



LDRC Juror Attitudes
Study II:

Private Figure / Broadcast

Prepared in Conjunction
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Libel Trial Symposium

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Introduction

This is LDRC's second juror attitudes study. Since the first study dealt with a major newspaper defendant in a public official's libel action, this study sought to examine the attitudes of the jurors who heard a case involving a major television defendant in a private figure's libel (and privacy) action, to serve as a starting point for comparison and contrast between attitudes toward public and private plaintiffs and toward print and broadcast media defendants.

Obviously, however, no two complex trials can be expected to provide precisely parallel points of comparison. Nor is it suggested that the first two LDRC juror studies are distinguished only by the status of the parties. Each case, as will be apparent to those reading both of them, involves innumerable facts, issues and even personalities that powerfully differentiate one from the other -- both in terms of the actual events in each litigation and in terms of the nature and findings of the LDRC studies regarding juror attitudes in each case.

Nonetheless, it is believed that this second LDRC study should at least add to the body of raw data from which valid observations and patterns can begin to be discerned regarding juror attitudes in libel cases. This, in turn, might begin to suggest how attorneys can deal with such attitudes in developing more effective defense strategies in future cases. Nonetheless, ultimate, definitive generalizations regarding both juror attitudes and trial strategies, if they are possible at all, must surely await still further studies.

What follows is a report on LDRC's second juror attitude study. As with the first report, in order to ensure juror confidentiality, and in order to protect the integrity of the litigation process -- an appeal is expected in this case -- the materials that follow do not specifically identify either the litigants or the jurors. It is nonetheless believed that the following report adequately describes the essential character of the litigation as well as the attitudes of the jurors who chose to impose liability and to award substantial damages against the defendant broadcaster.

Methodology

LDRC undertook to study the attitudes of the jurors in this case, including the alternate jurors, in essentially the same manner as was used in LDRC's first jury study. (See LDRC Bulletin No. 14 at 1-33). Briefs, opinions, and in this case the full trial transcript, were reviewed to achieve an independent understanding of the issues, arguments and proofs in the case. A list of the jurors' names and counties of residence was obtained from the information routinely provided to the attorneys by the court clerk's office.

Then, using the limited information available, addresses and/or telephone numbers were located for seven of the nine jurors, including two alternates. Letters were written to all of these jurors explaining the nature of the LDRC study, asking for their voluntary cooperation and promising confidentiality. The six jurors whose telephone numbers were available were told to expect a follow-up telephone call. The one juror with no known telephone number was asked to return a self-addressed reply card or to call LDRC collect.

Two out of the six jurors whose telephone numbers were available agreed to meet with LDRC for interviews. These face-to-face interviews lasted between 2 and 2 1/2 hours. A 23-page written script was loosely followed by the interviewer and the interviews were also tape recorded. In addition, two other jurors were interviewed by telephone (one regular and one alternate) following a somewhat abbreviated version of the script. In sum, a total of four jurors were interviewed in the study -- three out of the six regular jurors and one of the three alternates. In addition, the basic positions of all of the regular jurors as to both the liability and the damages verdicts, were revealed to some substantial extent by the three regular jurors who were interviewed. Finally, LDRC became indirectly aware of some of the specific views of the other two alternates.

Of the five jurors not interviewed, two were spoken to by telephone but declined to be interviewed; one failed to respond to a series of letters; and two jurors were never contacted due to insufficient information as to their place of residence. Although only half of the jurors and one of the alternates were ultimately interviewed, given what is known of the deliberation process, and the apparent unanimity among the jurors on the underlying issues as well as their consistent recollections regarding those issues, it is confidently believed that LDRC's understanding of the jury's basic attitudes in this case is essentially complete and accurate.

Background of the Case

The case arose out of a local television news broadcast concerning a local toxic waste dumpsite. The plaintiff was an elderly private citizen, the president and owner of a small firm which manufactured chemical products, whose plant happened to be located on a parcel of land adjoining the dumpsite. The defendants were the corporate owner of the television station, the individual reporter, his film crew, and a research assistant.

1. The Broadcast

Defendant reporter had been conducting a series of reports on toxic waste for the local news. A source in local government informed him of the location of an illegal hazardous waste dumpsite.

Upon arriving at the site with a film crew, the reporter noted rusting containers with such labels as "hazardous" and "flammable." Since there were no fences or property demarcations, he went to a building adjoining the lot containing the drums, in order to ask questions; he later discovered that this building was plaintiff's place of business. He encountered plaintiff leaving the building, and proceeded to question him about the source of the drums and the chemicals contained therein. While the cameras were rolling, plaintiff became highly agitated and vociferously expressed his desire that he not be filmed.

During the course of this encounter, all of it taped by the camera crew, plaintiff disclaimed responsibility for the dump and told the reporter to ask his questions of a governmental agency. The reporter was also thereafter told, by plaintiff's son at the company, that the company had previously reported the dumping to local authorities. This lead was followed up and confirmation was received that plaintiff had in fact reported the existence of the dumpsite to the relevant agencies two years prior but that no action had been taken. That same day, before the tape had been broadcast, plaintiff called the broadcaster's legal department and requested that the tape of him not be aired, or at least that its broadcast be delayed until the following day. It is not entirely clear from the trial record whether anyone in the broadcaster's editorial department became aware of that call, but in any event the news director was called upon to review the tape prior to the broadcast, under defendant's internal guidelines requiring review of a "confrontational" interview. After this review the tape of plaintiff was approved and was aired as a part of the broadcast on the dumpsite that same evening. That broadcast also included the information that the plaintiff had reported the dumpsite to local authorities, and the reporter's statement, at the end of the segment, that he didn't know who was responsible for the dumping. These "disclaimers" were not added as a result, either of the phone call or of the news director's review, but had been a part of the segment from the outset.

