LDRC Libel Defense Resource Center
BULLETIN

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LDRC 1997 REPORT ON SUMMARY JUDGMENT

LDRC issues the 1997 Report on Summary Judgment updating its 16-year survey of summary judgment motions in defamation and related cases involving media defendants.

PART I. INTRODUCTION

With this issue, LDRC marks its fifth comprehensive study of the outcome in state and federal courts of reported summary judgment cases involving defamation and related torts.[1] This issue updates the previously published data, which spanned the period 1980 through 1994 by adding 164 new or updated cases reported in 1995 and 1996.[2]

The new data reveal that media defendants still win most of the summary judgment motions in the cases reported and that the rate has stayed fairly constant since 1990. For example, the overall rate of reported summary judgments in favor of media defendants has reached 79.4% for the 1990-96 period. The last reported rate, covering 1990-94, was 78.6%. Over the current study period, 1995-96, defendants have been even more successful, achieving a 82.3% success rate. As expected, when looking at cases involving full or limited purpose public figure/official plaintiffs, the numbers are even higher, reaching 84.7% for the 1990-96 period, identical to the percentage of victories in the 1990-94 period. In other words, the procedural vehicle for summary judgment designed in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), which required trial courts to apply the evidentiary standard of clear and convincing evidence of actual malice at the summary judgment phase, appears to be working and working well for media defendants.

While this issue continues the LDRC tradition of presenting the important data on summary judgment decisions, it begins a new one. We supplement the data with the story behind the numbers: articles by experienced defamation litigators who brief us on the strategies and suggestions that emerge from their motion battles and offer us novel ways to win.

- Samuel Fifer and Gregory Naron advise that while *Anderson* has made summary judgment a more likely outcome for all litigants, including the media, it is not a guarantee. Media defendants still have the First Amendment in their arsenal, and they should use it. Fifer and Naron cite the cases that emphasize the role of the First Amendment in the media's summary judgment cases.

- John Borger deflates the notion that a media defendant cannot get summary judgment in a private figure case where negligence is the standard. He collects the many cases granting summary judgment on that issue.

- Joseph Steinfield explains that it may not be necessary to file a summary judgment motion at all when the case turns on a lack of evidence of actual malice. To highlight plaintiff's dim prospects, Steinfield filed and won a motion to have plaintiff declared a public figure. Once that was decided, the case was effectively over.

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[1] Previous studies were reported in LDRC BULLETIN 1995 Issue No. 3 (July 31, 1995); LDRC BULLETIN No. 19 (May 31, 1987); LDRC BULLETIN No. 12 (December 31, 1984); and LDRC BULLETIN No. 4 (Part 2) (September 15, 1982).

[2] LDRC acknowledges the contributions of Erik Bierbauer, New York University School of Law, Class of 1999, and Jason Zedeck, Boston University School of Law, Class of 1998, to the preparation of this BULLETIN.

- Anthony Bongiorno tells us that another cost-effective way to run potentially expensive litigation is to select a discrete issue for summary judgment and then attempt to bifurcate discovery to focus solely on that issue. He recounts a victory on that score, where discovery focused only on the issues of substantial truth and non-verifiability.

- Julie Ford offers a counterpoint. She highlights the dangers inherent in moving for summary judgment on substantial truth, including the expense and delay that may come from a protracted summary judgment battle.

- Finally, Susan Grogan Faller reminds us that a case may be ripe for summary judgment even before discovery begins. What facts are really in dispute? Are they in the public record? By asking these questions, Faller delivered summary judgment before the first deposition could be taken.

The analysis of the data from the new study, including tables and explanatory text, follows the articles. The tables tell us:

- The ultimate outcome of all of the summary judgment motions reviewed;
- The likelihood of success at the trial level;
- The likelihood of success at the appellate level;
- The effect of being in state or federal court;
- The effect of plaintiff's status as a public or private figure;
- The issues that are decided in summary judgment motions; and
- The outcome of summary judgment motions on defamation-related claims.

It is our hope that these materials will provide practitioners with helpful insights as to whether, when and how to present summary judgments in defamation cases.

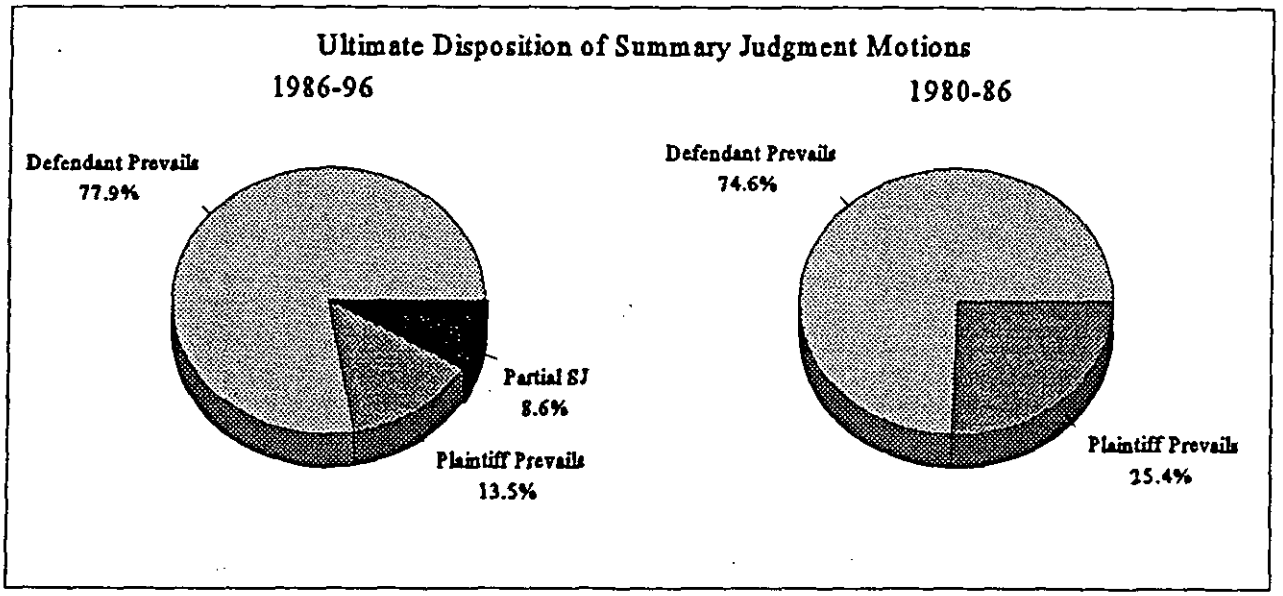
PART II.

SUMMARY JUDGMENT AND THE FIRST AMENDMENT: A DECADE AFTER *ANDERSON v. LIBERTY LOBBY*

by Samuel Fifer and Gregory R. Naron

In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) the Supreme Court gave its imprimatur to summary judgment proceedings in libel cases. The Court's opinion, however, did not go so far as to say that the defendant in a *New York Times* malice case should get the edge. And in the years following *Anderson*, libel defendants have hardly been invincible on summary judgment; one need look no further than the Court's later opinion in *Masson v. New Yorker Magazine*, 501 U.S. 496 (1991) for proof of that. But *Anderson* has made summary judgment a fact of life in defamation cases. And despite its limitations, *Anderson* has strengthened the hand of those state and federal courts that properly seek to limit the chilling effect of protracted libel litigation.

Anderson mandated that courts look through the "prism of the substantive evidentiary burden" on summary judgment. That means, in public figure cases, courts "must bear in mind the actual quantum and quality of proof necessary to support liability under *New York Times*"; if the plaintiff's



See Table 1.

affidavits are of "insufficient caliber or quantity to allow a rational trier of fact to find actual malice by clear and convincing evidence" then summary judgment would be proper. 477 U.S. at 254. *Anderson* further held that public-figure plaintiffs cannot defeat summary judgment "by merely asserting that the jury might, and legally could, disbelieve the defendant's denial . . . of legal malice." *Id.* at 256. In other words, plaintiff has the burden of coming forward with specific *affirmative*

evidence that the defendant "in fact entertained serious doubts as to the truth of his publication."

Of course, *Anderson's* holdings were not designed for the benefit of media defendants; indeed, the Court made clear that the roles of judge and factfinder, and the procedural balance of power between plaintiffs and defendants, is the same for the media as it is for any other Rule 56 movant. 477 U.S. at 256 n.7 (noting "our general reluctance 'to grant special procedural protections to defendants in libel and defamation actions in addition to the constitutional protections embodied in the substantive laws.'"). *See also Masson*, 501 U.S. at 520 ("[o]n summary judgment, we must draw all justifiable inferences in favor of the nonmoving party, including questions of credibility and of the weight to be accorded particular evidence") (citing *Anderson*, 477 U.S. at 255). And even under *Anderson's* more muscular summary judgment regime, meritorious motions have been denied in media defamation cases because -- after extensive discovery and intensive post-hoc examination of the reporting process -- plaintiffs are sometimes able to convince the court, by the sheer volume of their submissions, that a material issue of fact must be lurking somewhere.

This does not necessarily mean the summary judgment procedure is flawed. Under *Anderson*, identifying possible fact issues -- even inconsistencies in defendants' testimony -- is not itself enough. *See Anderson*, 477 U.S. at 256-57; *Clyburn v. News World Communications, Inc.*, 903 F.2d 29, 35 (D.C. Cir. 1990). The court's attention must be focused -- as *Anderson* instructs -- on the substantive test, and merely "creat[ing] ambiguity . . . fails to meet the constitutional standard." *Unelko v. Rooney*, 912 F.2d 1049 (9th Cir. 1990), *cert. denied*, 499 U.S. 961 (1991). *See also Faltas v. State Newspaper*, 928 F. Supp. 637, 640 (D.S.C. 1996) ("To survive summary judgment, a party cannot rest on mere conjecture. This is true even as to claims which can normally only be proven by circumstantial evidence . . . In short, a party cannot prove his case 'only through speculation and the piling of inferences'"; granting summary judgment on libel claims).

Perhaps *Anderson's* most important legacy is in confirming that summary judgment is not *disfavored* in actual malice cases, rejecting the implication to that effect in *Hutchinson v. Proxmire*, 443 U.S. 111, 120 n. 9 (1979). *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) ("Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'"). Since *Anderson*, it is virtually a "given" that a libel defendant will move for summary judgment, whether on actual malice, substantial truth, opinion, qualified privilege or other grounds. A quick review of published district court opinions post-*Anderson* shows that summary judgment proceedings are the norm.

Of course, there is a reason -- the First Amendment -- for courts to look *more* favorably upon media defendants' summary judgment motions: "juries do not give adequate attention to limits imposed by the First Amendment and are much more likely than judges to find for the plaintiff . . . [i]t is appropriate for judges, therefore, to take cases from juries when they are convinced that a statement ought to be protected because, among other reasons, the issue it presents is inherently unsusceptible to accurate resolution by a jury." *Ollman v. Evans*, 750 F.2d 970, 1006 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1127 (1985) (Bork, J., concurring), *citing Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485 (1984). While the Supreme Court has itself echoed this

sentiment in different contexts (*see Monitor Patriot Co. v. Roy*, 401 U.S. 265, 273-75 (1974) (having a jury decide whether a publication was relevant to a "public affair" would leave "the jury far more leeway to act as censors than is consistent with the First and Fourteenth Amendments"); *Hustler Magazine v. Falwell*, 485 U.S. 46, 55 (1988) (emotional distress tort's "outrageousness" standard "has an inherent subjectiveness about it" which would improperly "allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression.")), it has never explicitly opined in *favor* of summary judgment in public figure/actual malice cases.

Fortunately, many state supreme courts and lower federal courts, following *Anderson*, have recognized the First Amendment's relevance to the summary judgment determination. Even before *Anderson*, courts recognized that "'[w]hen civil cases may have a chilling effect on First Amendment rights, special care is appropriate. Thus, a judicial examination at [the summary judgment stage] of the proceeding, closely scrutinizing the evidence to determine whether the case should be terminated in a defendant's favor, provides a buffer against possible First Amendment interferences'. . . . Requiring defendants to undergo a trial in this case would unnecessarily chill the exercise of their First Amendment right to publish newsworthy information." *Gilbert v. Medical Economics Co.*, 665 F.2d 305, 309-10, n. 1 (10th Cir. 1981) (granting motion in private facts privacy case) (quoting *Guam Fed. of Teachers, Local 1581 v. Ysrael*, 492 F.2d 438, 441 (9th Cir. 1974)). *See also Gintert v. Howard Publications*, 565 F. Supp. 829, 830 (N.D. Ind. 1983).

Judge Leisure's 1995 opinion for the Southern District of New York in the *Church of Scientology* case is a recent and eloquent example:

> Although a defendant's state of mind is at issue in a libel case covered by *New York Times*, that fact alone cannot preclude summary judgment, for First Amendment protection cannot be emasculated by unwillingness on the part of a court to grant summary judgment where "affirmative evidence of the defendant's state of mind" is lacking. A libel suit cannot be allowed to get to the jury, at enormous expense to the defendant, based on mere assertions of malice by the plaintiff. Indeed, without judicious use of summary judgment to dispose of libel suits, "the threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." Because the freedoms guaranteed by the First Amendment are designed to ensure that debate, not litigation, is vigorous, the subjective nature of the test of liability cannot create a bar to summary disposition of libel suits. Indeed, this Court finds little to distinguish silence enforced by oppressive litigation from "silence coerced by law -- the argument of force in its worst form." *Whitney v. California*, 274 U.S. 357, 375-76, 47 S.Ct. 641, 648-49, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring).

Church of Scientology Int'l v. Time Warner, Inc., 903 F. Supp. 637, 640 (S.D.N.Y. 1995) (citations omitted).

Other like-minded district court decisions include, *e.g.*, *Southwell v. Southern Poverty Law*

Center, 949 F.Supp. 1303, 1313 (W.D. Mich. 1996) (citing summary judgment's "benefit as a device to screen out otherwise meritless libel cases, especially those involving public figure plaintiffs"); *Faltas v. State Newspaper*, 928 F. Supp. 637, 640 (D.S.C. 1996) (summary judgment "is especially appropriate in libel cases, for prolonging a meritless case through trial could result in further chilling of First Amendment rights") (quoting *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638 (4th Cir. 1976)); *Milsap v. Journal-Sentinel*, 897 F. Supp. 406 (E.D. Wis. 1995), *aff'd in part, rev'd in part*, 100 F.3d 1265 (7th Cir. 1996); *Hickey v. Capital Cities/ABC Inc.*, 792 F. Supp. 1195 (D. Or. 1992), *aff'd*, 999 F.2d 543 (9th Cir. 1993) ("Summary judgment is the preferred method of dealing with First Amendment cases"); *Adler v. Conde Nast Publications, Inc.*, 643 F. Supp. 1558, 1565-67 (S.D.N.Y. 1986) (referencing "the strong First Amendment policy in favor of disposing of libel actions without trial"); *Crane v. Arizona Republic*, 729 F. Supp. 698, 701 (C.D. Cal. 1989) ("because there is a concern that unfounded libel suits may chill free speech, there is a strong federal policy of disposing of libel cases by motion rather than by trial whenever possible"), *aff'd in part, rev'd in part*, 972 F.2d 1511 (9th Cir. 1992). Among the State high courts which have expressed similar views are: *Immuno A.G. v. Moor Jankowski*, 77 N.Y.2d 235 (1991) ("we reaffirm our regard for the particular value of summary judgment, where appropriate, in libel cases"); *Jones v. Palmer Communications, Inc.*, 440 N.W.2d 884 (Iowa 1989) ("Summary judgment is afforded a unique role in defamation cases" and trial court must determine whether "allowing a case to go to a jury would . . . endanger First Amendment freedoms"); *Cox v. Hatch*, 761 P.2d 556 (Utah 1988) ("We acknowledge . . . a First Amendment interest in disposing of libel cases on motion").

Judicial recognition of the First Amendment's presence in summary judgment proceedings is certainly salutary, and perhaps implicit in *Anderson*. Whether the Supreme Court will acknowledge that remains to be seen.

