermine[s] this broad interest."

The same was true of the second governmental interest – assisting states that prohibit casino gambling to keep out the broadcast of advertisements for such activity. Notwithstanding this asserted interest, the exceptions allowed a substantial amount of this advertising to "spillover" into non-casino states. Thus, because they failed to directly advance the asserted interests, the regulations failed to satisfy the *Central Hudson* test.•

Rex S. Heinke and Lincoln D. Bandlow are with the firm Gibson, Dunn & Crutcher LLP in Los Angeles, CA.

Washington Court of Appeals Declines to Recognize Common Law Action for Invasion of Privacy

In a non-media case involving the unauthorized use of plaintiff's health records, the Washington Court of Appeals, Division I, affirmed the dismissal, on summary judgment, of the plaintiff's claim for public disclosure of private facts, holding that Washington has not yet recognized a common law action for invasion of privacy. *Doe v. Group Health Cooperative of Puget Sound, Inc.*, 1997 WL 87946 (Wash. App. Div. 1, March 3, 1997). At the same time, however, the Court found disputed issues of fact that precluded dismissal of the plaintiff's statutory claim for violation of the state's Uniform Health Care Information Act.

The plaintiff, who suffered from biploar disorder, a form of depression, was a highly placed employee in the defendant medical provider. To avoid disclosure of his medical condition, he had specifically designated his medical file at Group Health as "confidential," had gone outside of Group Health for some treatments and had used an alias when receiving in-patient services at Group Health hospitals. He had also declined reimbursements from Group Health so that coworkers would not learn of his condition. *Slip. op.* at 1.

In preparation of a training session designed to instruct staff from Group Health's mental health department in proper claim processing, the trainer selected the names and consumer numbers of several Group Health patients, among them the plaintiff. One of the trainees, seeing the plaintiff's name in the training manual, exclaimed, "that's my boss." The trainer then removed the pages with the plaintiff's information and instructed the trainees not to access his patient information in the computer. *Id.*

The Common Law Claim

In 1911, the Washington Supreme Court refused to recognize a claim for what it characterized as "an invasion of the so-called right of privacy in a case involving publication of a woman's photograph in an article reporting on fraud charges against her father." *Hillman v. Star Publishing Co*, 64 Wash. 691, 117 P. 594 (Wash. 1911). Nearly forty years later, the Washington Supreme Court again considered invasion of privacy in a case involving phone calls to the plaintiff's employer, complaining of her failure to pay a bill. *Lewis v. Physicians & Dentists Credit Bureau, Inc.*, 27 Wash.2d 267, 177 P.2d 896 (1947). *Slip op.* at 4–5. The court outlined its discussion in *Hillman* but found it unnecessary to deter-

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Comes Now Plaintiff . . .

LDRC Looks At Some Recent Complaints

LDRC found this month that the complaints filed in libel, privacy and other assorted cases were, in some ways, more interesting, and certainly more headline grabbing, than the decisions. A few fraud claims—even a "Food Lion wanna-be" or two, and a smattering of foreign figures suing overseas.

Trucking Company Files Fraud and Negligence Suit Against NBC For *Dateline* Expose

A Maine trucking company has filed suit against NBC, alleging that two producers from the network's news magazine, *Dateline*, committed fraud and negligence by misleading company officials about the nature of their report. The suit, which was filed in federal court in Maine, contends that NBC told the trucking company, Classic Carriers, Inc., that it intended to do a story on the "positive side" of the trucking industry. The company then permitted NBC to bring their cameras along on a coast-to-coast trip. The story, which was broadcast in 1995, turned out to be an expose of the trucking industry and according to the complaint depicted Classic Carriers and its operators as routinely engaging in practices that were dangerous, reckless and unsafe.

Author Anne Rice Sued Over Restaurant Criticism

A question of taste has led to a lawsuit and a public spitting match between two public figures in New Orleans. Author Anne Rice began the battle with a pre-Mardi Gras advertisement addressed to visitors in which she "express[ed her] personal humiliation, regret and sorrow . . . for the absolutely hideous Straya's restaurant which has just opened its doors on St. Charles Avenue." Rice, who considers herself a preservationist, continued to state that, "[t]his monstrosity in no way represents the ambiance, the romance or the charm that we seek to offer you and strive to maintain in our city." The restaurant is decorated mainly in peach and has huge white stars, two chrome epaulets and bands of purple, teal and red. Straya's owner, Al Copeland, who also founded Popeye's chicken chain, responded with his own two page advertisement as well as a four page civil lawsuit which alleged that Rice's advertisement exposed him "to contempt, hatred, ridicule or obloquy."