2. Plaintiff's Claims

A week after the broadcast a retraction demand was sent to the broadcaster, but no retraction was made. Thereafter, plaintiff sued, claiming the broadcast falsely portrayed him and his business as being responsible for the waste and as being illegal dumpers, although the broadcast never made any explicit statements to that effect. He also claimed that the broadcast inaccurately portrayed him as intemperate and evasive. Plaintiff and his corporation also asserted defamation claims. Further, plaintiff individually asserted three invasion of privacy theories -- intrusion, disclosure of intimate facts and false light. In addition, plaintiff alleged that a research assistant who followed up on aspects of the story prior to its broadcast had slandered him and his company in her conversations with governmental personnel while verifying the facts of the story. Plaintiff also alleged assault and battery based on his claim that the crew had shoved and jostled him during the taping. Finally, plaintiff asserted a trespass claim.

3. Summary Judgment

After discovery, defendants moved for summary judgment on all counts. Plaintiffs cross-moved for summary judgment on one of the defamation claims and on the trespass claim. On the defamation claim, the court denied summary judgment. It found that the broadcast could reasonably be interpreted as having the defamatory meaning that plaintiffs were illegal dumpers and that genuine issues of fact existed as to whether defendants were aware that the broadcast falsely suggested plaintiffs were dumpers and as to whether they "deliberately" or "intentionally" presented this false impression in the broadcast. Summary judgment was also denied with regard to the slander claim, which allegedly arose out of questions asked of local authorities by defendant's research assistant. The defense of this claim centered around common law privilege and the court held that material issues of fact existed regarding the nature of the questions asked, the researcher's attitude toward their truth and her motives in asking them.

As to the privacy claims, the judge granted defendants' motion on the intrusion and disclosure theories, both essentially on the ground that the interview that was sought, and the facts that were revealed, were essentially obtained in a "semi-public" area "open to the public eye." Summary judgment was denied, however, on the false light theory on the ground that either the portrayal of plaintiff as an illegal dumper or as intemperate and evasive could have placed him in a false light and that the portrayal could not be deemed "inoffensive" as a matter of law. Regarding the assault claim, the court also found that a material issue of fact was raised regarding whether the cameramen intentionally or inadvertently touched plaintiff in the course of their taping. Finally, the court granted summary judgment on the trespass claim, finding that defendants' news crew did not enter the property improperly and were given implied permission to remain on the property.

4. The Trial

At trial, the core of defense's argument was that the reporter acted reasonably and responsibly in doing his job and, in fact, that the broadcast had spurred a resolution of the toxic dumping problem it had helped bring to light. The defense called witnesses from the relevant agencies to show how the broadcast had galvanized authorities into cleaning up the dump site. Defense counsel repeatedly stated that nothing but the "simple truth" was reported and no liberties were taken in the editing process. The defense also presented an expert witness, the news director of another television station, to testify that the broadcast met reasonable journalistic standards.

On the other side, plaintiff's attorney portrayed his client, who was also his father, as the victim of irresponsible and sensational journalism. Less effort was made to delineate the specifics of the three charges than to argue that this case was

important to the public because private citizens should have a right not to appear on TV. The attorney urged the jurors that a verdict in favor of plaintiff would "send a message" to the media that their conduct should not and cannot impinge on the rights of private citizens to privacy and dignity. He also suggested that because plaintiff was a private figure, he had no access to the media to set the record straight, and that therefore a legal remedy was his only recourse.

Plaintiff's attorney also sought to establish that the reporter failed to exercise the proper degree of care in reporting this story. He contended that the reporter neglected his duty to fully investigate, and consequently presented a story that was not newsworthy, and merely a sensational addition to an ongoing series of stories that had been presented on similar concerns. An effort was also made to characterize the reporter's encounter with the plaintiff as an "ambush" interview, and a transcript of a program prepared by another television station suggesting the unfairness of ambush interviews was introduced as evidence, over defendants' objection. Using this transcript as a reference point, plaintiff's attorney argued that an ambush interview, allegedly the sort the defendant reporter had conducted, inherently casts the interviewee in a false light.

Finally, plaintiff's counsel attacked the editorial process. Plaintiff submitted a specially prepared tape in which a technical expert had reassembled the bits and pieces of the broadcast together with the available outtakes in chronological order, and revealed that portions of the tape were allegedly missing. The defense claimed that a certain amount of the tape was simply lost due to the cutting and splicing required in editing tape; plaintiff insisted that too much of the tape was missing to be accounted for as the average editing loss. Plaintiff contended that this tape demonstrated that the interview had been deliberately manipulated and edited so as to achieve a false and defamatory presentation of plaintiff. Furthermore, it was brought repeatedly to the jury's attention that plaintiff's request not to air the broadcast had been ignored.

The Jury's Verdict

1. The Deliberation Process

The jury was excused in the morning, after receiving the judge's instructions on the law with regard to the libel, slander and false light claims. A directed verdict had been entered on the assault and battery claim. The jury deliberated until 11 p.m. that first day, until 6 p.m. on the second, and returned with a verdict with respect to liability on the various charges at about 11 a.m. on the third day of deliberations. They rejected plaintiffs' defamation claims, finding that although there was defamatory

meaning, the "defamatory statements of fact" were not "substantially false." The jury also rejected the slander claim, finding no communication of defamatory statements to third parties. However, the jury found for plaintiff on the false light claim against the broadcaster, indicating on the special verdict form that the broadcast did "portray" plaintiff in a false light, that the broadcast was "highly offensive" and that this false portrayal had been published with actual malice. The false light claim against the reporter was rejected.

Due to the fact that the trial was bifurcated, testimony on the issue of damages was not received until after the jury had determined defendants' liability. No new testimony on the damages issue was proffered, however. The jury was discharged over a weekend, then returned to the court to hear the closing arguments on damages and the damages charge, after which they returned in only a few hours with their decision to award the plaintiff \$1.25 million, \$250,000 in "compensatory" damages and \$1,000,000 in "punitive" damages. (See Section 3. Damages, below)

From all appearances, the defendants' case was lost in the jury room. The verdict was essentially a product of the deliberations, rather than an affirmation of any pre-existing positions that the jurors had individually arrived at during the trial, as had been the case in LDRC's first juror attitudes study. In fact, with one exception, the three jurors and one alternate who were interviewed by LDRC said that, at the close of the arguments, they actually favored the defendants. One juror said that he was surprised at the amount of discussion that took place, since he entered deliberations believing that plaintiff had no case, and that a verdict in favor of the defendant was the obvious action to take. The one juror who told LDRC that he entered deliberations believing the broadcaster was liable agreed with the others interviewed that the plaintiff had not been libeled; he did feel, however, that the program had cast plaintiff in a false light. It is not clear which side, if either, was initially favored by the jurors not interviewed and a strong initial position was apparently not revealed by these other jurors as the deliberations commenced. One can only speculate that some of those not interviewed may have favored the plaintiff, or at least leaned in that direction, in light of the ultimate outcome of the jury's deliberations. But even this is not clear in light of the apparently powerful effect of the deliberation process itself in this case.