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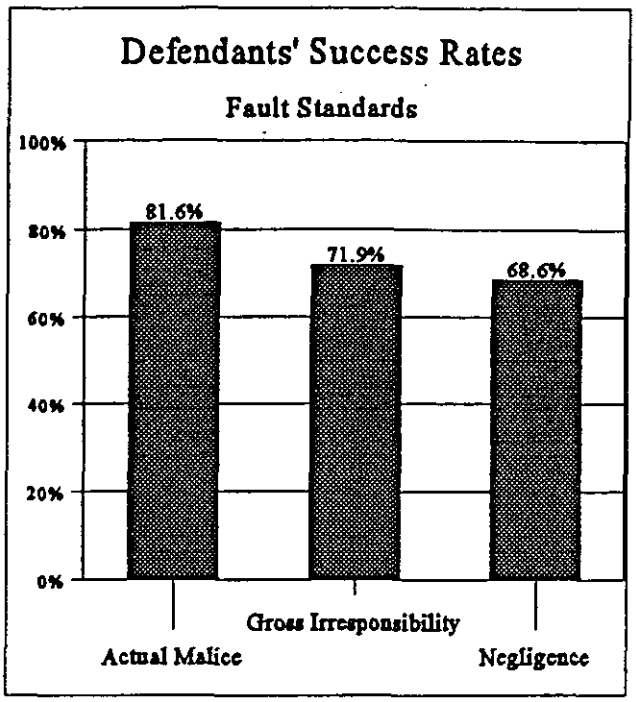
SUMMARY JUDGMENT IN NEGLIGENCE CASES: IT CAN HAPPEN TO YOU

by John Borger

You're representing a news organization in a libel case. You've lost your early motions for dismissal, the court has ruled that the plaintiff in your case is a private figure who under the laws of your state need prove only negligence in order to recover actual damages, you've just finished discovery, and trial is looming on the horizon. Is it worth moving for summary judgment? The answer may well be yes.

Although courts frequently regard questions of ordinary negligence as jury issues that are ill-suited for consideration on a motion for summary judgment, defamation or other content-based claims against the media may be treated differently. Listed below are some cases where this has occurred.



See Table 11.

- *Middleton v. Sutton*, 24 Media L. Rep. 1639 (1st Cir. 1996) (unpublished) (Affirming summary judgment for defendant in libel action against television program that "exercised reasonable care in [its] investigation" for report that portrayed plaintiff as one who had sexually abused and exploited his own children. The court noted: "The television program itself, despite a shallow pretence at serious reporting, was as to the plaintiff a highly colored and inflammatory version of the events. But there seems to have been at least some evidence for, and some investigation of, various key charges.").

- *Brown v. Hearst Corp.*, 54 F.3d 21 (1st Cir. 1995) (affirming summary judgment that television station was not negligent in broadcasting news report accurately reporting underlying facts of wife's disappearance and official suspicion that pilot/husband killed her, and holding no reasonable juror could infer defamatory meaning in alleged innuendo of murder by leading news report with reprise of recent pilot/husband murder in same small town, the "woodchipper murderer").

- *Penobscot Indian Nation v. Key Bank of Maine*, 906 F. Supp. 13 (D. Me. 1995) (media consultant was not negligent for using colorful adjectives and common parlance to describe, at a press conference, the substance of the allegations in a civil complaint, and he reasonably relied on the veracity of the complaint).

- *Garza v. Hearst Corp.*, 23 Media L. Rep. 1733 (W.D. Tex. 1995) (granting summary judgment to newspaper that relied on photographic identification of plaintiff as provided by sheriff's office).

- *Turner v. Harcourt, Brace, Jovanovich*, 5 Media L. Rep. 1437, 1438 (W.D. Ky. 1979) (granting summary judgment for defendant magazine that described defamation plaintiff as "a crazed stablehand [who] kidnapped and assaulted" a woman; plaintiff failed to present evidence that magazine acted negligently, and magazine had a right to rely upon the accuracy of the statements of the victim of crime for a description of that event, inasmuch as she was the witness against plaintiff in the case which led to his conviction and her version of the incident was accepted by the jury).

- *Kendrick v. Fox Television*, 659 A.2d 814 (D.C. Ct. App. 1995) (affirming summary judgment that television stations were not negligent in failing to obtain a school administrator/landlord plaintiff's side of the story before reporting on the air challenged statements about his possible involvement in tipping off drug dealers to police raid, or in reasonably relying on police statements which were not inherently suspicious).

- *Karp v. Miami Herald Publ. Co.*, 359 So. 2d 580 (Fla. Dist. Ct. App. 3d Dist.) (granting summary judgment; no negligence where reporter made reasonable efforts to contact plaintiffs for their version of circumstances prior to publication), *appeal dismissed*, 365 So. 2d 712 (Fla. 1978).

- *Phillips v. Washington Post Co.*, 8 Media L. Rep. 1835 (D.C. Superior Ct. 1982) (granting motion for summary judgment, despite plaintiff's claim that reporter acted negligently in failing to talk with homicide detectives prior to writing article; reporter based article on written police "hot line" report which had been established to eliminate need for personal interviews with police and which reporter previously had found to be accurate).

- *Bates v. Times Picayune Publishing Corp.*, 527 So. 2d 407, 411 (La. App.), *writ denied*, 532 So. 2d 136 (La. 1988) (plaintiff's photograph was published with caption incorrectly naming him as a different person arrested in connection with a disturbance at a housing project; photographer had obtained identification of the photograph from police department; court affirmed summary judgment for newspaper, stating that defendant was without fault because it relied on a police source and had no reason to doubt the reliability of the information).

- *Lovett v. Caddo Citizen*, 584 So. 2d 1197 (La. App. 1991) (newspaper did not act negligently in publishing article based upon information obtained from police chief, erroneously stating that plaintiff had been arrested in connection with a theft; appellate court reversed trial court judgment in plaintiff's favor and ordered the case dismissed).

- *Appleby v. Daily Hampshire Gazette*, 478 N.E.2d 721 (Mass. 1985) (affirming summary judgment and holding that newspaper is generally not negligent when it accurately restates, or publishes verbatim, information obtained from a reputable source, such as a wire service).

- *McKinney v. Avery Journal Inc.*, 393 S.E.2d 295, 297 (N.C. App.), *review denied*, 399 S.E.2d 123 (N.C. 1990) (newspaper was not negligent in relying on sheriff for information about plaintiff).

- *Torres-Silva v. El Mundo, Inc.*, 3 Media L. Rep. 1508 (P.R. 1977) (wire service, which erroneously reported that arrested individual was the son of the plaintiff, did not act negligently in relying on statements of police officers who identified family relationship; affirming summary judgment for defendants).

- *Holly v. Cannady*, 669 S.W.2d 381, 384-385 (Tex. App. 1984) (there was "simply no evidence indicating the existence of circumstances which would have prompted a reasonable person to question the statements made and conclusions drawn by the city manager" concerning city investments).

- *LaMon v. Butler*, 770 P.2d 1027, 1030-1031 (Wash.), *cert. denied*, 493 U.S. 814 (1989) (affirming summary judgment for newspaper; reporter did not act negligently in relying upon city attorney's interpretation of court order).

- *Dunlap v. Wayne*, 716 P.2d 842, 849-850 (Wash. 1986) (affirming summary judgment in defamation action where plaintiff had not provided evidence necessary to create an issue of fact about any claim of negligence).

- *Havalunch, Inc. v. Mazza*, 294 S.E.2d 70, 76 (W.Va. 1982) (reversing judgment for plaintiff: "We find no . . . element of negligence present in this case. . . . Where there are facts which would lead a reasonably prudent person to formulate a harsh conclusion, the facts need not be disclosed and the statement of opinion becomes actionable only when nonexistent facts are implied.").

- *Van Straten v. Milwaukee Journal*, 447 N.W.2d 105, 111-112 (Wis. App. 1989), *cert. denied*, 496 U.S. 929 (1990) (newspaper, which published article concerning suicide attempt by prisoner who had tested positive for HIV and who sprayed two jailers with his blood, did not act negligently in relying on statements made by jail personnel directly involved in incident, even though personnel mistakenly described prisoner as having AIDS rather than being HTLV-3-positive; summary judgment for newspaper affirmed).

- *Cf. Britton v. Koep*, 470 N.W.2d 518, 524 (Minn. 1991) (affirming summary judgment for defendant and noting it was "difficult to find even a question of ordinary negligence, let alone malice, to submit to a jury").

As these cases suggest, a defense motion for summary judgment in a libel case on the grounds of absence of negligence regarding the truth or falsity of the statement is not necessarily an exercise in futility. It must, of course, be carefully considered in light of the particular facts on an individual case, and it probably will have a better chance of success if you can combine it with a strong motion on the grounds of substantial truth or official report privilege.

Your chances of success also rise if your jurisdiction holds (as not all do) that the question of threshold evidence of fault is a question of law, regardless of whether the level of fault is negligence or actual malice. *See, e.g., Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W. 476, 492 n.21 (Minn. 1985) (in defamation action, sufficiency of evidence on any fault question is a matter of constitutional fact, requiring de novo review on appeal).

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A SUMMARY JUDGMENT SHORTCUT: PROVING THE ABSENCE OF A MATERIAL ISSUE OF FACT BY FILING A MOTION TO DETERMINE PLAINTIFF'S STATUS

by Joseph D. Steinfield

In 1991 Naval Institute Press published "Trapped at Pearl Harbor," an eyewitness account of the sinking of the battleship *Oklahoma*. The author, Stephen Bower Young, coupled his memories of the attack on Pearl Harbor with those of other surviving enlisted men who had been stationed with him in the ship's #4 turret. The riveting story tells of many lives lost and a handful saved from the overturned ship a day after it capsized and sank. Dell Publishing reprinted the book in 1992.

When the attack was announced early on that Sunday morning, 55 enlisted men and 2 officers quickly made their way to their battle stations in turret #4. It appears that the senior officer left the turret soon after the attack, and Young describes in his book the conduct of the junior officer, Ensign Joseph Spitler. According to the book, Spitler entered the turret, ordered his men to remain below deck, and then exited the turret and abandoned ship, leaving Young and many others in great peril. Denying these allegations, Spitler sued Young and the publishers in Massachusetts State Court.

The publishers filed two pretrial motions. They joined in a motion captioned "Motion to Determine Status," asking the Court to declare Ensign Spitler a public official. The second motion, filed on behalf of Dell only, sought summary judgment on the grounds that as a republisher of a book initially published by a responsible publisher, Dell was immune from suit.

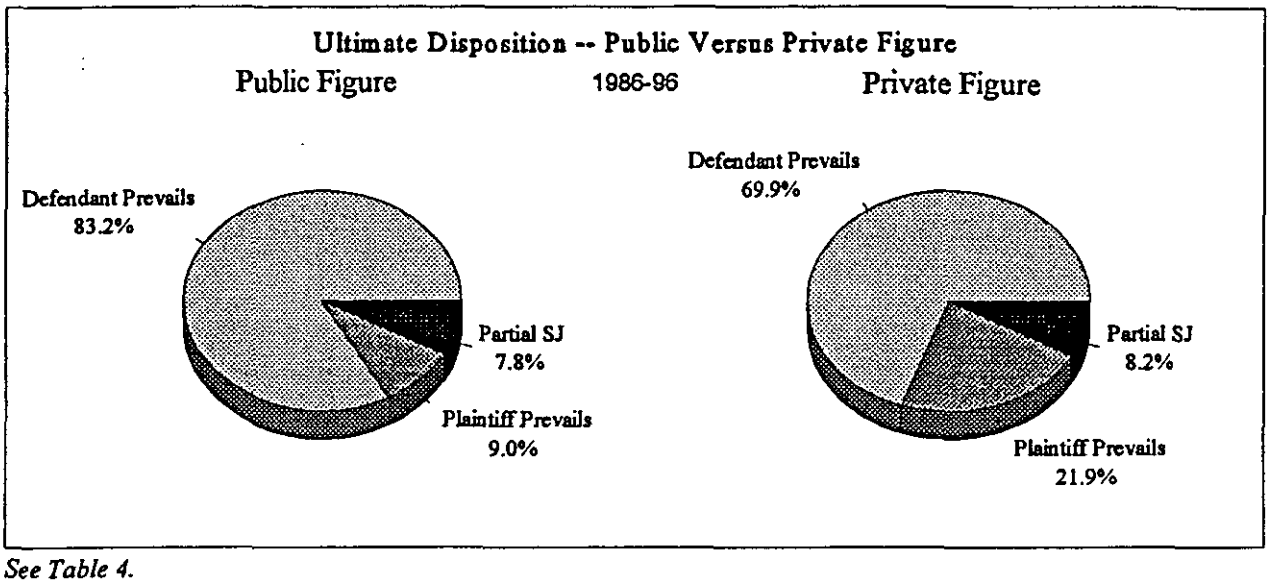
Before the motions were filed, the parties took extensive discovery, and it appeared highly doubtful that the plaintiff could ever show actual malice were he held to that standard. The strategy behind the status motion was simple: if the attention of the Court were focused on the public official question, then all of the issues pertaining to summary judgment could be put aside for another day. Such a strategy might seem inefficient at first blush, but the publishers were met with at least two problems. First, charging a military officer with leaving his men under fire obviously exposed the defendants to some risk if the case got to a jury. Second, relatively few cases have dealt with the status of military officers under *New York Times v. Sullivan*, and no decision had reached down to the level of a naval ensign just months out of Annapolis.

In a sense, the status motion could be seen as tantamount to a summary judgment motion (since there was clearly insufficient evidence of actual malice), but with a lot less paper. This consideration carries some weight in Massachusetts where Superior Court judges move from county to county and have an inadequate law clerk support system. Many judges assume that somewhere in a mountain of paper there must be a material fact in dispute; and media defendants cannot be confident that the judge will have any background or sensitivity to First Amendment concerns.

Apart from the benefit of shorter briefs and fewer exhibits, the status motion had the additional advantage of presenting a non-dispositive question to the Court -- an important question

but really just a pretrial way-station on the road to trial, an effort to clear away extraneous matters. Most important, it sidestepped, at least for the moment, the question of whether by granting the motion the judge would be depriving Mr. Spitler (who had gone on to serve an honorable career in the Navy) of his day in court.

This subject came up, at least obliquely, during oral argument. The judge inquired as to whether the next step after his ruling would be a pretrial conference. The response of media counsel was that however the Court might rule, further motions might be forthcoming. With discovery substantially completed, and the hiring of experts on the horizon (the publisher's expert, a retired admiral, had already been deposed), it seemed sensible and consistent with judicial efficiency to obtain a decision on the overriding question of status.



See Table 4.

The Massachusetts Superior Court granted both motions on the grounds that "a military officer, under fire from the enemy and responsible for the lives of men and women under his/her command, is a public official . . . ." *Spitler v. Young*, 25 Media L. Rep. 1243, 1245 (Mass. Super. Ct. 1996). Dell was dismissed from the case not on the immunity grounds, which the Court declined to recognize, but rather on the grounds that in these circumstances a public official could not establish actual malice against a paperback republisher, whose "reliance on the fact investigation of another publisher is relevant to the issue of fault." *Id.* at 1248.

The judge's status ruling was, of course, interlocutory in nature. However, Spitler's lawyers candidly acknowledged that they could not prove knowing falsity or reckless disregard. Thus, they moved for an immediate appeal of the interlocutory order, noting that the policy against such appeals is often relaxed in First Amendment cases. The motion was denied. "The relaxation . . . is to give media defendants special protection . . . . The present case does not fit within that purpose." *Spitler v. Young*, 25 Media L. Rep. 1254, 1255-56 (Mass. App. Ct. 1966).

At this juncture of the case, Plaintiff's counsel made the novel suggestion that the parties impanel a jury, plaintiff would concede in his opening that he could not prove actual malice, and the court would then direct a verdict on the opening. This would produce a final judgment, thereby enabling the plaintiff to appeal the adjudication of public official status. Defendants declined to go along with the suggested approach and indicated that they would now proceed with summary judgment motions. Having told the Appeals Court that the trial judge's ruling was effectively the death knell of the case, plaintiff's counsel had little stomach for more pretrial motions in the Superior Court. At that point the parties were able to settle the case on agreeable terms.

Counsel on both sides of this litigation had dreamed of the day when they would have the opportunity to present to a jury issues rarely seen by trial lawyers. What happened during those critical fifteen minutes on December 7, 1941? Did Seaman Young and his colleagues accurately recall what took place in turret #4? What was a young naval officer's duty in those circumstances? How should modern First Amendment law deal with historical accounts of this type? None of these issues was heard or decided, but the case does stand for the proposition that the public has a very great interest in the conduct of military officers, whatever their rank, during time of war. For purposes of media lawyers, the suggested approach, focusing first on status and deferring summary judgment, may be the easier way to accomplish the desired result.