Patient Sues After Being Stitched By Reporter

A report, by WSYT FOX 68, a Syracuse television station into medical procedures at a community hospital has led to the filing by a patient, Christopher Petrie, of a complaint with claims running the gamut from medical malpractice to invasion of privacy. According to the complaint, Community Memorial Hospital permitted WSYT reporter Chuck Plumpton to enter the hospital in order to film medical procedures on October 31, 1995. On that day Petrie came to the hospital to obtain treatment for a laceration on his right thumb. Petrie alleged that the hospital staff then permitted Plumpton to stitch the cut on his thumb without telling him that Plumpton was not a doctor. In fact, according to Petrie, Plumpton stated that he had just gotten out of medical school. Without specifically stating the harm caused by Plumpton's work, Petrie's lawsuit alleged medical malpractice, fraudulent misrepresentation, breach of fiduciary relationship, assault and battery, unlawful impersonation of a medical professional, invasion of privacy, based on the subsequent broadcast of the procedure, and infliction of emotional distress. LDRC has it on good authority, however, that while the reporter did put in some of the stitches, the reporter contends that the plaintiff knew he was a reporter and consented both to the procedure and its taping by a visible camera.

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Washington Court of Appeals Declines to Recognize Common Law Action for Invasion of Privacy

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mine whether the tort should be recognized because the plaintiff would have failed to state a claim in any case.

The court noted that in several more recent decisions the Washington Supreme Court assumed the existence of an action for invasion of privacy, although again finding the facts insufficient to sustain a claim. In a separate line of cases interpreting the Washington Public Disclosure Act, the Washington Supreme Court cited to the sections in the Restatement covering the right of privacy. *Id.* at 5.

Noting that the Supreme Court had never explicitly overruled *Hillman*, and declaring itself unpersuaded that the decisions addressing the right of privacy had implicitly overruled *Hillman*, the appellate court affirmed the trial court's grant of summary judgment. *Id.*

The Statutory Claim

On the other hand, the court reversed the grant of summary judgment to the defendant on the claim based on the Uniform Health Care Information Act, which provides a private cause of action against health care providers who fail to comply with its provisions.

Although the trial court had concluded that no health care information had been disclosed, the appellate court held that there was sufficient evidence for a jury to conclude that find otherwise. In addition to the fact that the purpose of the training session was to instruct the staff in accessing mental health records, at least two of the trainees had concluded that the plaintiff had received mental health treatment. While this did not conclusively establish that the inclusion of the plaintiff's name in the records had necessarily revealed that he was receiving mental health treatment, it did present a jury question. *Id.* at 2. •

Comes Now Plaintiff . . .

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Sports Fights Back:
Dallas Cowboy Files Suit Over Rape Investigation

Dallas Cowboy Erik Williams has filed a pair of lawsuits over the media coverage of and police investigation into the allegations of rape leveled by Nina Shahravan, a young woman who often hung around the team. Shahravan, who claimed that she was raped in late December 1996 by Williams while another teammate held a gun to her head, eventually confessed that the allegations were made up and was subsequently charged with perjury. Williams' suit against the city of Dallas and its police department alleged that his civil rights were violated by the publicity the police sought to bring to the accusations and because they allegedly ignored evidence which contradicted her story. Williams also sued KXAS-TV and reporter Martin Griffin, alleging that Griffin and Shahravan agreed to report to the police a story about the assault. In addition, the complaint alleged that Griffin and KXAS, among other things, aided and abetted fraud by acting "with willful blindness to the falsity of Shahravan's actions." Griffen is alleged to be "well known" for his tabloid style attacks on the Cowboys and Shahravan is alleged to have been a regular source enlisted by Griffen to provide information on the players. Williams' complaint also included causes of action for defamation, invasion of privacy, infliction of emotional distress and trespass.

Philadelphia Flyers to Sue Talk Radio Station

Philadelphia Flyers chairman Ed Snider announced on March 6 that he planned to file an libel action on behalf of the team against WIP-AM, a sports-talk radio station, for comments made about Flyers captain Eric Lindros by WIP host Craig Carton. Snider also announced that he would seek to terminate the team's relationship with WIP, which currently airs all of the Flyers games. Lindros, the subject of the comments by Carton, was also reported to be considering his legal options.

On February 28, Carton reported that Lindros had been "suspended" from a February 15 game because he was either hungover or drunk. Carton has said that four sources confirmed his story, including two within the organization. At the press conference held to announce the filing of the suit, Snider vehemently denied the accusation stating that Lindros missed the game due to a lower back strain. WIP-AM found itself the subject of a fair amount of criticism and not much sympathy in local newspapers for its general talk radio style and on-air personalities, characterized in one article as "shoot-from-the-lip," and in another as "bullies."