If the reports of the jurors interviewed are accurate, the jury's deliberations were characterized by a remarkable lack of passion or emotion. The jury deliberated for more than two days on the liability issue alone. According to the jurors interviewed, this time was spent discussing the issues and paying scrupulous attention to the questions posed by the special verdict form and to

the definitions contained in their written copies of the judge's instructions. (A full text of the instructions was provided to the jury when they sent out a note asking for a re-reading of the charge.) According to those interviewed, no one juror initially had (or at least expressed) particularly strong opinions regarding liability one way or the other, and the discussion reportedly proceeded in an amicable and orderly fashion. It also appears that no one juror dominated the discussions nor was any juror perceived as pressing the jury in one direction or another. There was apparently little if any formal polling during most of the deliberations, and no hard divisions or factions appear to have developed. Thus, it would appear that the judge's charge (and the accompanying special verdict form) was in effect the seventh and by far the most dominant presence in the jury room. All of the jurors pursued an intellectual rather than an emotional process governed by their reading of the charge (and verdict form). And, even those jurors who entered the jury room favoring the defendant were won over by what they viewed as the legally-required result in the action.

The verdict was announced as a unanimous one and all of the jurors who took part in the study indicated agreement with the ultimate verdict. Most of the jurors who cooperated with LDRC said that all the issues were discussed and decided separately, and that their decisions on one claim were not influenced by their decisions on the others. However, one of the jurors did express the view that pragmatically, after the jury's lengthy and careful discussion of all aspects of the liability case, when the final decisions were rendered on each of the claims, there was some sense of compromise and trade off. For example, in this juror's view the final decision to exonerate the reporter was made only after it was clear (or at least implicit) that the broadcaster was to be found liable. Similarly, the final decision to drop the libel claim was made only after it was clear that the false light claim would be upheld. This was not, however, a compromise verdict in any untoward sense, since it is apparent that the jurors ultimately agreed that, by their lights at least, the broadcaster was more culpable than the reporter and the false light claim fit their view of the facts and law whereas the libel claim did not.

2. The Verdict on Liability

(i) The Incidental Claims

The jury gave short shrift to the non-defamation/privacy claims. Even prior to the dismissal of the assault and battery claim on technical grounds, the jurors LDRC interviewed had viewed this claim as completely unfounded, based on their repeated viewing of the videotape of the incident upon which the claim was based. As to the slander claim, the jury found the testimony (and exhibits) of plaintiff's key witnesses confused and unpersuasive. They also apparently considered both of these claims to be clearly incidental to the major thrust of plaintiff's case.

(ii) Libel vs. False Light

As noted, the jury ultimately rejected plaintiff's libel claims, as to both the broadcaster and the reporter. In order to reach this verdict, following the format of the special jury verdict sheet, the jury did find that the broadcast had a defamatory meaning, but did not find "evidence that any [of these] defamatory statements of fact . . . were substantially false." On the other hand, with regard to the false light claim, the jury did answer "yes" to the question whether "plaintiff had been portrayed in a false light . . . by the broadcast." The jurors attempted to explain the apparent inconsistency between finding no substantially false statement of fact on plaintiff's libel claim and finding that the defendant had cast plaintiff in a false light. They read the charge as requiring that liability for libel must be based on a finding of at least one specific, substantially false statement of fact -- which finding they could not make. Because the jury failed to find any substantially false statement of fact on the defamation claim, they never had to consider the question of fault on this count, which would have required a finding of negligence under the applicable local standard. Although one can only speculate, it is unlikely, given the jury's finding of reckless disregard on the false light claim, that the negligence requirement would have prevented this jury from rendering a plaintiff's verdict on libel had they felt the other elements of the libel claim had been established.

The jury concluded that liability for false light, on the other hand, could be based on a finding of falsity -- not of any particular fact or statement, but in the overall portrayal of plaintiff, which included visual images and the way the story was edited. Unfortunately, the judge's charge -- and particularly the special verdict form -- played into the jury's hands on this point. Thus, the first question they had to answer on the defamation claim was framed in terms of whether the broadcast "contain[ed] defamatory statements of fact concerning plaintiff." On the other hand, the false light question on the verdict form was phrased more loosely in terms of whether the broadcast "portrayed" plaintiff "in a false light." At one point the jury considered asking the judge for a definition of "portrayed," but then apparently concluded that the term must have been intended to suggest the looser conception and proceeded on that basis. Ultimately the jury was able to find a false portrayal based on these relatively "less-structured" grounds.

(iii) Falsity and Offensiveness

There is perhaps a more significant anomaly in the jury's verdict than the arguable inconsistency between the falsity finding on defamation and that on false light. This is the fact that the jury was able to find the "portrayal" of plaintiff to be "false," yet the jury -- or at least a number of them -- still harbored the suspicion that plaintiff may in fact have been the dumper. The jury's false light verdict had clearly been based on what the jury felt was the suggestion that plaintiff was the dumper and not on any suggestion that plaintiff was intemperate or evasive, which the jurors generally believed to be a true reflection of plaintiff's attitude toward the reporter. Nonetheless, at least 3 of the 4 jurors interviewed indicated ambivalence or skepticism as to whether plaintiff was in fact the dumper. See Juror Profiles, infra. Moreover, those jurors interviewed conveyed the strong impression that it was the shared view of the entire jury that they were not required to determine whether plaintiff was in fact the dumper in order to render a verdict on the false light claim.