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SELECT YOUR SUMMARY JUDGMENT ISSUE AND BIFURCATE DISCOVERY

by Anthony M. Bongiorno

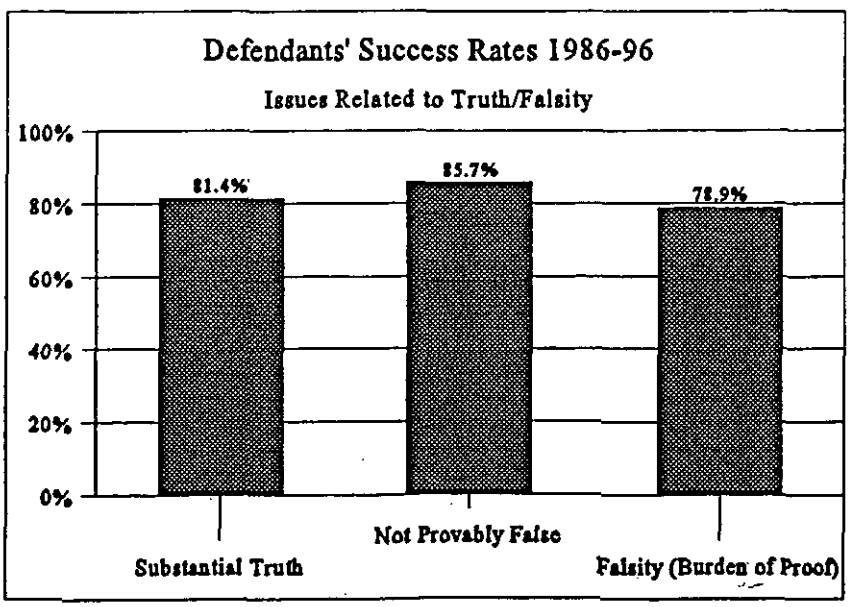
Much attention has been focused on recent multimillion dollar jury verdicts in defamation cases. While those adverse verdicts are profoundly disturbing, the dramatic rise in the costs of defending defamation litigation is also troubling. As the Supreme Court cogently observed in *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971):

> It is not simply the possibility of a judgment in damages [in a defamation action] that results in self-censorship. The very possibility of having to engage in litigation, an expensive and protracted process, is threat enough . . . to cause discussion and debate to "steer far wider of the unlawful zone" thereby keeping protected discussions from public cognizance.

Id. at 52-53 (1971)(plurality opinion of Brennan, J.), (citing *Speiser v. Randall*, 357 U.S. 513, 526 (1958)); *see also New York Times v. Sullivan*, 376 U.S. 254, 279 (1964).

Accordingly, to minimize litigation costs and intrusions into the editorial process, defendants should consider filing a motion for a protective order in the initial stages of a defamation action, which seeks to defer actual malice discovery until after the falsity of the challenged statements has been shown through the discovery process, or, at the very least, after a genuine issue of material fact on that issue has been demonstrated.

This bifurcated discovery approach was endorsed by the United States District Court for the Eastern District of Washington in *Auvil v. CBS "60 MINUTES,"* where a putative class of 4,700 apple growers in Washington State filed suit in November, 1990, against CBS and its local affiliates for product disparagement, interference with economic relations, and a violation of the Washington State Unfair Business Practices Act. The action arose from a February 26, 1989 60 MINUTES report entitled "'A' is For Apple," which discussed the government's failure to respond to the public health threat posed by "Alar," a growth



See Table 11.

regulator that was sprayed on red apples which was shown to be carcinogenic in laboratory animals.

After several preliminary motion battles, which narrowed the parties and shaped the issues of the case, CBS sought an order limiting discovery to the issues of falsity and/or nonverifiability. CBS argued that subjecting it to actual malice discovery where there was a well-grounded basis for believing that the case could be disposed of on the issue of truth could "not be reconciled with the goal of disposing of a case implicating First Amendment rights at the earliest opportunity, and with the least burden on a media defendant." CBS' motion was supported by affidavit evidence of its protracted and expensive actual malice discovery experience in cases such as *Herbert v. Lando* and *Westmoreland v. CBS*. Plaintiffs vigorously opposed bifurcation of discovery.

The court agreed to limit discovery to the issue of the alleged falsity of the 60 MINUTES report, in deference to the principle of "expeditiously resolving cases implicating the First Amendment" and with the least burden on a media defendant. *See* unpublished decision dated July 23, 1992.

After several months of expert discovery on that narrow issue, on September 13, 1993, CBS was awarded summary judgment on the grounds of substantial truth and nonverifiability. *See* 836 F. Supp. 740 (E.D. Wash. 1993). That decision was affirmed by the Ninth Circuit. 67 F.3d 816 (9th Cir. 1995). *Certiorari* was later denied by the United States Supreme Court. 116 S. Ct. 1567 (1996).

Litigants can mitigate the chill of defamation litigation by bifurcating discovery, where there is a good faith basis for believing that the case can be disposed of on the issue of substantial truth or some other discrete issue.

Anthony M. Bongiorno is Assistant General Counsel of CBS Inc. and was one of the attorneys of record in Auvil.

"TRUTH" OR CONSEQUENCES: IS THERE DANGER IN LITIGATING TRUTH?

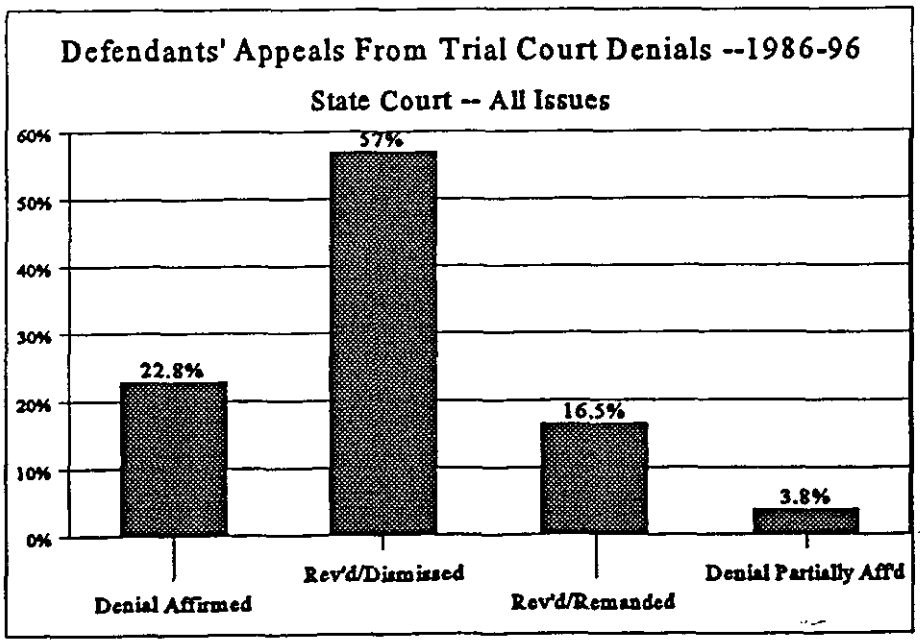
by Julie Ford

Defenses of "opinion" and "no actual malice" were always worth a shot in a summary judgment proceeding in Texas. But summary judgment motions negating the element of substantial falsity, particularly where there were several false statements alleged, were a different story.

In presenting a "substantial truth" defense, we would remind the court of the rule that "falsity" is for the court in the first instance. But once we launched into the factual evidence, all was lost. Factual evidence in a summary judgment proceeding can only mean one thing to a trial judge -- contested issues of fact precluding summary judgment.

Then in 1993 free speech in Texas scored a legislative victory, with a substantial change in summary judgment procedure. Under the new statute, a media defendant could pursue an interlocutory appeal of a trial court's denial of summary judgment where the motion is based on First Amendment defenses. Appellate review is not discretionary at the intermediary court of appeals level, and the trial court must not interfere with the defendant's right to file an interlocutory appeal. Tex. Civ. Prac. & Rem. Code § 51.014 (6); *Grant v. Wood*, 916 S.W.2d 42 (Tex. App. Houston [1st Dist.] 1996).

Now defendants could appeal to a panel of cooler and wiser appellate judges, who would examine the issues with great care. So instead of working on trial strategy, we gathered evidence for motions for summary judgment, even on issues of substantial truth. And if the trial judge went to sleep during argument, no matter -- the issues would go up on appeal where law clerks read each bit of evidence. If all of that evidence showed the "gist" of the statements were true, the high cost of a trial would be avoided. Or so we thought.



See Table 9B.

Four years later, it looks like the use of summary judgment as a quick and cheap way to prove "substantial truth" may be an illusion. Summary judgment and an

interlocutory appeal based on a defense of "substantial truth" can rival the cost of a full-blown trial. And, unlike trial, all of the presumptions are against you. Instead of resolving the dispute with a small legal skirmish up front, the process can end up being two lengthy trials and appeals when one trial may have accomplished the same result.

While it may be hard to resist filing a summary judgment motion based on a "substantial truth" defense, it's a choice that deserves a long hard look.

Some things a media defendant may want to consider before compiling a motion for summary judgment based on "substantial truth" are described below. Although in Texas the decision is greatly influenced by the right to an interlocutory appeal, the same factors may be helpful no matter where the case is pending.

1. Is the truth a simple matter?

To prove substantial truth, a defendant has to be able to hold the truth up next to the published statement and compare the two. But the truth may be hard to articulate. This is particularly true where the libel is not based on the actual words, but on innuendo or implication. Affidavits and deposition testimony may not capture the qualities that would best prove the truth of an implied defamatory statement. In fact, sometimes a truckload of affidavits may not help as much as one minute of live testimony.

The truth also needs to be short and simple. If it is long or complicated, judges won't want to figure it out. A defendant may have better luck explaining the truth to a captive audience of twelve.

The evidence of truth must be directly on point -- and uncontroverted. At trial, the defendant may have tons of evidence to convince the jury that the statement has the same gist as the "truth." That evidence can be both direct and indirect, and the plaintiff can disagree with all of it. But in summary judgment, only the uncontested evidence can be used.

At trial, the scope of evidence will not only include contested evidence, but evidence on other issues in the case. For example, in Texas, if specially pleaded, a defendant can give evidence of "all material facts and circumstances surrounding the claim for damages and defenses to the claim" to mitigate damages. This kind of evidence, unavailable at the summary judgment stage, might provide extra insight into the "whole truth."

2. Can the court's decision affirmatively hurt you, not just make you go to trial?

Those issues that are to be considered first by the court, and then, if unclear, sent to a jury, can be dangerous. For example, one of the few areas in which "substantial truth" can be nailed down with uncontested evidence is a of true report of an official proceeding. Just compare the statement with the transcript and anyone can see that the report is true.

But what if the judge disagrees? Instead of getting a chance to convince the jury, a defendant may lose altogether if the judge rules that the report was substantially false as a matter of law. In summary judgment, this decision would be made in a vacuum, without the assistance of other evidence that could paint a broader picture of the truth.

3. Are your witnesses healthy?

Delay is generally viewed as a good thing: the defendant keeps its money and the plaintiff keeps his lawsuit. However, a defendant may want to do a roll call and make sure everyone is likely to be alive and well -- and still friends with the defendant -- after a summary judgment and appeal just in case there will be a trial after all.

4. How much money is at stake?

A messy, complicated "substantial truth" case with a relatively small amount of damage and an unsympathetic plaintiff could call for a trial without pursuing summary judgment. Compiling summary judgment evidence in such a case can be a very expensive process. It might be more cost effective for the defendant to put on its evidence only once -- at trial -- and hope for a favorable decision on appeal based on a full record. (Of course, if a large amount of damages are at issue, the expense of summary judgment could pale against the cost of the appeal bond alone.)

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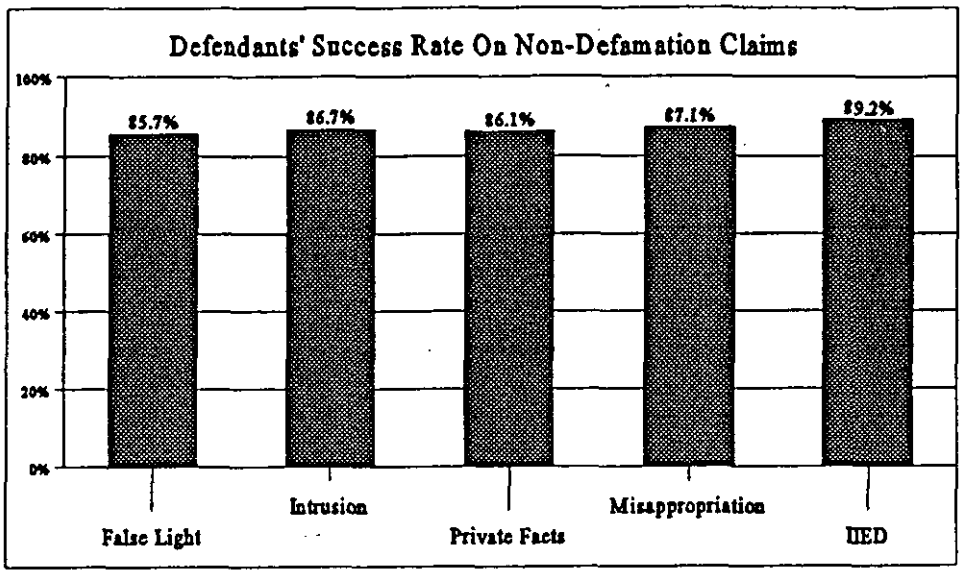
SUMMARY JUDGMENT WITHOUT DISCOVERY

by Susan Grogan Faller

A good illustration of the successful use of summary judgment "right out of the box" is *Lusby v. Cincinnati Monthly Publishing Corp.*, 17 Media L. Rep. 1962 (6th Cir. 1990). The Complaint, filed against *Cincinnati Magazine*, alleged libel, invasion of privacy, and negligent and intentional infliction of emotional distress. The article at issue was attached to the complaint and was entitled "The Six-Time Loser." It included as an illustration the plaintiff's wedding photograph next to paperdoll cutouts representing his six prior brides. The plaintiff complained that *Cincinnati Magazine* wrongly revealed his "personal and private affairs, including allegations concerning his marriages, his supposed employment history, his supposed sexual practices, his supposed venereal diseases and his supposed financial condition and practices. . . . [T]he defendants published private and personal photographs of the plaintiff from his wedding . . . ."



See Table 12.

Defense counsel filed a motion for summary judgment with supporting affidavits a month after the filing of the Complaint, before discovery.

Lusby's complaint was full of allegations that appeared to implicate factual disputes. For example, one of Lusby's filings states:

> The article alleges that the plaintiff's employment history is erratic, that he preys upon professional women for their money, that he "took" his sixth wife for $60,000 and his fifth wife for $5,000, that he is a sociopath and a pathological liar, that his credit is over-extended, that he has condyloma, a venereal disease, and transmitted it to his sixth wife causing her to undergo a hysterectomy, that he attracts women with his "flamboyant lifestyle," that he engages or attempts to engage in adulterous relationships, that his actions have jeopardized the career, finances, health and emotional stability of his sixth wife, in that his sixth marriage "disintegrated through

> the attrition of his thoughtlessness and his none-to-subtle pursuit of other women." The article also mentions that the plaintiff had declared bankruptcy, and recounts his prosecution and conviction for falsification, a charge brought by his sixth wife stemming from his false statement on his application for a marriage license that he had only been married twice instead of the actual five times.

Defense counsel argued that it was not necessary to resolve the numerous disputes of fact raised because they were immaterial to the valid defenses supported by the undisputed facts. It was uncontested that many of the allegedly private facts were part of the public record in prior litigation. Lusby was the source of other facts, having discussed them with the magazine. Furthermore, the statute of limitations defenses could be analyzed and decided without reaching the issues of the truth or offensiveness of the article published.

The United States District Court for the Southern District of Ohio granted summary judgment and the Sixth Circuit affirmed.

Lusby's defamation claim was dismissed on statute of limitations grounds. Lusby argued that his claims for infliction of emotional distress were not barred by the one-year Ohio statute of limitations barring his claims for libel. Lusby argued "that Ohio recognizes the torts of defamation and intentional infliction of emotional distress as separate torts. . . . The statute of limitation for the tort of intentional infliction of emotional distress in Ohio is four years." 17 Media L. Rep. at 1965.

The Sixth Circuit concluded

> [Lusby's] distress claims have their only basis in the article which is based on the same set of facts which supports his libel, defamation and privacy claims. . . . [T]he district court correctly determined that it would be unfair to permit Lusby to recover for his emotional distress claims after the statute of limitations for the libel and defamation claims had run . . . .

17 Media L. Rep. at 1765.

The Sixth Circuit also agreed that Lusby's privacy claims were barred, holding

> that Lusby "should not now be permitted to claim an invasion of privacy where he voluntarily submitted to an interview regarding the subject matter of the article." . . . Finally, any information contained in the article that was derived from official court proceedings cannot be the basis for liability, because the First Amendment protects those who accurately report the information released. . . . Therefore, we agree with the district court's conclusion that Lusby's previous divorce litigation, bankruptcy proceeding and conviction for falsifying his marriage license had made all these facts public.