And Libel Overseas:
Russian Politician Sues Forbes Magazine In England

One of Russia's richest businessmen and most controversial politicians has filed suit in London against Forbes magazine over an article which allegedly defamed him by linking him to shady business deals and the murder of a Russian television journalist. Boris A. Berezovsky, the deputy secretary of Russia's National Security Council, was the subject of Forbes magazine profile entitled, "Godfather of the Kremlin?" The article suggests that Berezovsky, who made his fortune from a car dealership and oil and media investments before entering politics, built his career on corruption and links to organized crime. Nikolai Glushkov, the first deputy managing director of the Russian airline Aeroflot, and whom the article described as a convicted thief, joined the suit alleging that he was defamed by charges that he may be involved in a plot with Berezovsky to siphon money from Aeroflot.

Princess Di Gets $122,000 In Settlement

In what was reported to be the largest-ever libel payment to a member of the royal family, Princess Diana was paid $122,000 by *The Express* for a report which alleged that the Princess would profit personally from a charity auction of 20 of her best-known gowns. In addition to the payment, the paper also apologized for the story on its front page and in an editorial. *The Express* stated that it was the victim of forged documents that stated Diana would profit from the June 25 auction.

Libel-Proof Plaintiff, Anyone?
Saddam Hussein Sues French Magazine

Perhaps worried over his public image, Iraqi president Saddam Hussein has filed a defamation suit against French magazine *Le Nouvel Observateur* for a September 1996 article entitled, "The Unbearable Likeness of an Executioner." In addition to the comparison to an "executioner," the article also called Hussein a "monster," a "perfect cretin," and a "murderer." Legal arguments thus far in the case have focused on whether Hussein was correct in filing the suit as a common citizen. The defense, with the support of the government's assistant prosecutor, argued that the case should be thrown out because it should have been filed as "an offense against a foreign head of state." Hussein's attorney countered the defense contention arguing that Hussein had to file as a common citizen because Paris and Baghdad severed diplomatic relations in February 1991. Judge Martine Ract-Madoux stated that she will announce April 1 whether the trial may proceed. •

LDRC would like to thank intern Brian Larkin of the Fordham University School of Law, Class of 1997, for his contributions to this month's *LibelLetter.*

Nebraska Court Holds Injunction Improper in Uniform Deceptive Trade Practices Act

But Court Sets Out Standard For When Injunction May Be Imposed

In *Sid Dillon Chevrolet-Oldsmobile-Pontiac, Inc v. Mortan Sullivan*, No. S-94-1176, 1997 Neb. LEXIS 40 (Sup. Ct. Neb. 1997), defendant, the dissatisfied owner of a Chevrolet Suburban purchased from the predecessor of the plaintiff, Sid Dillon Chevrolet-Oldsmobile Pontiac, commenced a campaign against the dealership with the avowed intention of putting it out of business. Utilizing the mass mailing and advertising capabilities of his own business, the defendant flooded the media with purported news releases concerning "dishonest" General Motors dealers, utilized automatic telephone dialing equipment in order to educate the general public, and faxing, phoning and harassing officers of General Motors.

Invoking the Uniform Deceptive Trade Practices Act and common law claims of libel and slander, the dealership commenced an action against the defendant, seeking damages and an injunction. The lower court granted plaintiff a temporary restraining order prohibited the defendant from "uttering any word, written or oral, or engaging the automatic dialing-announcing device in any fashion, directed at the Plaintiffs, their agents or employees, or taking other steps or action which may reasonably lead or result in damage in the Plaintiff's business..." After an unsuccessful attempt to dissolve the order, defendant continued his campaign. The lower court, after finding him in contempt of court, replaced the TRO with a permanent injunction containing the same wording.

Nebraska Supreme Court Reverses

On appeal, the Nebraska Supreme Court reversed the lower court, finding the injunction both unwarranted by statute and an abrogation of defendant's right of Free Speech. Noting that statute provides for equitable relief consistent with principles of equity, the Court, string-citing a series of cases from other states, noted that "equity will not enjoin a libel or slander" unless "essential to preserve a property right, or if the publication is in violation of a trust or contract, or if the defamation is published in aid of another tort or unlawful act."

The Court went on to note that some jurisdictions permit an injunction against defamation where there has been a "full and fair adversarial proceeding in which the complained of publications were found to be false or misleading...prior to the issuance of injunctive relief."