Understandably, the defense had not sought during the trial to indict plaintiff as the dumper, since the broadcast itself had disclaimed any view on the subject and defendants were actively litigating the issue of defamatory meaning. However, when the jury decided against the defense on that issue, and concluded that the broadcast did suggest plaintiff as the dumper, the jury seems to have lost sight of the fact that they still had to find that the defendants were not only "reckless" in broadcasting a portrayal about which they may have entertained doubts as to its truth, but that plaintiff had met its burden of proving that the portrayal was in fact false. Again, the instructions and verdict form, which played so prominent a role throughout the deliberations, propelled the jury toward its verdict against the defendant on this issue. Whereas the defamation instructions and special verdict form had forced the jury to seek a specifically false statement of fact, the false light verdict form glossed over the falsity requirement by telescoping the false light finding into a single question, even though the instructions had properly divided the issue into two parts -- the first being the offensive portrayal and the second the requirement of substantial falsity. The jury never really had to confront -- nor did they confront -- their doubts as to the underlying falsity of the suggestion that plaintiff was the dumper.

Finally, the judge's instructions on the issue of offensiveness failed to provide an additional substantial hurdle for plaintiff to overcome in establishing its false light claim. In fact, the terms "offensive," or "highly offensive," were never separately defined. The jury was thus left to its own devices to determine whether the broadcast was offensive and, if so, to whom and by what measure. The only limitation provided in the instructions was that offense should be measured by the "sensitivity"

of an "ordinary or average" person and not by a "particularly sensitive person." The looseness of this definition is demonstrated by the jurors' theories of "offensiveness" as described to LDRC. One juror felt that to suggest dumping is inherently offensive. One felt that it is always offensive to ridicule a person or diminish his self-esteem. The third juror interviewed said the broadcast was in fact not highly offensive to him, but presumably was willing to conclude that it might be so to a person of average sensibilities.

(iv) Actual Malice

The jury had been instructed, under Time v. Hill, that plaintiff had to prove actual malice by clear and convincing evidence in order to prevail on his false light claim. Although one juror interviewed by LDRC suggested he believed the defendants actually "knew" the broadcast was false, the others indicated that they believed actual malice was established by a finding of "reckless disregard" for truth and it seems clear that this represented the consensus of the jury on this issue.* In finding recklessness the jury failed once again to come to grips with the underlying requirements that the portrayal had to be false and that defendants' state of mind had to be knowing or reckless with regard to the falsity. Instead, the loose concept of recklessness applied by the jury permitted them to glide over both the underlying falsity and defendants' attitude toward that falsity. This is evidenced by the manner in which the jurors articulated what, for them, established defendants' reckless disregard. For each of the jurors interviewed found reckless disregard unrelated to a finding of the underlying falsity of the suggestion that plaintiff was the dumper. Instead, the jurors focused on defendants' alleged disregard of plaintiff's request not to air the tape, or to delay the broadcast; or on defendants' alleged disregard for the possibility that the broadcast might be seen as suggesting plaintiff was the dumper without sufficient basis for so suggesting.

The phone call by plaintiff to request the organization to delay broadcasting the taped interview seems to have been a powerful factor in deciding the issue of reckless disregard. One juror felt that defendant evidenced reckless disregard for plaintiff's feelings in failing to assure that the message of this phone call was conveyed to those in charge of determining whether to air the broadcast. All of the jurors interviewed expressed the belief that the broadcast could have been delayed for an extra day without any harm to the story's news value and this would have provided the

* It is probable that this one juror was speaking more in terms of knowing that a potentially false impression might be created, than of knowing that the broadcast was in fact false, since that juror was one of those who indicated some ambivalence as to whether plaintiff was actually the dumper.

defendant with an opportunity to delve further into the truth of the story. When asked, none of the jurors could state what specifically might have been discovered in the day's delay, but simply said the delay would have done no harm. What the jury believed to be the defendants' cavalier dismissal of plaintiff's request made the organization seem reckless and unheeding of the consequences of the story they broadcast.

In applying this loose concept of recklessness, the jury was once again aided and abetted by the judge's charge which twice permitted them to gloss over the underlying falsity problem. First, the definitions of recklessness provided permitted them to avoid the question of knowledge of falsity and, although the judge's charge included some of the appropriate formulations of reckless disregard as a subjective standard, several alternative definitions were given which invited the jury to consider recklessness apart from the narrow definition of "in fact" entertaining serious doubts as to truth. The charge on recklessness also enabled the jury to gloss over the requirement, articulated in the charge, that defendants' state of mind had to be found with regard to a meaning they intended to convey by the broadcast. This occurred because the judge also permitted the jury to find, in the alternative, that defendants had "recklessly disregarded" the possibility that the broadcast -- as the jury had interpreted it -- might convey an injurious meaning.

In sum, the jury in this case ultimately found against the defendant at least three steps removed from the kind of clear and convincing proof that ought to be required in such actions. First, it found that defendants had published no specifically false statements of fact, but only an overall impression that the jury felt portrayed plaintiff in a "false" light. Second, the jury entirely ignored the underlying truth or falsity of that impression, relying instead on the view that defendants had recklessly disregarded the claim by plaintiff, and the possibility that the impression they felt the broadcast created might be false. And finally, the jury ignored defendants' argument that they had not intended to create this (potentially) false impression (indeed, the broadcast included the reporter's express statement that he did not know who was responsible for the dumping) on a theory that defendants recklessly disregarded the possibility that, despite this disclaimer, the broadcast might have conveyed such a meaning.

Despite the jury's strict finding as to the broadcaster, the individual reporter was not found liable on the false light claim, although at one point a majority of the jurors were apparently leaning toward holding him liable. The jurors questioned attributed their change of heart to the reporter's testimony that he had shown the videotape of the interview to his superiors, whose final decision it was whether or not to air it. It was this action, which the jurors viewed as his compliance with the rules and regulations

of his employers, that absolved the reporter in the juror's eyes of ultimate responsibility for the broadcast. He was generally considered to have done his job in a responsible and professional manner, and was not, in the jury's ultimate view, liable for his employer's decision to air the story.