17 Media L. Rep. at 1764.

Obviously, the summary judgment tactic was successful in keeping defense costs to a minimum in the *Lusby* case, despite the fact that the complaint alleged sensitive and highly disputed issues of fact. Defense counsel in the *Lusby* case took away from the experience the view that the mere presence of numerous disputed facts should not dissuade the defense from attempting to keep the court's eye on the ball -- the material facts. The material facts may well be far fewer than they seem at first and they may be undisputed, particularly where defenses such as statute of limitations, consent, and the public nature of allegedly private facts can be readily established.

NB: 6th Circuit Rule 24 governs citation of the above case.

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Editor's Note: Readers may also be interested in ***Reed v. Time****, 1995 WL 5810, 23 Media L. Rep. 1607 (S.D.N.Y. 1995), a potentially thorny libel case in which summary judgment was granted without any depositions of defense witnesses because the existing record showed that plaintiff could not prove actual malice or gross irresponsibility. This summary of the case is taken from an account written for LDRC's LibelLetter by defense counsel, Gregory L. Diskant and Steven A. Zalesin of Patterson, Belknap, Webb & Tyler, New York, NY, whom the Editor thanks.*

Reed approached *Time* in 1992 with a sensational tale. According to Reed, President Clinton, while governor of Arkansas, agreed to provide a training ground in Arkansas for pilots involved in President Reagan's plan to assist the Nicaraguan Contras. Reed said Clinton was to be paid ten percent of the proceeds from the operation, which involved guns, cash and drugs.

These and other allegations were thoroughly debunked by *Time* reporter Richard Behar. *Time* then published Behar's expose of Reed's attempted smear. Behar's article was supported in detail by tape-recorded interviews.

Reed sued. Behar, an award-winning journalist, had been a witness at time-consuming depositions in previous lawsuits, including one deposition that lasted for 27 days. Defense counsel, anxious to spare Behar and to permit him to spend his time pursuing his work, relied on the mountain of taped evidence, reporters notes and drafts to persuade the court that summary judgment could be warranted on the fault standard even though the case had barely gotten underway.

In response to plaintiff's claims that he needed a host of depositions to defend against the motion, the court permitted him to take only one: a third party witness whom Reed claimed was his key witness. The witness provided Reed with no corroboration.

Time's victory enabled a key reporter to continue work unhindered and brought a speedy and economical conclusion to what could have been a protracted libel battle.

PART III. FINDINGS OF THE 1997 LDRC REPORT ON SUMMARY JUDGMENT

- **OVERVIEW**

1. *What's included?* LDRC reviewed reported decisions on motions for summary judgment filed by media defendants in cases involving defamation and related claims dated for the period from January 1, 1995 to December 31, 1996.[3] The 1997 Report on Summary Judgment updates summary judgment data dating from 1980 previously reported by LDRC, which is also included in this Report.

2. *The new data.* The data is taken from 164 cases, which are either new to the study or are newly decided appeals of previously reported decisions. These cases account for 212 summary judgment decisions. 123 of these are trial court decisions, while 89 are appellate decisions. 132 are state court decisions; 80 were decided by federal courts.

3. *Ultimate dispositions.* The overall numbers show that defendants' success rates on summary judgment are substantial and continue to rise. For the 1995-96 period, the rate is 82.3%. For the period 1990-96, the rate is 79.4%. The entire post-*Anderson* period (July 1986-1996) bears a 77.9% defense success rate, while the pre-*Anderson* rate (1980-June 1986) was 74.6%.

4. *Trial court decisions.* At the trial court level, the numbers are also on the rise. In the 1995-96 period, defense success rate with trial judges was 84.6%. In 1990-96, the rate is 83.6%. The entire post-*Anderson* period has a success rate of 82.1%. The pre-*Anderson* rate was 79.5%.

5. *Appellate decisions.* Defendants' overall success rate on appeal (including both plaintiffs' appeals from grants of summary judgment and defendants' appeals of denials) was a new high of 81.6% in the 1995-96 period. The 1990-96 rate is 75.0%, while the entire post-*Anderson* period rate is 73.6%. The pre-*Anderson* rate was 72.1%.

When broken down into plaintiffs' appeals of grants of summary judgment and into defense appeals of denials, the recent picture is no less optimistic. Plaintiffs' appeals of grants resulted in affirmances 80.3% of the time in the 1995-96 period. This is up from the 74.2% for the 1990-96 period and the 74.5% for the post-*Anderson* period. It is also higher than the affirmance rate of 76.4% for the pre-*Anderson* period. Similarly, denials of summary judgment were reversed and cases were dismissed in 83% of the decisions in 1995-96, a large increase from the 74.4% rate of 1990-96 and the 57.0% rate of the entire post-*Anderson* period. The pre-*Anderson* rate was only 50.0 percent.

6. *State and federal court comparisons.* In the most recent study period, the success rate is 84.4% in state court and 79.4% in federal court. Over the entire post-*Anderson* period, the success

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[3] The cases reported in the 1995-96 period are set out in Part IV below.

rate in state court is 79.1% and the success rate in federal court is 75.5%.

7. *The public figure effect.* Classification of the plaintiff as a public figure accords defendants great power on summary judgment. This is no surprise and is evident from the LDRC findings. In 1995-96, the defense success rate was 85.2% where plaintiff was a public figure. In contrast, where plaintiff is characterized as a private figure, the success rate drops to 68.4%. This mirrors the rates from 1990-96 (84.7% public figure; 70.5% private figure) and over the entire post-*Anderson* period (83.1% public figure; 66.1% private figure). Before the *Anderson* decision, the rate was only 77.8% for public figure cases and 57.6 % for private figure cases.

8. *Other claims.* In the post-*Anderson* period, defendants succeeded on 85.4% of summary judgment motions aimed at claims related to defamation, such as invasion of privacy and intentional infliction of emotional distress. This rate is virtually the same as the 85.6% rate reported in the last LDRC summary judgment survey for 1986-94.

9. *Tables.* Tables 1–4 report on the ultimate disposition of defendants' motions for summary judgment; that is, the final determination in the case after all considerations of the motion and any appeals have been resolved. Tables 5–7 report on the initial disposition of defendants' motions for summary judgment at the trial court level. Tables 8–10 report on the appellate review of lower court rulings on these motions. The tables also reflect the effect on the motions of defending a case in state or federal court (Tables 3, 6, 9) and of the plaintiff's status as a public or private figure (Tables 4, 7, 10). Table 11 examines the court's disposition of the various legal issues considered on the motion for summary judgment in each case and Table 12 examines the disposition of other claims and causes of action.

◦ ULTIMATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS (TABLES 1–4)

Tables 1–4 categorize the outcome of each motion as either "defendant prevails," "plaintiff prevails," or "partial summary judgment."[4] A defendant was considered to have prevailed if a trial court grant of summary judgment was not appealed or was finally affirmed, if a trial court denial was reversed and dismissed, or if a trial court denial was reversed and remanded and no further information was available. In addition, the small number of cases in which a defendant sought and was granted partial summary judgment on a particular issue or issues was also categorized as "defendant prevails." A case was classified as "plaintiff prevails" if a trial court denial of summary judgment was not appealed or was finally affirmed or a trial court grant of summary judgment was finally reversed.

[4] Partial grants were not separately reported in LDRC's 1980–86 studies, but aggregated into the plaintiffs' success rate.

TABLE 1 ULTIMATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS TRIAL COURT AND APPELLATE DISPOSITIONS

	Defendant Prevails		Plaintiff Prevails		Partial SJ	
	No.	%	No.	%	No.	%
1995-96	135	82.3	14	8.5	15	9.1
1990-96	358	79.4	56	12.4	37	8.2
1980-96	850	76.7	196	17.7	62	5.6
ANDERSON ANALYSIS[5]						
July 1986-1996	560	77.9	97	13.5	62	8.6
1980-June 1986	290	74.6	99	25.4	—	—

The results of the 1997 study of summary judgment show a continued slow but steady increase in the media defendants' success rate over all periods studied, with defendants' success rate rising from 74.6% of reported cases in 1980–86 to 77.9% in the decade since *Anderson v. Liberty Lobby*. In addition, the defendants' success rate rose from the 75.1% success rate reported in 1995 for cases in 1986–89 to 79.4% for cases reported from 1990-96. In the current study period, 1995-96, the defendants' success rate was at its highest ever, with defendants' prevailing in 82.3% of reported cases. The recent increase in success on motions for summary judgment has raised the defendants' success rate for the entire 17-year period covered by the LDRC studies to 76.7%, nearly a percentage point higher than the 75.9% defendant success rate reported in 1995 for the 1980-94 period.

Additionally, in the period 1986–96, partial summary judgment was entered in favor of media defendants — dismissing either some claims or some defendants — in another 8.6% of cases. Over the entire period covered by LDRC studies, 1980–96, plaintiffs' success rates in entirely deflecting entry of summary judgment declined from 25.4% in 1980–86 to 13.5% in 1986-96. In the current study period, 1995-96, plaintiffs were successful in only 8.5% of cases, the lowest plaintiff success rate of any of the study periods.[6]

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5 The date of the decision in *Anderson* was June 25, 1986.

6 Because partial grants in the 1980-86 studies were aggregated into the plaintiffs' success rate, the 25.4% plaintiffs' success rate in 1980–86 is overstated to the extent that it includes cases in which summary judgment was obtained either as to some defendants or some claims.

TABLE 2A ULTIMATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
YEAR-BY-YEAR ANALYSIS

	Defendant Prevails		Plaintiff Prevails		Partial SJ	
	No.	%	No.	%	No.	%
1996	69	76.7	10	11.1	11	12.2
1995	66	89.2	4	5.4	4	5.4
1994	52	81.3	8	12.5	4	6.3
1993	47	90.4	3	5.8	2	3.8
1992	36	73.5	9	18.4	4	8.2
1991	42	73.7	11	19.3	4	7.0
1990	46	70.8	11	16.9	8	12.3
1989	51	75.0	11	16.2	6	8.8
1988	76	80.0	12	12.6	7	7.4
1987	51	76.1	10	14.9	6	9.0
July 1986-December 1986	24	63.2	8	21.1	6	15.8
1980-June 1986	290	74.6	99	25.4	—	—

In a break from the traditional LDRC analysis of summary judgment motions over periods of years, the new study includes an analysis of summary judgment disposition on a year-by-year basis. Much like LDRC's analysis of jury verdicts and damages, the year-by-year breakdown illustrates the danger of making predictions or discussing trends in the way courts are or will be handling future summary judgment motions.

The year-by-year analysis does show, however, that while the rate of defendants' success fluctuates, defendants consistently enjoy a high winning percentage on motions for summary judgment.

It is also interesting to note that the year-by-year analysis points out the fluctuations in the number of reported decisions over a given period of time. In the 1995-96 period, for instance, a total of 164 decisions were reported, over 40% more than the 116 decisions reported in the 1993-94 period. Indeed, LDRC found more reported decisions in the 1995-96 period than any other post-*Anderson*, two-year period.

TABLE 2B ULTIMATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS: YEAR-BY-YEAR ANALYSIS

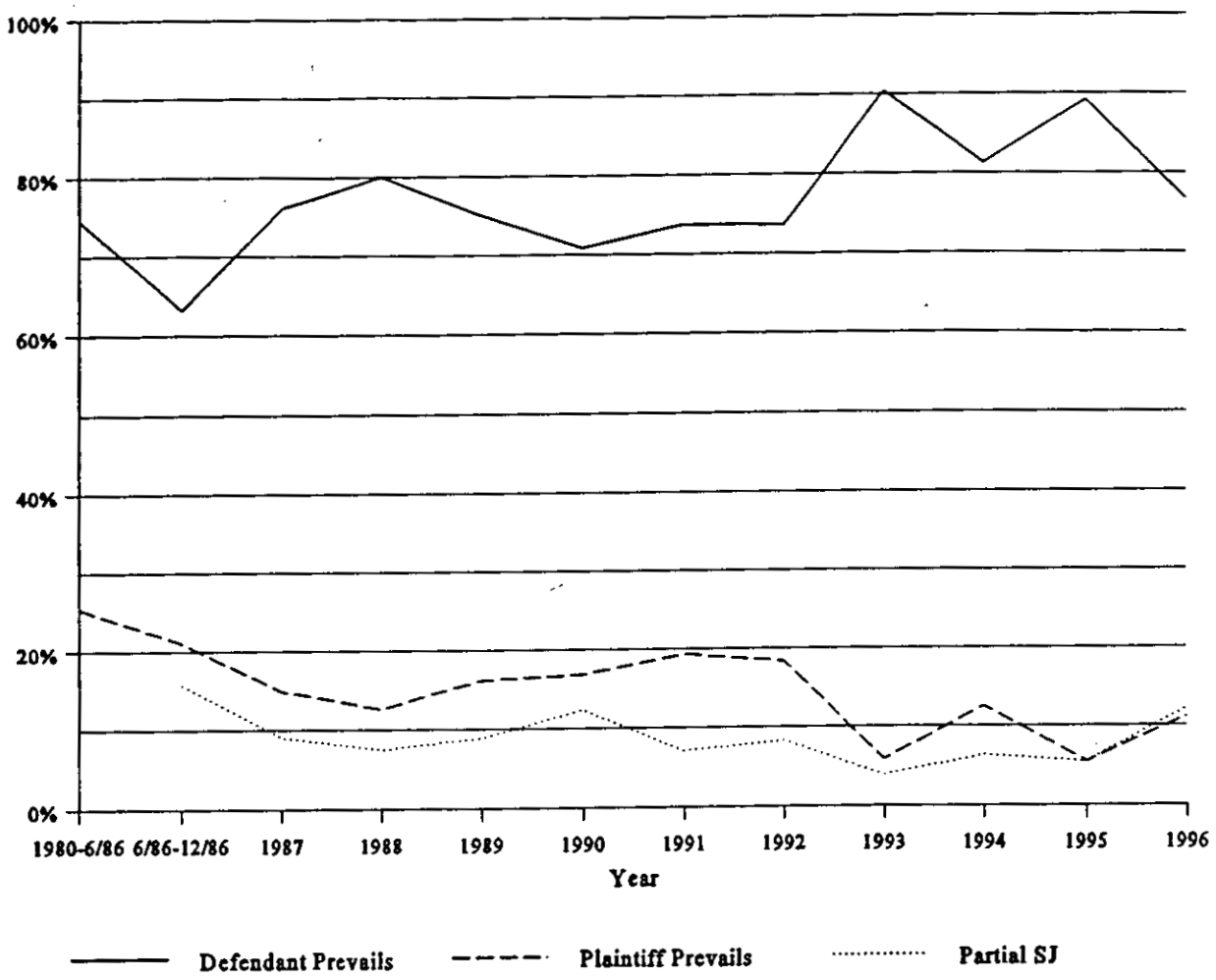

TABLE 3 ULTIMATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
STATE VERSUS FEDERAL COURT

		Defendant Prevails		Plaintiff Prevails		Partial SJ	
		No.	%	No.	%	No.	%
STATE:	1995-96	81	84.4	9	9.4	6	6.3
	1990-96	237	80.9	41	14.0	15	5.1
	1980-96	563	77.7	131	18.1	31	4.3
FEDERAL:	1995-96	54	79.4	5	7.4	9	13.2
	1990-96	121	76.6	15	9.5	22	13.9
	1980-96	286	74.9	65	17.0	31	8.1
ANDERSON ANALYSIS							
STATE:	July 1986-1996	375	79.1	68	14.3	31	6.5
	1980-June 1986	188	74.9	63	25.1	—	—
FEDERAL:	July 1986-1996	186	75.5	29	11.8	31	12.7
	1980-June 1986	101	73.7	36	26.3	—	—

In 1995-96, the ultimate grant rates were 84.4% in state versus 79.4% in federal court. Over the entire 1980–96 period, the respective grant rates in state and federal court were 77.7% and 74.9%. During 1980–86, defendants were ultimately successful in obtaining summary judgment in slightly more cases reported in state court (74.9%) than in federal court (73.7%). This divergence was maintained in the post–*Anderson* period, with 79.1% of motions ultimately granted in state court versus 75.5% in federal court.

The incidence of partial grants of summary judgment is an additional factor that must be considered when comparing the results in state and federal court. During 1986–96, federal courts reported awards of partial summary judgment — that is, summary judgment as to either some claims or some media defendants — almost twice as frequently as did their state counterparts (12.7% versus 6.5%). As a result, summary judgment was completely denied in 14.3% of cases reported from state court, versus only 11.8.% of cases reported from federal court.