"We adopt the view of those jurisdictions," the Court held, "that have considered the issue and hold that absent

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Massachusetts Federal Court Rejects Application Of Forum's Statute Of Limitations

Applying Massachusetts conflicts analysis, the federal district court *rejected the automatic application of the* forum's statute of limitations, looking instead to what it characterized as a "functional analysis" derived from the Restatement (Second) of Conflict of Laws and adopted by the Massachusetts Supreme Judicial Court in a recent non-media conflicts decision. The result was the dismissal of the non-resident plaintiff's libel claims. *Stanley v. CF-VH Associates, Inc.*, No. CIV. A. 93-30232-MAP (D.Mass. 2/13/97).

The plaintiff is a resident of Texas. The defendant publication is incorporated in and has its place of business in New York. Its parent, also a defendant, is a German corporation. The article itself never mentioned Massachusetts, but focussed on events in Texas. The reporter, based in New York, used no information from Massachusetts. Plaintiff alleged relatives lived in the state, that a subsidiary of his corporation (unnamed in the article) owned property in Massachusetts, and *that he visited Massachusetts* a number of times during the year.

The court noted the increasing number of states which refuse to automatically apply the statute of limitations of the forum, but look more carefully at the relationship of the parties and the litigation to the forum state -- citing the 1988 amendments to the Restatement (Second) of Conflict of Laws § 142 (Supp. 1989) which reflects this movement and the Massachusetts Supreme Judicial Court decision to follow that trend and the Restatement (Second) criteria. The Massachusetts test, established in *New England Telephone & Telegraph Co. v. Gourdeau Construction Co., Inc.*, 419 Mass. 658 (1995) followed the analysis of the Restatement, in which the statute of limitations to be applied should be that from the state of with the most significant relationship to the occurrence and to the parties.

Using what it characterized as the "functional analysis criteria of the Restatement," the court found that the law of Massachusetts would be inappropriate. *Slip op.* at 4. None of the parties had a residence or place of business there, none of the acts or events giving rise to the lawsuit took place there and the plaintiff had only minimal contacts with the state. The state has neither a substantial interest in the litigation nor a significant relationship to it, as required by the Restatement criteria.

The court rejected a minimal circulation of the publication as sufficient to establish sufficient interest on the part of Massachusetts, and the notion that consistent with the Restatement criteria that every nationally distributed magazine could be sued in every state of the union. The opinion cites Justice Souter's dissent in *Keeton v. Hustler Magazine, Inc.*, 131 N.H. 6, 22 (1988), when as a Justice of the New

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Newsroom Ban On Political Activity Allowed

(Continued from page 1)

her to her former position relying, among other grounds, on a statute that prohibits employers from discriminating against an employee for "in any way supporting or opposing a candidate, ballot proposition, political party or political committee." RCW 42.17.680(2).

The state supreme court disagreed with the trial court and the newspaper that this statute is inapplicable to employers' efforts to maintain their political neutrality without any intent to influence the political process. The appellate court majority preferred a literal interpretation that would prevent an employer from taking any action based on an employee's political activity:

> Taken as a whole, the provision in question means that employers may not disproportionately influence politics by forcing their employees to support their position or by attempting to force political abstinence on politically active employees.

Slip op. at 15.

The supreme court nevertheless found that the statute as applied to a newspaper unconstitutionally infringes on the newspaper's right to freedom of the press, and that as applied it violates the First Amendment and Article I, Section 5 of the Washington State Constitution. *Slip op.* at 26-28. (The state constitutional provision states, "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." Wash. Const. Art. I, § 5.) The majority opinion placed its principal reliance on the U.S. Supreme Court's decision in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), holding that "editorial integrity and credibility are core objectives of editorial control and thus merit protection under the free press clauses." The court also cited *Columbia Broadcasting Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94 (1973), and *Newspaper Guild of Greater Philadelphia v. NLRB*, 636 F.2d 550 (3rd Cir. 1980), and quoted the latter case:

> In order to preserve [its managerial prerogative to control its editorial integrity,] a news publication must be free to establish without interference, reasonable rules designed to prevent its employees form engaging in activities which may directly compromise their standing as responsible journalists and that of the publication for which they work as a medium of integrity.

Slip op. at 26, *quoting* 636 F.2d at 561.