3. The Verdict on Damages

After working long and hard on its liability verdict, it seems fair to say -- and a number of the jurors interviewed confirmed this -- that the jury was not inclined to spend an extraordinary amount of time on the damage phase of their deliberations. The fact that the damage mini-trial presented no new witnesses or evidence abetted this feeling (and apparent desire) that the damage verdict could be rendered swiftly. It is true that a number of the jurors interviewed were surprised that the plaintiff presented so little evidence as to harm done to his business or reputation. They would also have liked more guidance as to how to compute damages. Nonetheless, it is apparent that the jury was able to reach a quick consensus that some damages should be awarded. Given the lack of extreme passion generated against the defendant, it was almost as if the jury saw its role as necessarily imposing some punishment on the guilty party, regardless of the degree of its culpability. And given that the jury did not particularly sympathize with plaintiff as a personality, nor did they feel he had been especially harmed financially, the jury's attention primarily focused on punitive damages.

Two of the jurors initiated the discussion regarding the amount of damages by suggesting the sums of \$10,000 or \$50,000. These amounts were dismissed by others of the jurors as being too low, in that they would not affect the defendant in any way; the numbers were too small in relation to the wealth of the defendant to impress the defendant with any sense of wrongdoing, or influence the defendant to change its practices in any way. Also, with regard to the size of the damages award, several jurors recalled the judge's advice that they could take the size and wealth of the defendant organization into consideration when assessing damages and, as a result, during the discussion on this issue a figure as high as \$5 million was apparently mentioned. Ultimately, the \$1 million figure was isolated as an appropriately substantial sum in order to show the defendant that this was no "slap on the wrist," but a serious statement as to its fault. Apparently, the defense argument that the broadcast had helped eventually to clean up the dumpsite was not taken into consideration in mitigation of this huge sum, because most of the jurors had concluded that there was no urgency to the broadcast and that the site could have been cleaned up without invading plaintiff's privacy. Any argument about the impact of the damage award on freedom of the press would also have been discounted according to one juror, because the jury had already concluded that the defendant was liable, despite any First Amendment concerns, and the jurors were simply not prepared in the damages phase of the case to embark upon what might be tantamount to a reconsideration of any aspect of liability at that late point in the deliberations.

As to compensatory damages, it seems that no one on the jury felt that they had been given any substantial basis for awarding -- or at least for estimating -- the amount of damage plaintiff had actually suffered to his reputation, business or feelings. Again, the jurors generally seemed not overly impressed by, or sympathetic to, the plaintiff in considering the issue of his compensatory damages. The jury did, however, appear to have some sympathy for the situation in which plaintiff had been placed. At least one juror suggested the award of some nominal amount. Others suggested that plaintiff had been damaged, at least to the extent of having to pursue the litigation over a period of several years. Ultimately, in lieu of any other basis for calculating the amount of compensatory damages, the jury approximated how much they believed plaintiff had spent on litigating his claims, assessing that amount to be \$250,000, based upon no evidence whatsoever in this regard. (The judge had not specifically instructed the jury not to take into consideration litigation costs or attorneys fees. The judge charged the jury that it "may award only such [actual] damages as will fairly and reasonably compensate plaintiff . . . for the injury or damage you find he sustained as a result of defendant['s] acts.") The suggestion that the total of damages awarded be \$1 million, including the compensatory award, was also ultimately rejected in favor of the two awards totalling \$1.25 million. One juror commented that another factor in rationalizing the large damages award was the suggestion expressed during the jury's deliberations that an appeal was inevitable and the amount of damages would no doubt be lowered as a result of the appeal or any settlement that might be agreed upon by the parties in lieu of an appeal.

In sum, it seems fair to say that the jurors were influenced primarily by a desire to punish the defendant for what they saw as improper actions, and very little, if at all, by sympathy for the plaintiff. Indeed, a few jurors said that the jury felt uncomfortable giving \$1.25 million to the plaintiff, but they wanted to punish the defendant. One juror recalled that it had been jokingly suggested in the jury room that the million-dollar punitive portion of their award be given to a charity rather than to the plaintiff. However, even though the jury wanted to punish the defendant, their assessment of damages seems not to have been so much motivated by emotion or passion, but rather as reflecting a calculated desire to influence the defendant to alter its newsgathering and broadcasting habits.

Demographics

Given the lack of substantial division among the jurors during their deliberations, except initially on the damage issue, and given the unanimity of the final verdict, it is difficult to identify particular demographic factors that suggest themselves as having had

a special impact on the outcome of this action. Perhaps the most salient feature of this jury, according to all evidence and reports, was the remarkably dispassionate and systematic manner with which it approached its deliberations. A number of jurors predisposed to favor the defendants were, ultimately, willing converts to the logic of liability when they concluded it was required by the law as charged to them. Perhaps this is the downside risk of a highly intelligent jury, all, or almost all, of whom were college-educated or had advanced degrees. Indeed, ironically, if they had been jurors inclined to follow their initial "gut" reaction, this case might have come out in defendants' favor.

In terms of employment, again, most of the jurors had responsible professional positions in the public or private sector. Geographically, two of the jurors were from an urban center, the others lived in suburban counties. Interestingly, the two urban dwellers were the jurors who at first favored a far lower damage award, but this was probably more a reflection of their employment experiences as (presumably) lower-paid teachers and social workers, than a product of their place of residence. There were five men and one woman on the jury. It was the woman who, of those interviewed, seemed most predisposed to favor the media and it was she who, at first, favored a smaller damage award. In terms of age, three of the jurors were in their late 30's; the other three were in their 50's or 60's. It does appear that the older jurors, who were all men, did favor a larger damage award and may have initially favored a finding of liability against the reporter. But one of the younger men was the leader in proposing a stiff punitive damage award, although he was apparently a strong advocate of no liability against the reporter. All of the jurors were apparently middle to upper-middle class. Their political views and party affiliations were not ascertained.