TABLE 4 ULTIMATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS PUBLIC VERSUS PRIVATE FIGURE

		Defendant Prevails		Plaintiff Prevails		Partial SJ	
		No.	%	No.	%	No.	%
1995-96:	Public figure	46	85.2	3	5.6	5	9.3
	Private figure	13	68.4	3	15.8	3	15.8
1990-96:	Public figure	144	84.7	12	7.1	14	8.2
	Private figure	62	70.5	16	18.2	10	11.4
1980-96:	Public figure	268	82.0	39	11.9	20	6.1
	Private figure	99	64.3	39	25.3	16	10.4
ANDERSON ANALYSIS							
July 1986-96:	Public figure	212	83.1	23	9.0	20	7.8
	Private figure	80	66.1	25	20.7	16	13.2
1980-June 1986:	Public figure	56	77.8	16	22.2	—	—
	Private figure	19	57.6	14	42.4	—	—

Over all study periods, defendants were far more successful in cases where the plaintiff was a public figure.[7] Over the full post–*Anderson* period, 1986-96, defendants obtained dismissals in 83.1% of public figure cases versus only 66.1% of private figure cases. In the most recent period, 1995-96, defendants were successful in 85.2% of public figure cases and 68.4% of private figure cases. During 1980–86, defendants prevailed in 77.8% of cases involving public figures and only 57.6% of cases brought by private figure plaintiffs. Over the entire period covered by the LDRC studies, 1980–96, defendants were ultimately successful in securing summary judgment in 82.0% of cases involving public figure plaintiffs, versus 64.3% of cases involving private figures.

[7] Data on plaintiff status are limited to cases in which the status could be definitively determined. For example, in the 1995-96 study period, the plaintiff's status was identifiable in 73 of the 164 cases.

◦ TRIAL COURT DISPOSITION OF SUMMARY JUDGMENT MOTIONS (TABLES 5–7)

Tables 5–7 report on the number and percentage of grants, partial grants, and denials of summary judgment in 123 motions at the trial court level in the 1995-96 period, both as to aggregate results and results with respect to variables such as public versus private figure and state versus federal court.[8] In some instances, the same case may have resulted in more than one reported decision and therefore be counted more than once in the trial court tables — for example, when a defendant has moved for reconsideration or a case is remanded after appeal. Moreover, some cases were unreported at the trial court level but identified in reported appellate decisions. In order to better reflect the incidence and results of summary judgments motions made at the trial court level, these unreported decisions were also entered into the database used to generate Tables 5–7.

TABLE 5 TRIAL COURT DISPOSITION OF SUMMARY JUDGMENT MOTIONS AGGREGATE RESULTS

	Defendant Prevails		Plaintiff Prevails		Partial SJ	
	No.	%	No.	%	No.	%
1995-96	104	84.6	8	6.5	11	8.9
1990-96	347	83.6	40	9.6	28	6.7
1980-96	733	81.5	124	13.8	42	4.7
ANDERSON ANALYSIS						
July 1986-1996	582	82.1	85	12.0	42	5.9
1980-June 1986	151	79.5	39	20.5	—	—

In the 1980-86 period, 79.5% of defendants' motions were granted. Overall, the trial court grant rate in the post–*Anderson* period has increased to 82.1%, with trial courts granting summary judgment in 84.6% of the cases reported in the 1995-96 period. Over the entire period covered by the LDRC studies, 1980–96, defendants' summary judgment motions at the trial court level were fully granted in 81.5% of reported cases, partially granted in 4.7% of cases, and fully denied in 13.8% of cases.

[8] The 123 trial court motions reflect cases that appeared for the first time in the 1995-96 period. The 41 other cases (out of the total of 164) are cases which first appeared in the 1990-94 period and are now being updated due to appellate decisions in the 1995-96 period.

TABLE 6 TRIAL COURT DISPOSITION OF SUMMARY JUDGMENT MOTIONS STATE VERSUS FEDERAL COURT

		Defendant Prevails		Plaintiff Prevails		Partial SJ	
		No.	%	No.	%	No.	%
STATE:	1995-96	55	88.7	4	6.5	3	4.8
	1986-96	378	82.0	66	14.3	17	3.7
FEDERAL:	1995-96	49	80.3	4	6.6	8	13.1
	1986-96	204	82.3	19	7.7	25	10.1

During the 1986–96 period, state and federal trial courts granted summary judgment at roughly the same rate: summary judgment was granted in full in 82.0% of the cases reported in state court and in 82.3% of the cases reported in federal court. When partial grants of summary judgment over 1986-96 period are factored in, however, defendants fare better in federal court. Federal trial courts awarded partial summary judgment nearly three times more frequently than their state counterparts (10.1% versus 3.7%). Thus, over the entire post-*Anderson* period, 1986–96, summary judgment was denied outright in 14.3% of cases decided by state trial courts, versus only 7.7% in cases decided by federal trial courts.

In the current study period, 1995-96, state trial courts granted defendants' motions for summary judgment in 88.7% of the cases reported, while federal trial courts granted summary judgment in 80.3% of the cases. Due to the higher amount of partial summary judgment motions granted by the federal courts (13.1% versus 4.8% in state courts), however, plaintiffs were successful in fully defeating summary judgment in federal and state courts in a nearly identical percentage of cases (6.6% in federal court versus 6.5% in state court).

TABLE 7 TRIAL COURT DISPOSITION OF SUMMARY JUDGMENT MOTIONS
PUBLIC VERSUS PRIVATE FIGURE

		Defendant Prevails		Plaintiff Prevails		Partial SJ	
		No.	%	No.	%	No.	%
1995-96:	Public figure	33	84.6	2	5.1	4	10.3
	Private figure	16	94.1	0	0.0	1	5.9
1990-96:	Public figure	126	83.4	15	9.9	10	6.6
	Private figure	70	85.4	7	8.5	5	6.1
1986-96:	Public figure	198	83.5	28	11.8	11	4.6
	Private figure	94	81.7	15	13.0	6	5.2

Although plaintiffs' status appears to be a significant factor in defendants' ultimate success rates, with summary judgment entered in 83.1% of cases involving public figure plaintiffs and only 66.1% of cases involving private figure plaintiffs in the 1986–96 period (*see* Table 4), this divergence was decidedly less marked at the trial court level. Over the same period, trial courts granted summary judgment in 83.5% of cases involving public figures and 81.7% of cases involving private figures. And in the most recent period, 1995–96, the reported cases show that trial courts granted summary judgment in cases involving private figures at a higher rate than those cases involving public figures (94.1% versus 84.6%).

- **APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS (TABLES 8–10)**

The appellate review tables (Tables 8–10) report the results of 396 plaintiffs' appeals and 79 defendants' appeals reported in the post-*Anderson* period, 1986-96, and then combine these results to obtain an overall success rate on motions for summary judgment. Plaintiffs' appeals are reported as the number and percentages of affirmances, reversals, and partial affirmances of trial court grants of summary judgment. Defendants' appeals are reported as affirmances, partial affirmances, dismissals, or remands to the trial court. In tabulating the overall success rates, defendants were considered to have prevailed on appeal when an initial grant was affirmed or an initial denial was reversed and dismissed. Plaintiffs were considered to have prevailed when a trial court denial of summary judgment was affirmed or a grant was reversed. Because Tables 8–10 report on every appellate motion made, they include cases in which the decisions of intermediate appellate courts were reversed by higher courts.

TABLE 8A APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS PLAINTIFFS' APPEALS FROM TRIAL COURT GRANT

	Grant Affirmed		Grant Reversed		Grant Partially Affirmed	
	No.	%	No.	%	No.	%
1995-96	61	80.3	10	13.2	5	6.6
1990-96	178	74.2	44	18.3	18	7.5
1980-96	415	75.0	108	19.5	30	5.4
ANDERSON ANALYSIS						
July 1986-1996	295	74.5	71	17.9	30	7.6
1980-June 1986	120	76.4	37	23.6	—	—

During the pre–*Anderson* period, defendants fared well upon appellate review. Courts affirmed grants of summary judgment in 76.4% of reported plaintiffs' appeals. Defendants fared slightly worse in the post-*Anderson* period, when appellate courts affirmed 74.5% of trial court grants of summary judgment. In the most recent study period, however, the percentage of affirmances of trial court grants increased to 80.3%. Over the entire period covered by the LDRC studies, 1980–96, grants of summary judgment were affirmed in 75.0% of plaintiffs' appeals.

TABLE 8B APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS DEFENDANTS' APPEALS FROM TRIAL COURT DENIAL

	Denial Affirmed		Rev'd/Dismissed		Rev'd/Remanded		Denial Partially Aff'd	
	No.	%	No.	%	No.	%	No.	%
1995-96	1	8.3	10	83.3	1	8.3	0	0.0
1990-96	7	16.3	32	74.4	3	7.0	1	2.3
1980-96	34	30.1	62	54.9	14	12.4	3	2.7
ANDERSON ANALYSIS								
July 1986-1996	18	22.8	45	57.0	13	16.5	3	3.8
1980-June 1986	16	47.1	17	50.0	1	2.9	—	—

Defendants were also very successful on appeals of trial court denials of their summary judgment motions. During the pre-*Anderson* period, courts reversed and dismissed 50.0% of the decisions denying summary judgment while affirming 47.1% of the denials. In the decade since *Anderson*, the percentage of denials reversed and dismissed increased to 57.0%, while the percentage of denials affirmed dropped to 22.8%. In the 1986-96 period, courts also reversed and remanded an additional 16.5% of the trial court denials, and only partially affirmed the denials in 3.8% of the cases.

In the current study period, 1995-96, defendants continued to be highly successful on appeal: 83.3% of trial court denials were reversed and dismissed upon review, while only 8.3% of summary judgment denials were subsequently affirmed. Appellate courts also appeared much more likely to dismiss a case on appeal in its entirety rather than remand to the trial court: 83.3% of defendants' appeals resulted in a full reversal and dismissal, while only 8.3% of the cases were reversed and remanded.

TABLE 8C APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
OVERALL APPELLATE DISPOSITION — PLAINTIFFS' AND DEFENDANTS' APPEALS

	Defendant Prevails		Plaintiff Prevails		Appeals Partially Granted	
	No.	%	No.	%	No.	%
1995-96	71	81.6	11	12.6	5	5.7
1990-96	210	75.0	51	18.2	19	6.8
1980-96	477	73.2	142	21.8	33	5.1
ANDERSON ANALYSIS						
July 1986-1996	340	73.6	89	19.3	33	7.1
1980-June 1986	137	72.1	53	27.9	—	—

When characterized on the bottom line of the frequency with which defendant "prevailed" on appeal, defendants fared better in the post–*Anderson* period, prevailing in 73.6% of appeals during 1986–96, up from the 72.1% rate during 1980–86.

In the current study period, the rate at which defendants prevailed at the appellate level increased even further as 81.6% of the cases were decided in their favor. Plaintiffs prevailed in only 12.6% of the appellate decisions.

TABLE 9A APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
PLAINTIFFS' APPEALS FROM TRIAL COURT GRANT — STATE VERSUS FEDERAL COURT

		Grant Affirmed		Grant Reversed		Grant Partially Affirmed	
		No.	%	No.	%	No.	%
STATE:	1995-96	45	78.9	9	15.8	3	5.3
	1986-96	228	74.3	59	19.2	20	6.5
FEDERAL:	1995-96	16	84.2	1	5.3	2	10.5
	1986-96	67	75.3	12	13.5	10	11.2

In a reversal of the results of LDRC's 1995 study of the post-*Anderson* period, defendants succeeded more often on plaintiffs' appeals in federal than in state courts. Trial court grants were affirmed in 74.3% of appeals pursued by plaintiffs in state court and 75.3% of their appeals were affirmed in federal court. While the 1995 study noted that during 1986–89, the respective grant affirmance rates were 75.4% in state and 73.5% in federal court, since 1990, defendants have had greater success on appeals in federal rather than state court. From 1990-96, federal courts have affirmed 76.4% of summary judgment grants over the state courts' affirmance rate of 73.5% for the same period. Over the current period, 1995-96, the gap has widened. Federal courts have affirmed 84.2% of trial court grants and state courts have affirmed 78.9% of summary judgment grants. Moreover, because defendants were more likely to obtain partial affirmances of summary judgment in federal than state court (11.2% versus 6.5% during 1986–96), plaintiffs were successful in completely reversing defendants' grant in 19.2% of appeals in state courts versus only 13.5% of appeals in federal court.

TABLE 9B APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
DEFENDANTS' APPEALS FROM TRIAL COURT DENIAL — STATE VERSUS FEDERAL COURT

	Denial Affirmed		Rev'd/Dismissed		Rev'd/Remanded		Denial Partially Aff'd	
	No.	%	No.	%	No.	%	No.	%
STATE: 1995-96	1	8.3	10	83.3	1	8.3	0	0.0
1986-96	18	22.8	45	57.0	13	16.5	3	3.8

Because of the limitation on interlocutory appeals in federal courts, data are available on defendants' appeals only in those states in which interlocutory appeals are permitted. During the post-*Anderson* period, trial court denials of summary judgment in state court were more than twice as likely to be reversed (57.0%) as affirmed (22.8%). In the current study period, defendants' were very successful on appeal with 83.3% (10 out of 12) of the trial court denials reversed and dismissed by the appellate court. Of the remaining two cases involving an appeal of a trial court denial, one was reversed and remanded while the other was affirmed.

TABLE 9C APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
OVERALL APPELLATE DISPOSITION — STATE VERSUS FEDERAL COURT

		Defendant Prevails		Plaintiff Prevails		Appeals Partially Granted	
		No.	%	No.	%	No.	%
STATE:	1995-96	55	80.9	10	14.7	3	4.4
	1986-96	273	73.2	77	20.6	23	6.2
FEDERAL:	1995-96	16	84.2	1	5.3	2	10.5
	1986-96	67	75.3	12	13.5	10	11.2

Combining the results of appeals by either party, defendants were more likely to be successful in federal rather than state court during the entire post–*Anderson* period, prevailing in 75.3% of summary judgment appeals in federal court and 73.2% of appeals in state court. The greater number of partial decisions in federal court further decreased plaintiffs' success rate in federal court. Plaintiffs were able to defeat defendants' motions for summary judgment in only 13.5% of appeals in federal court versus 20.6% of appeals in state court.

Over the current study period, defendants prevailed in 80.9% of the cases reported in state court, while achieveing even greater success in the reported federal court cases: an 84.2% success rate.

TABLE 10A APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS PLAINTIFFS' APPEALS FROM TRIAL COURT GRANT—PUBLIC VERSUS PRIVATE FIGURE

	Grant Affirmed		Grant Reversed		Grant Partially Affirmed	
	No.	%	No.	%	No.	%
1995-96:						
Public figure	22	84.6	2	7.7	2	7.7
Private figure	3	37.5	3	37.5	2	25.0
1990-96:						
Public figure	78	79.6	12	12.2	8	8.2
Private figure	28	62.2	12	26.7	5	11.1
1986-96:						
Public figure	124	80.5	18	11.7	12	7.8
Private figure	38	58.5	18	27.7	9	13.8

In 1986–96, defendants fared significantly better on appeal in cases involving public as opposed to private figure plaintiffs. Trial court grants of summary judgment were affirmed in 80.5% of appeals involving public figure plaintiffs compared with only 58.5% of appeals involving private figures. Over the most recent study period, 1995-96, the disparity between affirmances of public versus private figure cases was even greater: 84.6% of the trial court grants in public figure cases were affirmed versus 37.5% of grants in private figure cases.

TABLE 10B APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
DEFENDANTS' APPEALS FROM TRIAL COURT DENIAL—PUBLIC VERSUS PRIVATE FIGURE

	Denial Affirmed		Rev'd/Dismissed		Rev'd/Remanded		Denial Partially Aff'd	
	No.	%	No.	%	No.	%	No.	%
1995-96:								
Public figure	1	16.7	5	83.3	0	0.0	0	0.0
Private figure	0	—	0	—	0	—	0	—
1990-96:								
Public figure	2	11.1	14	77.8	2	11.1	0	0.0
Private figure	5	45.5	5	45.5	0	0.0	1	9.1
1986-96:								
Public figure	5	17.2	17	58.6	7	24.1	0	0.0
Private figure	9	56.3	5	31.3	1	6.3	1	6.3

Trial court denials of summary judgment were affirmed in only 17.2% of appeals involving public figure plaintiffs during the post-*Anderson* period, compared with a 56.3% affirmance rate for appeals involving private figures. In the 1995-96 period, defendants also fared well on their appeals in public figure cases. Appellate courts reversed and dismissed 83.3% of trial court denials of summary judgment in cases involving public figures. There were no reported cases which involved a defendant's appeal from a trial court denial in a private figure case.