The court reached this conclusion after a thorough analysis of the underlying facts. The newspaper's reassignment of the plaintiff was taken pursuant to widely utilized newspaper industry ethical codes. For example, the code of the Washington Post was held by the court to be "nearly identical" to that of the defendant newspaper: "[N]ewsroom employees must avoid active involvement in any partisan causes – politics, community affairs, social action, demonstrations – that comprise or seem to compromise our ability to report and edit fairly." *Slip. op.* at 3-4 & 30. The court noted similar provisions in the codes of ethics of the Society of Professional Journalists and the Associated Press.

The court further found that "Nelson is a self-professed lesbian who spends much of her off-duty hours serving as a political activist . . . attend[ing] political fora, demonstrations and classes for political causes including highly visible support for gay and lesbian rights, feminist issues, and abortion rights." *Id.* at 4. Nelson had been cautioned that her high profile activism "compromised the paper's appearance of objectivity," but she refused to desist, and her "transfer became permanent when she refused to promise future conformity with the ethics code." *Id.* at 5-6. The court noted that the newspaper had "told Nelson that [its] discomfort had nothing to do with the content of her politics as, indeed, [the newspaper] has on several occasions adopted pro-gay positions in its editorials." *Id.* at 7.

Under these circumstances, the court held that application of the State statute to the newspaper's reassignment of a reporter fell closer to one of the two "governing polar [First Amendment] principles" – the editorial freedom to regulate content protected in *Tornillo*, rather than to the other principle represented by *Associated Press v. NLRB*, 301 U.S. 103 (1937), holding that a newspaper has no "special immunity from the application of general laws." *Slip op.* at 22-23. The majority, therefore, affirmed the judgment of the trial court that under both the state and federal constitutions,

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Nebraska Court Rejects Injunction

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a prior adversarial determination that the complained of publication is false or misleading, equity will not enjoin a libel or slander, unless such libel or slander is published in violation of a trust or contract or in aid of another tort or unlawful act."

The Court reversed the lower court's injunction, finding that "[a] jury has yet to determine whether Sullivan's allegations...are false or misleading..." The Court did, however, uphold the lower court's finding that defendant was in contempt of court for violating the temporary restraining order, holding that "[t]he collateral bar rule requires that a party may not, as a general rule, violate a court order." •

Mass. Court Rejects Statute of Limitations

(Continued from page 13)

Hampshire Supreme Court he rejected that Court's majority view that the state should apply its lengthy statute of limitations despite the fact that the only connection of the state to the litigation was the distribution of a small percentage of the magazine's copies in the state. Where, as was the case in *Keeton*, the only connection is the distribution of a small number of copies of a nationally distributed magazine, to allow the lawsuit would be, quoting Justice Souter, "inviting the ultimate forum shopping." *Slip op.* At 5. The court here states that Massachusetts has rejected just such tactics. •

Supreme Court Update

Wilson v. Brother Records
682 A.2d 714 (N.H. 1996), *cert. denied*, 65 U.S.L.W.3596 (No. 96-1018, 3/3/97)

The United States Supreme Court has declined to review a decision of the New Hampshire Supreme Court holding that the exercise of personal jurisdiction over California-based authors and a California partnership did not offend Fourteenth Amendment's Due Process Clause. *See LDRC LibelLetter* October 1996, at p. 1. The suit was filed by former Beach Boy Al Jardine and Brother Records against Beach Boys singer Brian Wilson and his ghost writer over the publication of Wilson's 1991 autobiography, *Wouldn't It Be Nice*. Plaintiffs filed the suit in New Hampshire after the California statute of limitations had expired. In its opinion, the New Hampshire Supreme Court stated that, "[t]he defendants' ultimate goal regarding the book included nationwide distribution and sale . . . . This market included New Hampshire."

The question presented by the petition was: Does the mere awareness on the part of independent contractor authors that their manuscript may be sold by third parties in the forum state constitute purposeful availment and provide minimum contacts between the authors and the forum state such that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice?

Parker v. Boyer
93 F.3d 445 (8th Cir. 1996), *cert. denied*, 65 U.S.L.W. 3584 (No. 96-883, 2/25/97)

The Supreme Court also let stand a decision by the U.S. Court of Appeals for the Eighth Circuit barring recovery for a media ride-along during a search of the plaintiff's home. *See LDRC LibelLetter* September, 1996 at p. 1. The federal appeals court held that the news crew who were permitted by law enforcement officers to enter the house during the search were acting for the television station's purposes and consequently not under color of law within the meaning of 42 U.S.C. § 1983. The decision also held the law enforcement officers were immune from liability under § 1983 because permitting the news crew into the house during the search did not violate any constitutional principle that was clearly established at the time.