Attitudes Toward the Media

Contrary to what one might expect of a jury that held against a media defendant in a libel or privacy action and had entered an award of \$1.25 million, none of the jurors interviewed expressed views hostile to the media in general. Most if not all of these jurors seemed to be generally supportive of the media as a whole. Indeed, one juror commented on how she had started the trial favoring the media defendant, with the attitude that the plaintiff had to prove a very strong case in order for her to find liability. While most of the other jurors interviewed were not this predisposed in the media's favor, they were generally of the opinion that the media did a good job at keeping the public informed. None of the jurors interviewed appeared to have any politically-motivated views against the media or any particular segment of the media.

Although the jurors indicated no general antipathy to the media, a number of them expressed some reservations regarding the media's performance. A juror who preferred newspapers to television news felt that newspapers cover the news in a more balanced fashion, although he indicated that he believed the lack of balance was the result of lack of time for in-depth coverage rather than conscious or intentional distortion or bias. Others of the jurors indicated that the media can be intrusive on occasion. At least one juror mentioned that television news, in particular, tends to invade unnecessarily the privacy of people struck by tragedy. Most of the jurors seemed to agree, to a greater or lesser extent, with the view that a (private) person should have a right not to be on television, although not all of them agreed with plaintiff in this case that he was subjected to an improper "ambush" interview.

In terms of media awareness, one juror and one alternate told LDRC they generally watched the defendants' news program, although they had not seen the particular segment at issue. The others watched television news in general, with the exception of the one juror who felt that television news programs were usually too brief and dramatic to present a completely accurate picture of the news. This juror preferred to get his information from newspapers. Most of the jurors interviewed also regularly read newspapers, as well as the occasional news magazine.

None of the jurors who participated in the survey expressed any change in their attitudes toward the media as a result of the trial. They did not appear to be disillusioned with the media in general because of their performance in this instance, though they were prepared to severely punish the defendant in this case for what they viewed as its improper activity, even though those same jurors claimed not to have continuing feelings against the defendants. As one juror put it: "They just 'blew it' in this case."

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Juror Profiles

A

Juror A is a woman in her mid-thirties. She has an advanced degree in social work and works as a staff analyst in this field. This was the first time she had served on a jury. Although she noted that the jurors had at one point agreed not to discuss the case after the trial, she was quite willing to speak with LDRC and was very open and articulate in her responses. A did express some concern about whether the information she gave could affect any appeal that might be taken in the case, but was reassured that LDRC's study had no bearing on any appeal.

Prior to hearing the charge to the jury, A was leaning toward the defendants and did not think they would be found guilty on any of the three claims. However, after the judge read the charge, and upon careful consideration of each element in the jury room, she became convinced that the broadcaster's behavior fit the description and definition of false light as detailed in the judge's charge. In finding false light, A focused on the overall way that the broadcast "portrayed" the plaintiff as possibly being the dumper of the toxic material, rather than on the actual words of the broadcast. Furthermore, A believed that the broadcaster's failure to withhold the story until it could have been more carefully checked demonstrated a "reckless disregard" for the plaintiff's feelings.

A was not particularly impressed with the testimony of any of the witnesses for the defense. She felt that the reporter and his assistant were uncharacteristically low-key and passive but felt this had little impact on her decision. In addition, she felt that the defense could have used a more effective expert witness -- and preferably one not indirectly associated with the defendant.

Similarly, none of the witnesses for the plaintiff were particularly effective, in A's view. Even though A felt sorry for the plaintiff to some extent, she did not feel he was a good witness. She recalled that he became extremely emotional on the stand and became angry at the defense attorneys for no good reason. This gave her the impression that his response to the reporters as shown on the broadcast may not have been out of character.

Although A emphasized the contrasting styles of the plaintiff's and defendants' attorneys, she did not prefer one over the other and felt both were equally well-prepared and persuasive. She characterized defendants' attorney, as well as the entire presentation of their case, as low-key and relaxed, while she described plaintiff's attorney as fast-talking and nervous. During the trial the low-keyed confidence exhibited by the defense led A to

conclude that the defense felt it had "an open-and-shut case," and this perception may have bolstered A's initial leaning toward the defense side. On the other hand, however, the low-keyed defense may have given A, and the other jurors, less emotional commitment to the defense position than they needed to overcome their intellectual conclusion that the judge's instructions mandated a verdict for the plaintiff.

The exhibit that A considered the most important was the tape of the actual broadcast as aired. Her first impression of this broadcast was that it portrayed the plaintiff as the dumper of the waste material. According to A, the jury never really decided whether plaintiff was or was not in fact a dumper. She felt there was no need to make such a finding. None of the other exhibits changed her opinion or attitude in coming to a resolution in the case. She concluded that the interview of plaintiff was not an example of ambush journalism and consequently discounted the evidence presented on this subject in coming to a decision about the case.

During the trial, prior to the judge's instructions, A did not have any sense of what the plaintiff must prove in order to win its case. She felt that the judge's charge, although long and complicated, was the key to the deliberation process. A's entire understanding of the elements of libel, slander and false light was gained from the judge's instructions to the jury and, presumably, the special verdict form.

As to damages, A was surprised that plaintiff did not present any hard evidence to show loss of business or money. Equally surprising to A was that the judge did not indicate any limit or give any guidelines with respect to the amount of damages that should be awarded -- except that the jury could take into account the size of the defendant corporation. Initially, A, in accord with the other jurors, wanted to award the plaintiff no compensatory damages but, after further deliberation, agreed that he should be recompensed for his legal fees. Regarding punitive damages, A initially thought in terms of something in the neighborhood of \$50,000, but when other jurors suggested that the damages should be related to the overall wealth of the defendant, she concluded that even a million dollars did not seem that large.

A considers herself a strong supporter of free speech and anticipated she would be on the side of the press. Furthermore, she feels the press provides an important service and likes investigative news programs like 60 Minutes. A also reads a national and a local newspaper daily, as well as magazines such as Time.