TABLE 10C APPELLATE DISPOSITION OF SUMMARY JUDGMENT MOTIONS
OVERALL APPELLATE DISPOSITION — PUBLIC FIGURE VERSUS PRIVATE FIGURE

	Defendant Prevails		Plaintiff Prevails		Partially Affirmed	
	No.	%	No.	%	No.	%
1995-96:						
Public figure	27	84.4	3	9.4	2	6.3
Private figure	3	37.5	3	37.5	2	25.0
1990-96:						
Public figure	92	80.0	14	12.2	9	7.8
Private figure	33	58.9	17	30.4	6	10.7
1986-96:						
Public figure	148	79.6	23	12.4	15	8.1
Private figure	43	52.4	27	32.9	12	14.6

Combining the results in defendants' and plaintiffs' appeals, defendants prevailed in 79.6% and plaintiffs in only 12.4% of all summary judgment appeals involving public figure plaintiffs during 1986–96. By contrast, in summary judgment appeals involving private figures during this same period, defendants prevailed in 52.4% and plaintiffs prevailed in 32.9% of appeals.

In the 1995-96 period, defendants prevailed in 84.4% of the summary judgment appeals involving public figures, while only prevailing in 37.5% (3 out of 8 cases) of the handful of appeals involving private figure plaintiffs.

• ISSUES CONSIDERED ON DEFENDANTS' SUMMARY JUDGMENT MOTIONS

TABLE 12 ISSUES CONSIDERED

	1986-96						1980-86			
	Defendant Prevails		Plaintiff Prevails		Partial SJ		Defendant Prevails		Plaintiff Prevails	
	No.	%	No.	%	No.	%	No.	%	No.	%
Actual Malice	248	81.6	45	14.8	11	3.6	124	76.1	39	23.9
Gross Irresponsibility	23	71.9	8	25.0	1	3.1	7	63.6	4	36.4
Negligence	24	68.6	10	28.6	1	2.9	5	26.3	14	73.7
Defamatory Meaning	115	77.2	25	16.8	9	6.0	24	77.4	7	22.6
Of and Concerning	17	70.8	7	29.2	0	0.0	—	—	—	—
Privilege	26	57.8	18	40.0	1	2.2	5	83.3	1	16.7
Fair Comment	9	56.3	7	43.8	0	0.0	—	—	—	—
Fair Report	93	74.4	27	21.6	5	4.0	19	95.0	1	5.0
Neutral Reportage	10	76.9	3	23.1	0	0.0	2	100.0	0	0.0
Substantial Truth	118	81.4	21	14.5	6	4.1	27	96.4	1	3.6
Falsity: Burden of Proof	71	78.9	15	16.7	4	4.4	—	—	—	—
Hyperbole	31	96.9	1	3.1	0	0.0	—	—	—	—
Opinion	146	80.7	30	16.6	5	2.8	35	83.3	7	16.7
Not Provably False	18	85.7	3	14.3	0	0.0	—	—	—	—
Parody	3	100.0	0	0.0	0	0.0	—	—	—	—
Public Figure	113	81.3	26	18.7	0	0.0	20	50.0	20	50.0
Republication	14	73.7	5	26.3	0	0.0	1	33.3	2	66.7
Statute of Limitations	29	76.3	8	21.1	1	2.6	9	100.0	0	0.0
Other Issues	61	75.3	20	24.7	0	0.0	2	66.7	1	33.3

In addition to calculating defendants' success rates in seeking summary judgment, the LDRC study also identified and recorded in Table 11 the results of all significant substantive libel issues considered in the course of disposing of each summary judgment motion. Because multiple issues

are often presented in the course of considering summary judgment motions, the number of issues identified in Table 11 is greater than the number of cases studied. Similarly, success on an issue is not necessarily the equivalent of success on the motion; some favorable rulings on particular issues do not necessarily result in a grant, or a complete grant, of summary judgment. For example, the court might hold that the plaintiff is a public figure but then, for other reasons, may not grant summary judgment on the issue of actual malice.

Defamatory Meaning. Defendants were successful in obtaining a favorable ruling on the issue of defamatory meaning in 77.2% of the cases (115 of 149) in 1986–96, nearly identical to the 77.4% of motions granted (24 of 31) in 1980–86.

Of and Concerning. Defendants won 17 of the 24 decisions recorded on the issue in the post-*Anderson* period (70.8%).

Falsity. Where the issue was substantial truth, in the sense of the true "gist or sting" of the defamation, 81.4% of the motions (118 out of 145) were granted. And where the failure to meet the burden of proving falsity was the issue, defendants won 78.9% of the time (71 out of 90 decisions).

Fault Standards. Defendants were more successful in the post–*Anderson* period on the threshold issue whether plaintiff was a public figure, prevailing in 81.3% of decisions in 1986–96, versus only 50.0% of cases in 1980–86.

- *Actual Malice.* The most frequently litigated issue on motions for summary judgment in defamation and related suits has been that of actual malice, an issue presented in 163 cases covered by the 1980–86 LDRC studies and 304 decisions in the post-*Anderson* period. During the 1980–86 period, defendants prevailed on the actual malice issue in 76.1% of cases. Following the decision in *Anderson*, however, defendants' success rate on this issue has improved to 81.6%.

- *Negligence.* Negligence still remains one of the issues on which summary judgment is granted least frequently in media defamation cases. In 1980–86, summary judgment was granted on the negligence issue in only26.3% (5 of 19) of cases. Since that time, defendants have prevailed on the issue of negligence 68.6% of the time, it is notable that the issue of negligence was considered in only 35 decisions during the entire period, 1986–96.

- *Gross Irresponsibility.* Not surprisingly, under gross irresponsibility, New York's unique standard of liability, defendants were more successful than in negligence cases. Defendants obtained favorable decisions in 71.9% of the cases (23 out of 32) in the post-*Anderson* period.

Opinion. During 1986–96, opinion was the second most frequently determined issue after actual malice. Rulings favored defendants in 146 of 181 decisions (80.7%). In the 1980–86 period, defendants prevailed on the opinion issue in 35 of 42 cases (83.3%) at the summary judgment stage.

When courts looked specifically at whether the statements were "not provably false" defendants were successful 85.7% of the time (18 out of 21 cases). On the related issues of

hyperbole and parody defendants were also highly successful. The issue of hyperbole yielded a 96.9% success rate (31 out of 32 cases) for defendants. Parody, which was addressed in only three of the reported decisions, was resolved in the defendants' favor in 100% of the cases.

Privilege. The only major issue with a lower defendant success rate than negligence during the 1986–96 period was "privilege," defined as any common law privilege (qualified or absolute, common law or statutory), but not including fair comment, fair report, or neutral reportage, which were separately tracked. As to such privileges, defendants prevailed only 57.8% of the time these issues were considered during the 1986–96 period. This is down from 83.3% in 1980–86, but the issue of common law privilege was considered in only six cases during that earlier period.

Fair comment was only considered in 16 summary judgment motions during the 1986-96 period, with defendants successful on 9 (56.3%) of the motions. The fair report privilege was considered more frequently and with more success from the defense point of view. In the post-*Anderson* period, 93 out of 125 decisions on the issue (74.4%), were defense wins. This compares to a 95.0% win rate on the fair report issue in the pre-*Anderson* period, spread over a far smaller number of cases (19 out of 20). Finally, neutral reportage was considered only rarely over the 1986-96 period, with 10 defense wins out of 13 cases (76.9%).

Miscellaneous Issues. From 1986-96, defendants won 14 of 19 motions on the issue of republication (73.7% — 14 out of 19 decisions), up from a 33.3% win rate in the handful of cases (1 out of 3) identified in the prior studies. Defense wins on the issue of statute of limitations were down from 100% (9 out of 9 cases) in the pre-*Anderson* period, to 76.3% (29 out of 38 decisions) in the 1986–96 period. Other miscellaneous issues (including retraction, the "libel proof" doctrine, libel per se/per quod and the wire service defense) yielded in the aggregate a 75.3% defense success rate (61 out of 81 cases) in the post-*Anderson* period.

○ OTHER CLAIMS CONSIDERED ON DEFENDANTS' SUMMARY JUDGMENT MOTIONS

TABLE 12 OTHER CLAIMS CONSIDERED

	1986-96					
	Defendant Prevails		Plaintiff Prevails		Partial SJ	
	No.	%	No.	%	No.	%
False Light	102	85.7	16	13.4	1	0.8
Intrusion	26	86.7	1	3.3	3	10.0
Private Facts	68	86.1	9	11.4	2	2.5
Misappropriation	54	87.1	7	11.3	1	1.6
Intentional Infliction of Emotional Distress	83	89.2	8	8.6	2	2.2
Other	128	81.5	24	15.3	5	3.2
Total	461	85.4	65	12.0	14	2.6

The study also tracked the results of motions for summary judgment in media cases presenting claims or causes of actions in addition to defamation over the entire post-*Anderson* period. For the most part such causes of action were pleaded as ancillary to the claim of defamation; however, in a small number of cases, claims for invasion of privacy or related torts were the only causes of action asserted.

Defendants' success rates on summary judgment motions addressing other claims or causes of action were even higher than their success rates on defamation-related claims and issues, with an 85.4% grant rate overall.

Grant rates in the four types of invasion of privacy claims ranged from more than 85% to just over 87%. Summary judgment was granted as to the claims of false light invasion of privacy in the greatest number of motions — 102 out of 119 decisions (85.7%). Defendants' success on false light claims was down from the 89.0% success rate reported for the 1986-94 period in the 1995 Study. Publication of private or embarrassing facts claims were next in frequency, with 68 out of 79 motions granted (86.1%), an improvement over the 85.5% success rate reported in 1995.

Motions challenging misappropriation (or right of publicity) claims were granted in 54 out of 62 decisions (87.1%), up from an 85.7% success rate reported in 1995. Defendants' success on motions challenging claims of intrusion, however, fell from a 95.5% success rate reported in 1995

for the 1986-94 period to an 86.7% success rate (26 out of 30 decisions) for the 1986-96 period.

Intentional infliction of emotional distress claims were also separately charted, with an 89.2% summary judgment grant rate — 83 out of 93 decisions. The result was an increase from the 85.5% success rate reported in 1995.

Other causes of action, listed as "Other" in Table 12, were also tracked, including negligent infliction of emotional distress, negligent publication, product liability, product disparagement and injurious falsehood, unfair competition, fraud, trespass, tortious interference with business relations, promissory estoppel, breach of contract, conversion, conspiracy, § 1983 violations and Lanham Act claims. Among these, an 81.5% defense success rate on summary judgment was achieved — 128 out of 157 motions — up slightly from the 80.8% defense success rate reported in 1995.

PART IV. TABLE OF CASES — 1995-96 [9]

◦ KEY TO ABBREVIATIONS

Plaintiff Status:

Pub = public figure
Priv = private figure

Procedural Approach of the Court:

DN = de novo review
IAR = independent appellate review
SJ-F = summary judgment favored by court
SJ-D = summary judgment disfavored by court
SJ-N = summary judgment treated neutrally by court
LL-P = *Anderson v. Liberty Lobby* applied positively by court
LL-N = *Anderson v. Liberty Lobby* applied negatively
LL-B = *Anderson v. Liberty Lobby* applied neutrally
LL-SL = *Anderson v. Liberty Lobby* or not applied because state law controlled

Issues Considered:

AM = actual malice
DefMean = defamatory meaning
FairCom = fair comment
FairRep = fair report
GrossIrr = gross irresponsibility
Harm = failure to show actual harm
Hyp = hyperbole
LibelProof = libel-proof plaintiff
Neg = negligence
NeutRep = neutral reportage

Issues Considered: (cont'd)

NotProvFals = Not Provably False
OC = of and concerning
Opin = opinion
Pvg = privilege
Retract = failure to comply with retraction statute
RespondeatSup = respondeat superior
SOL = statute of limitations
SubTruth = substantial truth
Wire = wire service defense

Other Claims:

BrK = breach of contract
Consort = loss of consortium
Conspir = conspiracy
Eaves = eavesdropping
IIED = intentional infliction of emotional distress
Lanham = Lanham Act (false advertising)
Misapp = misappropriation
NegSuper = negligent supervision
NIED = negligent infliction of emotional
PFT = prima facie tort
ProdDisparage = product disparagement
RtPub = right of publicity
TortInt = tortious interference
UnfairComp = unfair competition
UnjEnrich = unjust enrichment
WrongDeath = wrongful death.

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[9] In the table below, federal cases are reported alphabetically under the circuit in which they were reported. State cases, which are ordered alphabetically by state and case name, follow. The 1986-94 cases reviewed in LDRC's previous study are collected in Appendix B of LDRC BULLETIN 1995 Issue No. 3 (July 31, 1995).

- **CASES**

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
D.C. Circuit:					
Foretich v. Chung, 1995 WL 224558, 23 Media L. Rep. 1414 (D.D.C., Jan 25, 1995)	Motion granted			DefMean; Falsity; NeutRep; Pvg	IIED
Kendrick v. Fox Television, 659 A.2d 814, 24 Media L. Rep. 1065 (D.C. Cir. 1995)	Grant affirmed	Priv	DN	Neg	FalseLight
Lane v. Random House, 1995 WL 46376, 23 Media L. Rep. 1385 (D.D.C. 1995)	Motion granted	Pub	SJ-F; LL-P	FairCom; Opin; Pvg NotProvFals	FalseLight; Misapp
McFarlane v. Esquire Magazine, 74 F.3d 1296, 24 Media L. Rep. 1332 (D.C. Cir. 1996)	Grant affirmed	Pub	LL-P	AM; Jurisdiction	
McFarlane v. Sheridan Square Press Inc., 91 F.3d 1501, 24 Media L. Rep. 2249 (D.C. Cir. 1996)	Grant affirmed	Pub		AM	
Washington v. Smith, 893 F.Supp. 60 (D. D.C. 1995)	Motion granted			Hyp; Opin	IIED; FalseLight
Washington v. Smith, 80 F.3d 555 (D.C. Cir. 1996)	Grant affirmed			Hyp; Opin	
Winn v. United Press International, 938 F.Supp. 39 (D. D.C. 1996)	Motion granted	Priv		Neg; OC; Wire	TortInt; Fraud
First Circuit:					
Brown v. Hearst Corporation, 54 F.3d 21, 23 Media L. Rep. 1984 (1st Cir. (Mass.) 1995)	Grant affirmed		DN	DefMean; FairRep; Neg	IIED; FalseLight
Middleton v. Sutton, 73 F.3d 355, 24 Media L. Rep. 1639 (1st Cir. (N.H.) 1996)	Grant affirmed			Neg	

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
Mojica Escobar v. Roca, 926 F.Supp. 30 (D. P.R. 1996)	Motion granted	Priv	LL-P	Falsity	InvasionPrivacy
Quantum Electronics Corp. v. Consumers Union of U.S. Inc., 881 F.Supp. 753, 23 Media L. Rep. 1897 (D. R.I. 1995)	Motion granted	Pub		AM; Falsity; PubFig	ProdDisparage
Second Circuit:					
Aequitron Medical Inc. v. CBS Inc., 1995 WL 406157, 24 Media L. Rep. 1025 (S.D.N.Y. 1995)	Motion denied			No libel claim	TradeLibel; TortInt
Bryks v. Canadian Broadcasting Corp., 928 F.Supp. 381, 24 Media L. Rep. 2109 (S.D.N.Y. 1996)	Motion granted	Priv	SJ-N	GrossIrr	
Chaiken v. VV Publishing Corp., 907 F.Supp. 689, 24 Media L. Rep. 1449 (S.D.N.Y. 1995)	Motion granted	Priv	SJ-F	GrossIrr	IIED
Church of Scientology v. Time Warner, 932 F.Supp. 589, 24 Media L. Rep. 2081 (S.D.N.Y 1996)	Motion granted	Pub		SubsidiaryMeaning	
Corporate Training Unlimited Inc. v. NBC Inc., 868 F.Supp. 501, 23 Media L. Rep. 1653 (E.D.N.Y. 1994)	Motion denied			SubTruth	
DaSilva v. Time Inc., 908 F.Supp. 184 (S.D.N.Y. 1995)	Motion denied			LibelProof; SubTruth	
Fodor v. Berglas, 1995 WL 505522, 24 Media L. Rep. 1209 (S.D.N.Y. 1995)	Motion granted	Pub	LL-P	AM; SOL	InvasionPrivacy
Groden v. Random House Inc., 61 F.3d 1045, 23 Media L. Rep. 2203 (2nd Cir. (N.Y.) 1995)	Grant affirmed			No libel claim	Misapp; Lanham