The questions presented by the petition were: 1) Did the court of appeals correctly rule that the police officers were entitled to qualified immunity from a damage suit based on the officers' conduct in assisting and permitting a television news crew to enter the plaintiffs' home while executing a search warrant? 2) Did the court of appeals correctly hold that the television station's news crew was not acting under color of state law? •

Newsroom Ban On Political Activity Allowed

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"defendants have a right to protect the newspaper's unbiased content, both its facts and as perceived by its readers, its sources, and its advertisers." *Id.* at 17, quoting trial court opinion.

Two justices concurred in the dismissal of the case, but on the basis that the plaintiff lacked standing because the statute does not afford a private cause of action and can only support a state lawsuit brought by the Attorney General. *Slip op.* (Derham, C.J., concurring in the result). These justices expressly did not reach the First Amendment issue.

Two other Justices also concurred in the judgment based on the plaintiff's lack of standing, but observed,

> were it not for this procedural barrier, however, I would hold the statute to be applicable in this case and constitutional as applied to the press here. Absent a showing of bias in Ms. Nelson's work, and a consequent interference with [the newspaper's] right to editorial control from the application of the statute, the newspaper cannot claim First Amendment immunity.

Slip op. (Dolliver, J., concurring in the result). These concurring justices would have held that, as between the two "polar principles" cited by the majority, the statute fell in the "application of general laws" category under *Associated Press*, rather than being impermissible content regulation under *Tornillo*.

James Lobsenz, the Seattle lawyer representing Nelson through the American Civil Liberties Union, was quoted in newspaper accounts as stating that Nelson will likely petition for certiorari from the U.S. Supreme Court. •

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Veggie Libel Alert!

With state legislatures in session, Agricultural Disparagement Laws have begun to resurface.

Maryland, Massachusetts, Nebraska and Wyoming are all considering adopting produce disparagement laws.

Please let us know if there are any developments in your state.

Disclosure of Confidential Source Denied In Libel Suit Over Report On Militia Movement

(Continued from page 2)

watch Intelligence Report (KIR), which monitors the activities of the Ku Klux Klan and other white supremacist groups. The December 1994 issue of KIR contained a photo of Southwell and described an alleged meeting between Southwell and Bobby Norton, Southeastern Director for Aryan Nations. The information was attributed to a confidential source. Both Southwell and Norton denied that Southwell had attended the meeting, and Southwell brought libel and false light claims against the defendant. 1996 U.S. Dist. LEXIS at *1–*4.

After holding that Southwell was a limited purpose public figure, the court granted the defendant's motion for summary judgment on both the libel and false light claims, holding that Southwell "has not produced a single piece of evidence" of actual malice. In contrast, the defendant submitted substantial evidence that its employees had neither published the article with "a high degree of awareness . . . of probable falsity" nor entertained any serious doubts as to the accuracy of the publication. *Id.* at *10–*25.

The court's in camera review of the notes defendant alleged were taken during the conversations with the source were detailed and in many key respects accurate in reporting past events and predicting future ones. And in addition to evidence that defendant's employees believed in the report's accuracy, there was no evidence to suggest that the claim that Southwell had met with Norton was "inherently improbable."

Indeed there was substantial and unchallenged testimony suggesting that such a meeting had taken place: (1) the plaintiff had met with other members of the white supremacist movement on other occasions; (2) in a telephone interview with Klanwatch the plaintiff had stated that he would "sit down with Satan himself to talk about the militia"; and (3) when asked in the same interview if he would consider speaking at the Aryan Nations World Congress, the plaintiff had expressed neither surprise not outrage but laughed and stated "I certainly wouldn't now," which the court stated created an obvious inference that Southwell might have consented to give such a speech if he thought it would go unreported by the media. *Id.* at *14–*17.

Given these admissions, the court suggested that an absence of defamatory meaning might constitute an alternative ground for summary judgment:

> Although the court need not consider this issue to resolve this motion, it wonders how a plaintiff who has admitted ties with two individuals described as racists can claim he has been defamed by a defendant who erroneously links him in an article with a third individual described as a racist. Perhaps having ties to three racists is worse for one's reputation than having ties to two racists, but given the de minimis damages that one would suspect could be shown by the link to the third racist, the distinction hardly seems worthy of a costly trial.

Summary Judgment May Be Granted Without Disclosure of a Confidential Source

Southwell conceded at oral argument that he lacked evidence of actual malice but argued that it was improper for the court to rule on the summary judgment motion until he was given the opportunity to depose the defendant's source.