B

Juror B is a 37-year-old man with an advanced degree in labor relations. He teaches junior high school English in a large urban school system. Prior to serving on this jury, B had been a juror in three criminal cases, one a murder case in which the jury convicted on a lesser count of manslaughter. Although B originally declined to be interviewed, after reviewing background materials on LDRC he agreed to be interviewed at length. B was very articulate in expressing what he felt to be the jury's overall attitudes as well as his own views. During the deliberation process, B appeared to have assumed a role of "devil's advocate" on many of the issues.

When B originally entered the jury room he did not think that the plaintiff had much of a case and was not ready to find for the plaintiff on any of the three claims. Furthermore, until the judge read the charge to the jury he was inclined to think the case was "absurd." He commented that he was impressed with the jury's thorough and open deliberation process and had no reservations about the final verdict -- although he initially thought the deliberations would be finished very quickly and that there would be no finding of liability. B also indicated that he thought a compromise was involved to some extent in the deliberation process and in the finding of false light liability. He noted some jurors were willing to give up finding for the plaintiff on the libel claim, if the false light claim were sustained.

In finally being convinced that defendant had portrayed plaintiff in a false light, B focused on the overall image of the broadcast rather than on just the words. He felt that plaintiff's request not to be on television was legitimate and that plaintiff's request to delay the broadcast should have been respected. B felt that defendants' refusal to delay the broadcast showed a reckless disregard for plaintiff's feelings. It also showed a reckless disregard for the truth since defendants must have had doubts regarding the suggestion that plaintiff was the dumper. B believed that the only reason that the segment showing an agitated plaintiff was broadcast was because of the visual image and not its newsworthiness. Furthermore, B did not feel that defendants' "good service" argument negated their liability, even though in fact he had been active in environmental causes.

As to the attorneys, B thought that plaintiff's presentation of the case was "amateurish," long-winded, a bit too emotional and not all that persuasive. B described the attorney for the defendant as experienced, straightforward, and low-key. He did feel that the defense's low-key approach gave the impression that the case was not that important.

B noted that he felt no sympathy or empathy for plaintiff while he was on the witness stand. Indeed, B indicated he and possibly others on the jury felt plaintiff may, in fact, have been responsible for the dumping. Plaintiff's emotional performance in

court led B to see how his reaction to being interviewed occurred and that the broadcast perhaps showed him as he is. Plaintiff's witnesses that testified as to the alleged slander were not at all credible to B and he felt this helped the defendants.

B felt that the reporter was honest on the stand and basically came across well. B was considerably impressed with the news director's testimony but, ironically, thought it ultimately had a negative impact on the defendants' case. B felt that the news director, because he so strongly embodied the defendant corporation, absolved the reporter of any guilt; yet he assumed responsibility for the corporation and because he seemed so professional and so in control it was easier to view the decision to air the broadcast, despite the plaintiff's pleas, as a cold-blooded and conscious decision to risk placing plaintiff in a false light.

In addition to the tape of the broadcast as aired, which gave B the initial impression that plaintiff was the dumper, B thought the plaintiff's exhibit incorporating the outtakes helped their case. B felt this exhibit showed the power of the editing process and what this process can do to change the emphasis of a story. B also felt that the evidence of ambush journalism, even though he did not believe the interview was by definition an ambush, had some negative impact on defendants.

B found the judge's instructions to the jury to be an important part of the deliberation process. He also noted that the special verdict form was most helpful and that it simplified the charge, and thus the decision, on each element of each charge.

At the outset of the jury's consideration of damages, B wanted to make only a nominal award and suggested \$10,000 total. He felt that on this issue neither the judge nor the lawyers suggested any parameters as to the appropriate amount of damages that could or should be awarded. B felt that the defendant only deserved a "slap on the wrist" but yielded to the other jurors' view that defendant's size should be taken into consideration in defining even a slap on the wrist. In any event, B suggested, he felt that in the back of everyone's mind was the probability that their award would be reduced on appeal. B also noted that he and the other jurors were aware of million dollar damage awards, generally and in other libel trials, and thus a similar award was necessary to make any kind of statement.

B feels the media generally does an adequate job but he realizes that they are capable of making errors and have the tremendous power to present something as fact that may not be, in order to capture the interest of the audience. B sees this problem to be greater in broadcast than in print. In addition he personally believes that a right not to be on television should exist although he realizes that this may be legally incorrect. B was and is a regular watcher of the defendants' news program. In addition he also reads a national newspaper daily and weekly magazines like Time.

C

Juror C is an approximately 35-year-old college-educated man who works in data processing. Prior to the deliberations among the jurors, C said it was clear to him that the libel and slander charges were unjustified; however, he felt that the false light charge had merit.

His initial viewing of the broadcast as aired led him to believe that it portrayed the plaintiff as the dumper, even though C indicated that, for all he knew, plaintiff may have been the dumper after all. This initial impression that plaintiff was being accused of being the dumper, which was reinforced each time he viewed the tape, was a critical factor in his finding the broadcaster liable. C totally discounted the segment at the end of the broadcast which stated that it was not known who was the actual dumper as "too little, too late." Furthermore, he felt that the defendants (both the reporter and the editor) had to know the impression the tape created and decided to "take a chance" on airing the interview anyway. He felt that there was no reason to air the broadcast that evening and by waiting the defendant could have avoided liability. In sum, C believed that the defendants had done an injustice to the plaintiff, embarrassed him, damaged his integrity, and placed him in a false light.

C said he did not feel particularly sympathetic toward plaintiff, nor did he feel that sympathy played any part in the jury's decision. C stated that although he held the fact that the plaintiff was so uncooperative in the tape against plaintiff to some extent, the bottom line was that he felt that the defendants had improperly used plaintiff's uncooperative attitude to their own advantage.

On the defense side, C believed that the reporter was simply doing his job and thus there was no reason to hold him responsible. In contrast, he felt that the defendant broadcast organization was clearly the responsible party and the news director's testimony -- although impressive -- was an important factor in his finding on the false light issue.

C felt that the defendants' attorney had a better style and was better prepared than plaintiff's attorney. However, he felt that the plaintiff's attorney pursued the case harder and that his "angry" style was more effective.