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
Jones v. The Globe International Inc., 1995 WL 819177, 24 Media L. Rep. 1267 (D.Conn. 1995)	Motion granted		LL-P	LibelProof; SubTruth	
Reed v. Time Warner Inc., 1995 WL 5810, 23 Media L. Rep. 1607 (S.D.N.Y. 1995)	Motion granted			AM; GrossIrr	
Rotbart v. J.R. O'Dwyer Co. Inc., 1995 WL 46625, 23 Media L. Rep. 1429 (S.D.N.Y. 1995)	Motion granted			Jurisdiction	Copyright
Winn v. Associated Press, 903 F.Supp. 575 (S.D.N.Y. 1995)	Motion granted	Priv	LL-P	Neg; Wire	TortInt
Third Circuit:					
Bradford v. American Media Operations Inc., 882 F.Supp. 1508, 23 Media L. Rep. 1941 (E.D.Pa. 1995)	Motion granted			SOL	
Seale v. Gramercy Pictures, 949 F.Supp. 331 (E.D. Pa. 1996)	Partial grant			No libel claim	FalseLight; RtPub; Lanham
Fourth Circuit:					
Ditton v. Legal Times, 947 F.Supp. 227 (E.D. Va. 1996)	Motion granted			FairRep	
Faltas v. The State Newspaper, 928 F.Supp. 637, 24 Media L. Rep. 2057 (D. S.C. 1996)	Motion granted	Pub		Hyp; Opin	IIED; TortInt; CivilRights
Food Lion v. Capital Cities/ABC Inc., 951 F.Supp. 1224, 25 Media L. Rep. 1161 (M.D. N.C 1996)	Motion denied			No libel claim	Trespass; Conspir; Fraud; NegSuper
Fornshill v. Ruddy, 89 F.3d 828, 24 Media L. Rep. 1986 (4th Cir. (Md.) 1996)	Grant affirmed			OC	
Ramey v. Kingsport Publishing Corp., 905 F.Supp. 355, 24 Media L. Rep. 1472 (W.D.Va. 1995)	Motion granted		LL-P	DefMean; FairRep	

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Rice v. Paladin Enterprises Inc., 940 F.Supp. 836, 24 Media L. Rep. 2185 (D. Md. 1996)	Motion granted		LL-P	No libel claim	WrongDeath
Fifth Circuit:					
DiLeo v. Davis, 1995 WL 5908, 23 Media L. Rep. 1242 (E.D.La. 1995)	Partial grant	Priv		FairRep; Falsity	FalseLight; UnfairTrade
Garza v. Hearst Corp., 23 Media L. Rep. 1733 (W.D. Tex. 1995)	Motion granted		LL-P	Neg	
Haynes v. Lemann, 921 F.Supp. 385 (N.D. Miss. 1996)	Motion granted			SOL	PFT; Copyright; Misapp
Matta v. May, 888 F.Supp. 808 (S.D. Tex. 1995)	Motion granted	Pub		AM; PubFig	FalseLight
Merco Joint Venture v. Kaufman, 923 F.Supp. 924 (W.D. Tex. 1996)	Partial grant	Pub	LL-P	AM; PubFig	
Mullens v. New York Times, 1996 WL 787413, 25 Media L. Rep. 1115 (N.D.Tex. 1996)	Motion granted			FairRep; SubTruth	
Risenhoover v. England, 936 F.Supp. 392, 24 Media L. Rep. 1705 (W.D.Tex. 1996)	Partial grant			No libel claim	IIED; Conspir; BrK; WrongDeath
Sixth Circuit:					
Cobb v. Time Inc., 1995 WL 861518, 24 Media L. Rep. 1585 (M.D. Tenn. 1995)	Partial grant	Pub	LL-P	AM; SubTruth	
Gamler v. Akron Beacon Journal, 1995 WL 472176, 23 Media L. Rep. 1845 (N.D. Ohio 1995)	Motion granted		SJ-F; LL-P	AM; SubTruth; FairRep; SOL	
Hunter v. Paramount Stations Group Inc., 1996 WL 426494, 24 Media L. Rep. 2402 (E.D. Mich. 1996)	Motion granted		LL-P	FairRep; SubTruth	
Southwell v. Southern Poverty Law Center, 949 F.Supp. 1303 (W.D. Mich. 1996)	Motion granted	Pub	LL-P	AM; Shield	FalseLight

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
Stilts v. Globe International, Inc., 950 F.Supp. 220 (M.D. Tenn. 1995)	Motion granted		LL-P	DefMean; Hyp; SubTruth	
Stilts v. Globe International, 91 F.3d 144, 25 Media L. Rep. 1057 (6th Cir. 1996)	Grant affirmed		DN	DefMean; SubTruth	
White v. Manchester Enterprise Inc., 871 F.Supp. 934, 23 Media L. Rep. 1309 (E.D.Ky. 1994)	Partial grant	Priv		PubFig	FalseLight; Intrusion
Seventh Circuit:					
Boese v. Paramount Pictures, 952 F.Supp. 550 (N.D. Ill. 1996)	Partial grant		LL-P	DefMean; Opin	FalseLight
Desnick v. ABC Inc., 1996 WL 189305, 24 Media L. Rep. 2238 (N.D. Ill. 1996)	Motion denied	Pub		OC; InnocentConstruction	
Faigin v. Doubleday Dell Publishing Group Inc., 98 F.3d 268, 24 Media L. Rep. 2590 (7th Cir. (Wis.) 1996)	Grant reversed			SOL	
Harris v. Quadracci, 48 F.3d 247, 23 Media L. Rep. 1296 (7th Cir. (Wis.) 1995)	Grant affirmed	Pub	IAR	AM; SubTruth; DefMean; PubFig; NotProvFals	
Milsap v. Journal Sentinel, 897 F.Supp. 406, 25 Media L. Rep. 1050 (E.D. Wis. 1995)	Motion granted	Pub		AM; SOL	IIED; Cons; Frd
Milsap v. Journal Sentinel, 100 F.3d 1265, 25 Media L. Rep. 1046 (7th Cir. 1996)	Grant partially affirmed	Pub		AM; Opin; DefMean; PubFig; SubTruth	
Pope v. The Chronicle Publishing Co., 891 F.Supp. 469, 23 Media L. Rep. 2196 (C.D. Ill. 1995)	Motion granted		LL-P	DefMean; Opin; SubTruth	FalseLight
Pope v. The Chronicle Publishing Co., 95 F.3d 607, 24 Media L. Rep. 2384 (7th Cir. (Ill.) 1996)	Grant affirmed			DefMean; FairCom; Opin; SubTruth	FalseLight
Schaefer v. Newton, 57 F.3d 1073, 23 Media L. Rep. 2051 (7th Cir. (Ind.) 1995)	Grant affirmed		DN	AM; SubTruth	

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
Schweihs v. Burdick, 96 F.3d 917 (7th Cir. 1996)	Grant affirmed		DN	SOL	
Eighth Circuit:					
Maynard v. Greater Hoyt School District No. 61-4, 876 F.Supp. 1104 (D. S.D. 1995)	Motion granted			No libel claim	CivilRights
Parker v. Clarke, 905 F.Supp. 638 (E.D. Mo. 1995)	Motion granted			No libel claim	CivilRights
Toney v. WCCO, 85 F.3d 383, 24 Media L. Rep. 1993 (8th Cir. (Minn.) 1996)	Grant partially affirmed	Priv		DefMean	
Ninth Circuit:					
Auvil v. CBS 60 Minutes, 67 F.3d 816, 23 Media L. Rep. 2454, (9th Cir. (Wash.) 1995)	Grant affirmed		LL-P; DN	No libel claim	ProdDisparage
Berger v. Hanlon, 1996 WL 376364, 24 Media L. Rep. 1748 (D. Mont. 1996)	Motion granted			No libel claim	Eaves; Trespass; IIED; Conversion
Caine v. Duke Communications Int'l, 1995 WL 608523, 24 Media L. Rep. 1187 (C.D. Cal. 1995)	Motion granted			Opin	TortInt
Hutchins v. Globe International Inc., 1995 WL 704983, 24 Media L. Rep. 1425 (E.D. Wash. 1995)	Motion granted	Priv	SJ-F; LL-P	DM; FairRep; Falsity; SubTruth	IIED
McIver v. CBS, A Current Affair,70 F.3d 120, 24 Media L. Rep. 1224 (9th Cir. (Or.) 1995)				FairRep; NeutRep	
Medical Laboratory Management Consultants v. ABC Inc., 931 F.Supp. 1487 (D. Ariz. 1996)	Motion granted			Neg; Wire	IIED; PFT; NIED; Conspir; InvasionPrivacy; UnfairTrade
Overby v. KPTV Television, Inc., 1995 WL 860299, 24 Media L. Rep. 1575 (D. Or. 1995)	Motion granted	Pub	LL-P	AM; Falsity; SubTruth	

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
Overby v. Oregonian Publishing Co., 1995 WL 860298, 24 Media L. Rep. 1567 (D. Or. 1995)	Motion granted	Pub	LL-P	SOL; SubTruth	
Page v. Something Weird Video, 960 F.Supp. 1438, 25 Media L. Rep. 1489 (C.D. Cal. 1996)	Motion granted	Pub		No libel claim	RtPub; Misapp
Partington v. Bugliosi, 56 F.3d 1147, 23 Media L. Rep. 1929 (9th Cir. (Haw.) 1995)	Grant affirmed			Hyp; NotProvFals	FalseLight
Tenth Circuit:					
Grimes v. CBS Broadcast Int'l of Canada, Ltd., 905 F.Supp. 964 (N.D. Okla. 1995)	Motion granted			No libel claim	FalseLight
Pfannenstiel v. Osborne Publishing Co., 939 F.Supp. 1497 (D. Kan. 1996)	Motion granted	Priv	LL-P	Harm	IIED; FalseLight
Tilton v. Capital Cities/ABC Inc., 905 F.Supp. 1514, 23 Media L. Rep. 2057 (N.D. Okla. 1995)	Motion granted	Pub	LL-P	AM; Fals; Opin; SubTruth	
Tilton v. Capital Cities/ABC Inc., 95 F.3d 32, 24 Media L. Rep. 2375 (10th Cir. (Okla.) 1996)	Grant affirmed	Pub		AM; Falsity; SubTruth	
Eleventh Circuit:					
Fyfe v. Canan, 1996 WL 741337, 24 Media L. Rep. 2448 (M.D. Fla. 1996)	Motion granted		LL-P	No libel claim	CivilRights
Kyser-Smith v. Upscale Communications, Inc., 873 F.Supp. 1519 (M.D. Ala. 1995)	Partial grant			No libel claim	FalseLight; Misapp; Fraud; BrK; UnjEnrich
State Decisions: *(alphabetical by state)*					
Mount Juneau Enterprises Inc. v. Juneau Empire, 891 P.2d 829, 23 Media L. Rep. 1684 (Alaska 1995)	Grant affirmed	Pub		AM; PubFig	

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
J.C. v. WALA-TV, Inc., 675 So.2d 360 (Ala. 1996)	Grant affirmed			No libel claim	InvasionPrivacy
Alexandre v. Telemundo Network Inc., 24 Media L. Rep. 1031 (Cal. Super. Ct. 1995)	Partial grant			Retract	
Couch v. San Juan Unified School District, 39 Cal. Rptr.2d 848 (Cal. Ct. App. 1995)	Grant affirmed		SJ-F; IAR	NotProvFals; Parody	IIED; FalseLight
Montana v. San Jose Mercury News Inc., 40 Cal.Rptr.2d 639, 23 Media L. Rep. 1920 (Cal. Ct. App. 1995)	Grant affirmed			No libel claim	Misapp
Shulman v. Group W Productions, 59 Cal.Rptr.2d 434, 25 Media L. Rep. 1289 (Cal. Ct. App. 1996)	Grant partially affirmed	Pub	SJ-F	No libel claim	IIED; Intrusion; PFT; Misapp; Eaves
NBC Subsidiary (KCNC-TV), Inc. v. Living Will Center, 879 P.2d 6, 23 Media L. Rep. 1417 (Colo. 1994)	Grant affirmed		DN	NotProvFals; Opin	
Student v. Denver Post Corp., 23 Media L. Rep. 2181 (Colo. Dist. Ct. 1995)	Motion granted			AM; FRep; SubTruth	
Student v. Denver Post Corp., 1996 WL 756965, 24 Media L. Rep. 2527 (Colo. Ct. App. 1996)	Grant affirmed		IAR	AM	
Zupnik v. Day Publishing Company, 1996 WL 150755 (Conn. Super. Ct. 1996)	Motion denied		SJ-N	FairRep; Pvg	FalseLight
Kanaga v. Gannett Co. Inc., 1995 WL 716938, 24 Media L. Rep. 1074 (Del. Super. Ct. 1995)	Motion granted	Priv	SJ-F	Opin	
Kanaga v. Gannett Co. Inc., 687 A.2d 173, 25 Media L. Rep. 1684 (Del. 1996)	Grant partially affirmed	Priv	IAR	DefMean; FairCom; FairRep	
Beck v. Lipkind, 681 So.2d 794, 21 Fla. L. Weekly D2130 (Fla. Dist. Ct. App. 1996)	Grant affirmed			Opin; Pvg; SubTruth	Conspir

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Brown v. New World Communications Inc., 25 Media L. Rep. 1510 (Fla. Cir. Ct. 1996)	Motion granted			OC	
Miami's Child World v. Sunbeam Television Corp., 669 So.2d 336, 21 Fla. L. Weekly D619 (Fla. Dist. Ct. App. 1996)	Grant affirmed			Opin	TortInt
Pullum v. Johnson, 647 So.2d 254, 23 Media L. Rep. 1211 (Fla. Dist. Ct. App. 1994)	Grant affirmed	Pub		Hyp; Opin	
Stewart v. The Sun-Sentinel Co., 24 Media L. Rep. 1318 (Fla. Cir. Ct. 1995)	Motion granted	Pub		AM; FairRep; NeutRep	
Blomberg v. Cox Enterprises Inc., 25 Media L. Rep. 1248 (Ga. Super. Ct. 1996)	Motion granted	Pub	SJ-F	AM; DefMean; FairRep; Falsity; Hyp; NeutRep; Opinion	
Daughtry v. Booth,1995 WL 113333, 23 Media L. Rep. 1215 (Ga. Super. Ct. 1994)	Partial grant	Pub		AM; PublFig; SubTruth	FalseLight; PFT; Misapp; BrK
Gardner v. Boatright, 216 Ga. App. 755, 455 S.E.2d 847 (Ga. Ct. App. 1995)	Denial reversed	Pub		AM	
Lawton v. Georgia Television Co., 216 Ga.App. 768, 456 S.E.2d 274, 23 Media L. Rep. 1952 (Ga.Ct. App. 1995)	Grant affirmed			FairRep	InvasionPrivacy
McBride v. Atlanta Journal Constitution, 23 Media L. Rep. 2183 (Ga. Super. Ct. 1995)	Motion granted			FairRep	
Raskin v. Swann, 216 Ga.App. 478, 454 S.E.2d 809, 23 Media L. Rep. 2054 (Ga. Ct. App. 1995)	Grant affirmed			SOL; SubTruth	IIED
Webster v. Wilkins, 217 Ga.App. 194, 456 S.E.2d 699, 23 Media L. Rep. 1979 (Ga. Ct. App. 1995)	Grant affirmed			Hyp; NotProvFals	
Gold v. Harrison, 24 Media L. Rep. 1383 (Hawaii Cir. Ct. 1995)	Motion granted			Hyp	IIED; FalseLight