Noting that a motion to compel discovery lies in the sound discretion of the trial court, and warning that it would "utterly emasculate the fundamental principles that underlay the line of cases articulating the constitutional restrictions to be engrafted upon the enforcement of state libel laws" to order disclosure of a confidential source without first considering the merits of the libel claim, Judge McKeague held that summary judgment may be granted even without disclosure when the plaintiff "fails to produce evidence that the article in question is either (1) inherently improbable, or is (2) published with serious doubts about the truth of its contents." *Id.* at *25–*27 (*quoting Schultz v. Reader's Digest Association*, 468 F. Supp. 551 (E.D. Mich. 1979).

Quoting an Eighth Circuit decision quoted in *Schultz*, Judge McKeague concluded that "there must be a showing of cognizable prejudice before the refusal to permit examination of anonymous news source can rise to the level of error." *Id.* at *27 (*quoting Cervantes v. Time, Inc.*, 464 F.2d 986, 994 (8th Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973)). Thus to survive a summary judgment motion, the plaintiff must make a "concrete demonstration" that disclosure of a source will provide "persuasive evidence on the issue of malice." *Id.* at *28.

Court Finds Qualified Privilege Protects Disclosure of Source

The court then went on to consider the scope of the reporter's privilege under constitutional and common law. Although neither the U.S. Supreme Court nor the Sixth Circuit had defined the contours of a reporter's privilege under the First Amendment in defamation cases, Judge McKeague found that nine of the 12 federal circuits have recognized a qualified reporter's privilege in civil cases. *Id.* at *28.

Judge McKeague went on to note that although the Sixth Circuit rejected the view that *Branzburg v. Hayes*, 408 U.S. 665 (1972), had created a qualified privilege for confidential sources under the First Amendment, it did so in dictum because (as was true of *Branzburg*) the privilege was being asserted in connection with a grand jury proceeding. *In re Grand Jury Proceedings*, 810 F. 2d 580 (6th Cir. 1987). The Sixth Circuit had not yet had the opportunity to consider "the much different issues raised in a civil proceeding." 1996 U.S. Dist. LEXIS 19860 at *29.

Even absent a privilege, however, the court in *In re Grand Jury Pro-*

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Disclosure of Confidential Source Denied In Libel Suit Over Report On Militia Movement

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ceedings had indicated the necessity of ensuring that a "proper balance is struck between freedom of the press and the obligation of all citizens to give relevant testimony." *Id.* at n.23 (*citing Grand Jury Proceedings*, 810 F.2d at 586). Although some of the factors cited by the Sixth Circuit as relevant to this inquiry in the context of a grand jury proceeding did not apply to a civil proceeding, Judge McKeague concluded that the balancing test he ultimately adopted under Michigan law "satisfied the requirements of *In re Grand Jury* even if that court's discussion of the qualified privilege in the grand jury setting were deemed applicable to a civil proceeding." *Id.*

Judge McKeague noted that Michigan state courts recognize a qualified privilege requiring civil litigants seeking confidential information to show "that (1) the requested information goes to the heart of the litigant's case; and (2) the litigant has exhausted all other means of obtaining the information." *Id.* at *32 (*citing King v. Photo Marketing Ass'n Int'l*, 120 Mich. App. 527, 532 (1990). To these two factors Judge McKeague added a third, which he viewed as being implicit in the balancing, namely "the potential harm that may be caused by ordering disclosure of the confidential source's identity." *Id.* at *33.

Source Disclosure As Harassment Tool

Southwell claimed that the identity of the source was essential in order to meet the high burden imposed by the actual malice standard, hypothecating that the defendant might have fabricated the source. As Judge McKeague explained, however, Southwell had failed to present any evidence that the source didn't exist, while the defendant had produced "a mountain of evidence that its source not only existed but was reliable,'" including a sealed defense exhibit containing detailed notes of an interview of the source conducted by an investigator for the defendant. *Id.* at *34.

The court went on to point out the dangers of allowing every plaintiff who could not provide evidence of actual malice to depose confidential sources without the court first inquiring into the substance of the claim:

> Under such a regime, even plaintiffs who suspected their ultimate case would fail on the merits could bring lawsuit simply as a harassment device to pester publishers and try to discover who was leaking the information they found damaging. This court finds that disclosure of defendant's confidential source is therefore of little relevance where plaintiff has failed to meet the Schultz requirement or a "concrete demonstration" that the source will provide "persuasive evidence on the issue of malice."

Id. at *35–*36 (*citing Schultz v. Reader's Digest Association*, 468 F. Supp. 551, 567 (E.D. Mich. 1979). Indeed, the court had earlier noted that Southwell's "preoccupation with finding and exposing defendant's confidential source raises some concern as to whether the search for and apparent desire to 'out' the source was perhaps the hidden purpose behind plaintiff bringing this litigation in the first place." *Id.* at *21, n15.