In addition to the tape of the broadcast as aired, C mentioned that plaintiff's gap tape exhibit left some further doubts in his mind that the broadcast fairly represented what occurred during the interview of the plaintiff. C felt the evidence presented by plaintiff on ambush journalism was basically irrelevant due to the fact he did not consider the interview of plaintiff an example of this technique.

Unlike some of the jurors, C felt the charge was specific as to the amount of damages to be awarded -- the amount awarded was to be based on the size of the defendant corporation. As a result, C believed a sizeable punitive award was necessary to make an impact on the defendant. C suggested the million dollar award because he felt it was enough to make them aware they had done wrong while not "castrating" them. In terms of compensatory damages, because no personal or business losses were proven, C agreed with the other jurors that it was appropriate only to cover plaintiff's legal expenses. C also advocated awarding compensatory damages over and above the punitive award, rather than leaving the total award at \$1 million.

Overall, C believes the media does a good job, but that they made a mistake in this case. His primary news source is print, rather than television. C reads both local and national newspapers -- whatever is available. Sometimes he watches early morning news, but tries to avoid the evening news. C prefers print because he feels it is not as "slanted" or "dramatic" as TV news. He does not believe TV news is consciously biased but simply that it doesn't give enough time to any one issue/story and that newspapers provide more in-depth coverage. On balance, he feels print does an overall better job of giving information to the reader.

D

Juror D is an approximately 60-year-old woman who works as a nurse. She was an alternate juror and was dismissed after the judge had read the charge on liability. She was not present for any of the limited testimony on damages nor did she hear the judge's charge to the jury on damages.

D stated she had not been impressed with plaintiff's case and thought she would have returned a verdict for the defendant. During the interview she noted her surprise at the verdict the jury rendered. It is not clear, however, given the fact that a number of the other jurors also favored the defendant before their deliberations, that D's personal views would have prevented her from ultimately joining in the jury's verdict for plaintiff had she participated in deliberations. From her first viewing of the tape, D felt that the plaintiff had made something out of nothing and continued to feel so throughout each step of the trial process. She felt that defendants' explanation at the end of the broadcast adequately clarified the plaintiff's position. In addition, although she thought that the defendant should have waited to air the broadcast in light of plaintiff's request not to air it that evening, she believed that this was not sufficient cause to warrant a verdict in favor of plaintiff. It should be noted, however, from comments D made immediately following the trial, that she apparently did think the segment had implied that the plaintiff was guilty of dumping, although it is not clear whether D believed that plaintiff was or was not actually the dumper.

D's recollection of the trial, at the time of the interview, was not strong. D could not recall the plaintiff or comment on any of the witnesses plaintiff put on the stand. On the defense side, she did comment that she felt the reporter was an honest man doing his job. She also thought that defendants' expert witness, although a good witness, did not serve the purpose he was supposed to serve and that it would have been better if the defense had not called him at all.

D commented that she thought the judge was a good, fair man and did a very good job. Similarly, she thought both the attorneys for the plaintiff and for the defense did a good job and she had no preference between them.

D believes that the media basically does a good job. She does not have any preference between print and broadcast as her news source. She regularly watches network news and reads the local daily newspaper.

E

Juror E, originally from England, is an approximately 65-year-old retired businessman with a background in the chemical field. He served as the foreman of the jury because of his position in the jury box. E did not have a telephone and he did not respond to LDRC's letters, or to a follow-up mailgram, requesting an interview. Juror E joined in the verdict and, it is believed from interviews with the other jurors, that he probably initially favored a verdict against the reporter, but ultimately agreed to find only the broadcaster liable. It is also believed that E was one of the early advocates of a substantial punitive damage award.

F

Juror F is an approximately 40-year-old college-educated man who works as a pharmaceutical researcher. During the trial juror F made known to the court a possible indirect connection to a witness in the case, but the judge concluded that there was no reason to discharge F from the jury, a conclusion not objected to by either side. When contacted by phone to request an interview, he vehemently declined to be interviewed and appeared to be somewhat angry at LDRC's request. In addition, he also responded similarly by mail strongly requesting LDRC not to contact him again in the future. It is not known why F responded in this fashion, although one possible explanation is that he was sensitive regarding the question of his possible discharge from the jury or else that he wished to adhere to the jurors' informal agreement among themselves that they would not discuss the case after the trial for fear that this could have an effect on their verdict during the appellate process. Juror F joined in the verdict and, it is believed, probably initially favored a verdict against the reporter, but ultimately agreed to a finding of liability only against the broadcaster.

G

Juror G is an approximately 60-year-old college-educated man who, before retiring, worked as a labor department supervisor. LDRC was unable to locate or contact Juror G. G joined in the verdict and, it is believed, probably initially favored a verdict against the reporter, but ultimately agreed to a finding of liability only against the broadcaster.

H

Alternate Juror H is an approximately 50-year-old woman who is believed to have a college education. She declined to be interviewed by LDRC and requested that she not be contacted again -- although she expressed no specific reason for her refusal.

What is known about H's views, from comments made immediately after the trial, is that at the conclusion of the trial she felt that she would have found for the defendants. However, she also revealed views adverse to the defendants on a number of potentially key issues in the case. For example, her first viewing of the broadcast left her with the impression that plaintiff was a "dumper." She was surprised that the report was put together with so little preparation and that it was scheduled for immediate broadcast. She was not impressed with defendants' expert witness. She felt the interview of plaintiff was an "ambush" interview and that a person does have a "right" not to be on television. Apparently, when H was told by one of the jurors of the basis for the jury's verdict on the false light issue, she concluded that she would have voted in the same manner as the jury did.

I

Alternate Juror I is an approximately 50-year-old man who works as a building security guard. LDRC did not have his address and did not attempt to contact him. However, it is known from comments that I made immediately after the trial that I favored the plaintiff, at least on the false light claim. He believed defendant had accused the plaintiff of being the dumper, but that plaintiff had proved he was not guilty of dumping. I felt the defendants had no right to broadcast the tape of plaintiff if asked not to do so, that defendants' "disclaimer" at the end of the broadcast was inadequate (although I felt it actually said plaintiff was not the dumper instead of leaving the question unanswered), and that defendants should have retracted the broadcast when asked to do so.