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Campbell v. Quad City Times, 547 N.W.2d 608 (Iowa Ct. App. 1996)	Grant affirmed			SubTruth	
Johnson v. Nickerson, 542 N.W.2d 506 (Iowa 1996)	Grant affirmed	Priv		AM; Opin; Pvg; Harm	
Kumaran v. Brotman, 24 Media L. Rep. 2339 (Ill. Cir. Ct. 1996)	Motion granted			SubTruth	TortInt
Romero v. Thomson Newspaper (Wisconsin) Inc., 648 So.2d 866, 23 Media L. Rep. 1528 (La. 1995)	Denial reversed		SJ-F	Falsity; Hyp; Opin; SubTruth	
Tarpley v. Colfax Chronicle, 650 So.2d 738, 23 Media L. Rep. 1799 (La. 1995)	Grant affirmed			AM	
Bruenell v. Harte-Hanks Communications Inc., 3 Mass. L. Rptr. 127, 1994 WL 790830, 23 Media L. Rep. 1378 (Mass. Super. Ct. 1994)	Partial grant			FairRep	PFT
Dulgarian v. Stone, 420 Mass. 843, 652 N.E.2d 603 (1995)	Grant affirmed	Priv	SJ-F; IAR	DefMeaning; Falsity; Hyp; NotProvFals; Opin	TortInt; InjuriousFalse; UnfairComp
Hyatt v. Purcell, 24 Media L. Rep. 1250 (Mass. Super. Ct. 1995)	Motion granted	Pub	SJ-F	Opin	IIED
Nicholson v. Lowell Sun Publishing Co., 37 Mass. App. Ct. 1125, 643 N.E.2d 1069, 23 Media L. Rep. 1223 (Mass. App. Ct. 1994)	Denial reversed	Pub		AM; PubFig	
Rielly v. News Group Boston, Inc., 38 Mass. App. Ct. 909, 644 N.E.2d 982 (Mass. App. Ct. 1995)	Grant affirmed			DefMeaning	
Spitler v. Young, 25 Media L. Rep. 1243 (Mass. Super. Ct. 1996)	Motion granted	Pub		AM; PubFig	
Davidson v. Detroit Free Press Inc., 24 Media L. Rep. 2391 (Mich. Cir. Ct. 1996)	Motion granted	Pub		AM; FairRep; SubTruth	

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Mayfield v. Detroit News, 1996 WL 767474, 24 Media L. Rep. 2566 (Mich. Ct. App. 1996)	Grant affirmed			FairRep	
Rahn v. The Detroit News Inc., 25 Media L. Rep. 1094 (Mich. Cir. Ct. 1996)	Motion granted			SubTruth	
Copeland v. Hubbard Broadcasting Inc., 526 N.W.2d 402, 23 Media L. Rep. 1441 (Minn. Ct. App. 1995)	Grant reversed			No libel claim	Trespass
Hunter v. Hartman, 24 Media L. Rep. 1577 (Minn. Dist. Ct. 1995)	Motion granted	Pub	LL-P	AM; PubFig	
Hunter v. Hartman, 545 N.W.2d 699, 24 Media L. Rep. 2004 (Minn. Ct. App. 1996)	Grant affirmed	Pub	DN	Hyp; Opin; PubFig; SubTruth	
Richie v. Paramount Pictures Corp., 532 N.W.2d 235, 24 Media L. Rep. 1009 (Minn. Ct. App. 1995)	Grant reversed			Harm	
Richie v. Paramount Pictures Corp., 544 N.W.2d 21, 24 Media L. Rep. 1897 (Minn. 1996)	Grant affirmed		LL-P	Harm	FalseLight
Roots v. Montana Human Rights Network, 275 Mont. 408, 913 P.2d 638 (1996)	Grant reversed			Falsity; PubFig NotProvFals	
Hayes v. Newspapers of New Hampshire, Inc., 141 N.H. 464, 685 A.2d 1237, 25 Media L. Rep. 1253 (N.H. 1996)	Denial remanded			FairRep	
Orso v. Goldberg, 284 N.J.Super. 446, 665 A.2d 786 (N.J. Super. App. Div. 1995)	Denial reversed	Pub	SJ-F; LL-P	AM; FairRep	FalseLight
Raycraft Printing Co. v. Gannett Satellite Info. Network Inc., 25 Media L. Rep. 1318 (N.J. Super. Ct. Law Div. 1996)	Motion granted			DefMean	
Rivera v. National Enquirer, 24 Media L. Rep. 1865 (N.J. Super. Ct. 1996)	Partial grant	Pub		AM; Opin; PubFig	FalseLight; PFT

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Turf Lawnmower Repair Inc. v. Bergen Record Corp., 139 N.J. 392, 655 A.2d 417, 23 Media L. Rep. 1609 (N.J. 1995)	Grant affirmed			AM	
Wilson v. Grant, 297 N.J.Super. 128, 687 A.2d 1009 (N.J. Super. Ct. App. Div. 1996)	Grant affirmed	Pub		DefMean; Hyp	PFT
Chastain v. Valley Broadcasting Co., 1996 WL 807390, 25 Media L. Rep. 1283 (Nev. Dist. Ct. 1996)	Motion granted			No libel claim	IIED; PF; NIED; FalseLight; Misapp; Intrusion
Laughlin Bay Village Homeowners Ass'n v. McCall, 24 Media L. Rep. 1860 (Nev. Dist. Ct. 1996)	Motion granted			Falsity; Opin; Damages	FalseLight; PFT
Abdelrazig v. Essence Communications, Inc., 225 A.D.2d 498, 639 N.Y.S.2d 811 (N.Y. App. Div. 1996)	Grant affirmed			No libel claim	Misapp
Barilla v. Meredith Corporation, 224 A.D.2d 992, 637 N.Y.S.2d 831 (N.Y. App. Div. 1996)	Denial reversed			Falsity	
Collins v. Troy Publishing Co., 213 A.D.2d 879, 623 N.Y.S.2d 663, 23 Media L. Rep. 2150 (N.Y.App. Div. 1995)	Denial affirmed	Pub	LL-P	AM	
Cruz v. Latin News Impacto Newspaper, 216 A.D.2d 50, 627 N.Y.S.2d 388, 23 Media L. Rep. 2565 (N.Y. App. Div. 1995)	Denial reversed			GrossIrr; OC	FalseLight; Misapp
Doe v. Hearst Corp., 25 Media L. Rep. 1483 (N.Y. Sup. Ct. 1996)	Motion granted			No libel claim	IIED; Neg (rape victim statute)
Donati v. Queens Ledger Newspaper Group, 25 Media L. Rep. 1487 (N.Y. Sup. Ct. 1996)	Motion granted			DefMean	
Farrakhan v. N.Y.P. Holdings Inc., 24 Media L. Rep. 1341 (N.Y. Sup. Ct. 1995)	Motion granted	Pub	LL-P	AM; PubFig	

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Gaeta v. Home Box Office, 169 Misc.2d 500, 645 N.Y.S.2d 707 (N.Y. Civ. Ct. 1996)	Partial grant			No libel claim	Misapp
Goetz v. Kunstler, 164 Misc.2d 557, 625 N.Y.S.2d 447, 23 Media L. Rep. 2140 (N.Y. Sup. Ct. 1995)	Motion granted	Pub		DefMean; Opin; SubTruth	
Goldblatt v. Seaman, 225 A.D.2d 585, 639 N.Y.S.2d 438 (N.Y. App. Div. 1996)	Grant affirmed	Pub		DefMean	
Guarneri v. Korea News Inc., 214 A.D.2d 649, 625 N.Y.S.2d 291, 23 Media L. Rep. 2215 (N.Y.App. Div. 1995)	Denial reversed			Opin; SubTruth	
Krauss v. Globe International, 25 Media L. Rep. 1082 (N.Y. Sup. Ct. 1996)	Motion granted	Pub		AM; PubFig	
Kruesi v. Money Management Letter, 228 A.D.2d 307, 644 N.Y.S.2d 49 (N.Y. App. Div. 1996)	Grant affirmed			GrossIrr; Opin	
Landmark Education Corp. v. Conde Nast, 1994 WL 836356, 23 Media L. Rep. 1283 (N.Y. Sup. Ct. 1994)	Motion denied			Opin	
Miller v. Journal-News, 211 A.D.2d 626, 620 N.Y.S.2d 500 (N.Y. App. Div. 1995)	Denial reversed	Pub		SubTruth	
Millus v. Newsday Inc., 224 A.D.2d 285, 638 N.Y.S.2d 613, 24 Media L. Rep. 1726 (N.Y.App. Div. 1996)	Grant reversed	Pub		AM; Opin	
Millus v. Newsday Inc., 89 N.Y.2d 840, 675 N.E.2d 461, 25 Media L. Rep. 1063 (N.Y. 1996)	Grant affirmed	Pub		AM; Opin	
Roche v. Mulvihill, 214 A.D.2d 376, 625 N.Y.S.2d 169 (N.Y. App. Div. 1995)	Grant affirmed	Pub		AM; Opin	

CASE/CITATION	RESULT	PLAINTIFF STATUS	PROCEDURAL APPROACH	LIBEL ISSUES CONSIDERED	OTHER CLAIMS
Sam v. Enquirer/Star Group, Inc., 1995 WL 542508, 23 Media L. Rep. 1574 (N.Y. Sup. Ct. 1995)	Motion denied			DefMean	
Sam v. Enquirer/Star Group, Inc., 223 A.D.2d 360, 636 N.Y.S.2d 49 (N.Y. App. Div. 1996)	Denial reversed			DefMean	
Stern v. Delphi Internet Services Corp., 165 Misc.2d 21, 626 N.Y.S.2d 694, 23 Media L. Rep. 1789 (N.Y. Sup. Ct. 1995)	Motion granted			No libel claim	Misapp
Trustco Bank v. Capital Newspaper Div. of Hearst Corp., 213 A.D.2d 940, 624 N.Y.S.2d 291 (N.Y. App. Div. 1995)	Grant affirmed			Opin	
Bruss v. Vindicator Printing Co., 109 Ohio App.3d 396, 672 N.E.2d 238 (Ohio Ct. App. 1996)	Grant affirmed			SubTruth	
Condit v. Clermont County Review, 110 Ohio App.3d 755, 675 N.E.2d 475 (Ohio Ct. App. 1996)	Grant affirmed	Pub		Hyp; NotProvFals; Opin	IIED
Franks v. The Lima News, 109 Ohio App.3d 408, 672 N.E.2d 245, 24 Media L. Rep. 1762 (Ohio Ct. App. 1996)	Grant reversed	Priv	IAR	Neg	
Kilcoyne v. Plain Dealer Publishing Co., 112 Ohio App.3d 229, 678 N.E.2d 581 (Ohio Ct. App. 1996)	Grant affirmed	Pub	LL-P; IAR	AM; FairRep; Neg; Opin; Neg; SubTruth	FalseLight
Mucci v. Dayton Newspapers Inc., 71 Ohio Misc.2d 71, 654 N.E.2d 1068, 24 Media L. Rep. 1241 (Ohio C.P. 1995)	Motion granted	Priv		Falsity; Neg	
Smitek v Lorain County Printing & Publishing Co., 1995 WL 599036, 24 Media L. Rep. 1403 (Ohio Ct. App. 1995)	Grant affirmed			FairRep	

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Young v. The Morning Journal, 76 Ohio St.3d 627, 669 N.E.2d 1136, 25 Media L. Rep. 1024 (Ohio 1996)	Grant reversed		SJ-D	PubFig; NeutRep	
Strong v. Oklahoma Publishing Co., 899 P.2d 1185, 24 Media L. Rep. 1315 (Okla. Ct. App. 1995)	Grant affirmed	Pub		AM; PubFig	
Lonsdale v. Swart, 143 Or. App. 331, 922 P.2d 1263 (Ore. Ct. App. 1996)	Grant affirmed	Pub		AM	
Dowling v. Philadelphia Newspapers Inc., 23 Media L. Rep. 1466 (Pa. C.P. 1995)	Motion granted	Pub		AM; False; PubFig; SOL	FalseLight; PFT
Ertel v. The Patriot-News Co., 544 Pa. 93, 674 A.2d 1038, 24 Media L. Rep. 2233 (Penn. 1996)	Grant affirmed	Pub		Falsity	
First Lehigh Bank v. Cohen, 24 Media L. Rep. 2409 (Pa. C.P. 1996)	Motion granted		SJ-F	FairRep	
Iafrate v. Hadesty, 23 Media L. Rep. 1089 (Pa. C.P. 1994)	Motion granted	Priv	DN	DefMean; Hyp	
Melhem v. The Morning Call Inc., 23 Media L. Rep. 1406 (Pa. C.P. 1994)	Motion granted			DefMean; OC	
Merriweather v. Philadelphia Newspapers, Inc., 453 Pa.Super. 464, 684 A.2d 137 (Pa. Super. Ct. 1996)	Grant reversed	Pub	IAR	AM	
Clift v Narragansett Television L.P., 688 A.2d 805, 25 Media L. Rep. 1417 (R.I. 1996)	Grant partially affirmed			No libel claim	IIED; PFT; Neg; WrongDeath; Consort; Intrusion
Lentz v. Clemson University, 24 Media L. Rep. 1765 (S.C. C.P. 1995)	Motion granted	Priv		FairRep; RespondeatSup; SubTruth	
Hopewell v. Midcontinent Broadcasting Corp., 538 N.W.2d 780, 24 Media L. Rep. 1091 (S.D. 1995)	Grant affirmed	Pub		AM; SubTruth	

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Krueger v. Austad, 1996 SD 26, 545 N.W.2d 205 (S.D. 1996)	Grant affirmed	Pub	LL-P	AM; Opin; PubFig	Intrusion; PFT; Misapp
Sparagon v. Native American Publishers, 1996 SD 3, 542 N.W.2d 125 (S.D. 1996)	Grant reversed	Priv		Pvg; Retraction	
Gibbons v. Schwartz-Nobel, 928 S.W.2d 922 (Ct. App. Tenn. 1996)	Grant affirmed			Falsity; SOL	InvasionPrivacy
Acker v. Denton Publishing Company, 937 S.W.2d 111 (Tex. Ct. App. 1996)	Grant affirmed		DN	AM; DefMean; FairRep	FalseLight
Barbouti v. Hearst Corp., 927 S.W.2d 37, 24 Media L. Rep. 2313 (Tex. Ct. App. 1996)	Grant affirmed		LL-P	SubTruth	
Freedom Communications, Inc. v. Brand, 907 S.W.2d 614 (Tex. Ct. App. 1995)	Denial reversed	Pub		AM	IIED
Hailey v. KTBS, Inc., 935 S.W.2d 857 (Ct. App. Tex. 1996)	Grant affirmed	Pub		AM; PubFig	IIED
Herald Post Publishing Co. v. Hill, 891 S.W.2d 638, 23 Media L. Rep. 1412, 38 Tex. Sup. Ct. J. 153 (Tex. 1994)	Partial denial reversed			Pvg	
Liles v. Finstad, 1995 WL 457260, 23 Media L. Rep. 2409 (Tex. Ct. App. 1995)	Grant affirmed	Pub		Opin; SubTruth	IIED
Morris v. Dallas Morning News, 934 S.W.2d 410 (Tex. Ct. App. 1996)	Grant affirmed	Pub	SJ-F	AM; SubTruth	
NBC v. Gonzalez, 1995 WL 624549, 24 Media L. Rep. 1179 (Tex. Ct. App. 1995).	Partial denial reversed	Priv		DefMean; FairRep; SubTruth	
San Antonio Express News v. Dracos, 922 S.W.2d 242 (Tex. Ct. App. 1996)	Denial reversed	Pub		AM; DefMean; PubFig; SubTruth	
Star Telegram Inc. v. Doe, 915 S.W.2d 471, 23 Media L. Rep. 2492, 38 Tex. Sup. Ct. J. 718 (Tex. 1995)	Grant affirmed			No libel claim	PFT
Norris v. KUTV Inc., 24 Media L. Rep. 1255 (Utah Dist. Ct. 1995)	Motion granted			FairCom; NeutRep; SubTruth	IIED; InvasionPrivacy

Case/Citation	Result	Plaintiff Status	Procedural Approach	Libel Issues Considered	Other Claims
Clardy v. The Cowles Publishing Co., 81 Wash. App. 53, 912 P.2d 1078, 24 Media L. Rep. 2153 (Wash. Ct. App. 1996)	Grant affirmed	Pub		AM; Falsity; PubFig; SubTruth; Harm	
Bay View Packing Co. v. Taff, 198 Wis.2d 653, 543 N.W.2d 522, 24 Media L. Rep. 1289 (Wis. Ct. App. 1995)	Grant affirmed	Pub	SJ-F; IAR	AM; PubFig	
Benson v. Schmidt, 190 Wis.2d 468, 528 N.W.2d 91, 23 Media L. Rep. 1251 (Wis. Ct. App. 1994)	Grant reversed	Pub	DN	AM; PubFig	
Small v. WTMJ Television Station, 198 Wis.2d 389, 542 N.W.2d 239, 24 Media L. Rep. 1511 (Wis. Ct. App. 1995)	Grant affirmed		DN	No libel claim	InvasionPrivacy
Roush v. Hey, 197 W.Va. 207, 475 S.E.2d 299, 24 Media L. Rep. 2441 (W. Va. Ct. App. 1996)	Grant reversed	Priv	DN	Pvg	
Davis v. Big Horn Basin Newspapers Inc., 884 P.2d 979, 23 Media L. Rep. 1345 (Wyo. 1994)	Grant affirmed	Pub		AM	