Addressing the possible harm that might result from divulging the identity of the source, the court remarked that Southwell is a person who holds "what can only be described as extremist views" and that the Aryan Nations were a "group with a violent past, whose leader has allegedly made death threats" against the defendant's chief trial counsel. *Id.* at *38. The court concluded that disclosure might present a "grave danger" of physical harm to the source should his or her identity be uncovered. *Id.* at *38–*39.

In addition, Judge McKeague noted that forced disclosure might have "a dire impact" on the defendant's ability to gather news, especially about "underground organizations," that went even beyond the "generic danger that forced disclosure presents for any journalistic enterprise." *Id.* at *40–*41.

Balancing these concerns against "the total lack of concrete evidence by plaintiff of defendant's actual malice," Judge McKeague concluded that the denial of disclosure would not result in "cognizable prejudice" to the plaintiff, and held that the defendant had established a qualified privilege under the First Amendment to prevent disclosure of its confidential source. *Id.* at *41.•

LDRC To Honor Fred W. Friendly

(Continued from page 1)

Friendly initiated and popularized, had their start in 1974 as a series of conferences on the media, the law and public policy.

While the Seminars were started to allow judges and journalists to educate themselves and one another on the issues that each faced, and the conflicts that their respective roles and values produced, the Seminars expanded both in scope and to television to explore for an enormous audience Constitutional issues in many areas of public, corporate, journalistic, legal, and ultimately virtually all important aspects of American life.

It was characteristic of Fred Friendly to have described the Seminars in the following manner:

"Our job is not to make up anyone's mind, but to open minds -- to make the agony of decision-making so intense that you can escape only thinking."

From his beginnings in Providence, Rhode Island in 1937, where he created a daily five-minute program, *Footprints in the Sands of Time*, to the over 600 conferences he produced worldwide before his retirement in 1993, Mr. Friendly has left an indelible mark upon the manner in which interrelations of the government, the media and the public are perceived. In the sixty years in between, Mr. Friendly formed a partnership with Edward R. Murrow which, among other things, produced the groundbreaking CBS television news program, ***See It Now***, in 1951. In the late 1950s, Mr. Friendly served as executive producer of ***CBS Reports*** presenting many acclaimed programs including the award-winning *Harvest of Shame*. Mr. Friendly was president of CBS News, but cut that tenure short, after only two years, when he resigned following a network decision to cancel live broadcasts of testimony on Vietnam before the Senate Foreign Relations Committee in favor of sitcom reruns.

Mr. Friendly turned his attention to teaching as an Edward R. Murrow Professor of Journalism at Columbia University, and helped to firmly establish a public broadcasting system through his work with the Ford Foundation. In addition to teaching at Columbia Graduate School, he has also taught at Yale and Bryn Mawr, published five books and numerous articles dealing with the Constitution.

The Fred Friendly Seminars continue as a lasting tribute to Mr. Friendly's accomplishments. The most recent offerings include a four-part series, ***Liberty & Limits: "The Federalist" Idea 200 Years Later***, which will debut on Friday, April 11, 1997 at 9:00 P.M. (Jay Brown of DCS member firm Levine Pierson Sullivan & Koch, L.L.P. was involved with the production of this series). Also due to air in April is ***Before I Die: Medical Care and Personal Choices.***

Fred Friendly has had an extraordinary impact on the understanding of the delicate and difficult issues that First Amendment principles raise in our society. He has also had an extraordinary impact on journalism itself, as a producer, as President of CBS News, as a writer and as a teacher. We will have a great deal more to say about Mr. Friendly and his accomplishments, as well as the Annual Dinner and its format, over the coming months.•

PLEASE MARK YOUR CALENDARS FOR THE FOLLOWING LDRC EVENTS:

1997 NAA/NAB/LDRC BIENNIAL
LIBEL CONFERENCE
SEPTEMBER 10-12, 1997
HYATT REGENCY, RESTON TOWN CENTER
RESTON, VA

LDRC FIFTEENTH ANNUAL DINNER
WEDNESDAY, NOVEMBER 12, 1997
WALDORF ASTORIA
WITH PRESENTATION OF THE
"WILLIAM J. BRENNAN JR. DEFENSE OF FREEDOM AWARD"
TO FRED W. FRIENDLY

LDRC DEFENSE COUNSEL SECTION ANNUAL BREAKFAST
THURSDAY, NOVEMBER 13, 1997
CROWNE PLAZA MANHATTAN