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DEFENSE COUNSEL SECTION

ANNOTATIONS TO LDRC DEFENSE COUNSEL SECTION SURVEY AND REPORT
ON SPECIAL PROCEDURES AND INNOVATIVE TECHNIQUES
FOR TRYING MEDIA LIBEL ACTIONS BEFORE JURIES

August 1989

Copyright 1989 Libel Defense Resource Center

Introduction

In August 1988, the LDRC Defense Counsel Section issued its Survey and Report on "Special Procedures and Innovative Techniques for Trying Media Libel Actions Before Juries." The Survey had inquired as to the use of "innovative" procedures and techniques by media defense attorneys in five general areas: (1) trial preparation; (2) trial-related motions (i.e., motions in limine); (3) jury selection; (4) specific trial procedures; and (5) procedures used at the jury verdict stage.

While the August, 1988 Survey and Report was helpful as an overview to the existence of certain innovative trial techniques, and provided general statistical data on the frequency of their use, that Report did not attempt to identify the specific cases in which such techniques had been employed.

To that end, in the Summer of 1989 LDRC undertook to contact the trial attorneys who had initially been surveyed for the purpose of gathering case-specific information. With such information, the initial report could be "annotated," thus creating more of a reference manual that would permit defense counsel to contact others with experience in the use of particular innovative techniques for information and advice on the use and effects of such procedures.

Ultimately, 35 of the approximately 55 attorneys who had initially been surveyed were interviewed for purposes of developing "annotations" to the Report. What follows is a listing, broken down by procedure or technique identified in the Report, of the attorneys we surveyed who employed the specific procedure or technique and the case(s) in which they were used.

As a reference, the full name, firm name, address and telephone number of each attorney listed (alphabetically by last name of attorney) is attached as Appendix A. All of those listed have indicated that they are willing to be contacted by those defense counsel wishing to obtain further information on the innovative techniques they have employed.

I. TRIAL PREPARATION
(See pages 4-6 of August 1988 Report)

A. Survey and Marketing Data

<u>Attorney</u>	<u>Case Used</u>
Theodore Sherbow	Millison v. Lexleon, Inc.
Terry Clark	Boddie v. ABC
Bob Hoemeke	Williams v. Pulitzer Broadcasting
F. Wilson Chockley	Collins v. Storer Communications
John McCrory	Sisler v. Bridgewater News
Samuel Klein	No case cited
Robert Warren	Laxalt v. McClatchy Newspapers
Gregory Diskant	Ramada Inns v. Dow Jones

B. Mock Jury Trials

<u>Attorney</u>	<u>Case Used</u>
Terry Clark	Marshal Motors v. NBC
F. Wilson Chockley	Collins v. Storer Communications
Gregory Diskant	Ramada Inns v. Dow Jones

C. Jury Consultants

<u>Attorney</u>	<u>Case Used</u>
John Hasty	No case cited
Gregory Diskant	Ramada Inns v. Dow Jones
Neil Shapiro	Alioto v. Cowles Communications

II. MOTIONS IN LIMINE
(See pages 6-7 of August 1988 Report)

A. To Limit Evidence of Libel Damages

<u>Attorney</u>	<u>Case Used</u>
Sam Colville	McMillan v. Kansas City Star
Terry Clark	Boddie v. ABC
Alan Isaacman	Falwell v. Flynt
	Keeton v. Hustler
David Branson	Van Deerlin v. Andersen

MOTIONS IN LIMINE (cont'd)

B. To Exclude Portions of Publication Not Mentioning Plaintiff

<u>Attorney</u>	<u>Case Used</u>
Peter Axelrad	Clark & Constable v. Washingtonian
Louis Petrich	KCET v. Mechanics Bank
Theodore Sherbow	Jenoff v. Hearst

C. To Limit Use of Term "Actual Malice"

<u>Attorney</u>	<u>Case Used</u>
Gregory Diskant	Ramada Inns v. Dow Jones
Sam Klein	Friske v. The News Company
	Sprague v. Walter

D. To Bifurcate Trial

<u>Attorney</u>	<u>Case Used</u>
Sam Klein	Friske v. The News Company
James Henderson	Godbehere v. Phoenix Newspapers

E. Unique and Extensive Voir Dire

<u>Attorney</u>	<u>Case Used</u>
Dave Kohler	Lipscomb v. Richmond Newspapers
Dick Rassel	Schultz v. Readers Digest
Albert Norman	Shockley v. Cox Enterprises
	Capuccitti v. Cox Enterprises

F. Interim Summations

<u>Attorney</u>	<u>Case Used</u>
Floyd Abrams	Newton v. NBC

G. Juror Notetaking and Written Questions by Jurors

<u>Attorney</u>	<u>Case Used</u>
Brady Williamson	Weigel v. Capital Times

MOTIONS IN LIMINE (cont'd)

H. Bar or Allow Expert Witness

<u>Attorney</u>	<u>Case Used</u>
John McCrory	Salazar v. El Paso Times
Terry Clark	Boddie v. ABC
Terry Adamson	Shockley v. Atlanta Constitution

I. To Restrict Testimony Regarding Anything That Happened After the Allegedly Libelous Incident

<u>Attorney</u>	<u>Case Used</u>
Robert Warren	Laxalt v. McClatchy Newspapers
	Ramada Inns v. Dow Jones
Peter Axelrad	Clark & Constable v. Washingtonian

J. To Restrict Testimony About Impact of the Publication on Plaintiff's Family Members

<u>Attorney</u>	<u>Case Used</u>
George Clark	Claudio v. Hayward
Tom Leatherbury	Uni-Copy v. KVUE-TV
	Hardy v. A.H. Belo Corporation
Sam Klein	Hepps v. Philadelphia Newspapers
Theodore Sherbow	Jenoff v. Hearst
Robert Warren	Ramada Inns v. Dow Jones
	Laxalt v. McClatchy Newspapers

K. To Restrict Testimony Relating to Journalistic Standards

<u>Attorney</u>	<u>Case Used</u>
Bob Vanderet	Galloway v. CBS
Tom Leatherbury	Uni-Copy v. KVUE-TV
Dick Rassel	Locricchio v. Detroit News

L. To Establish Plaintiff Was Public Figure

<u>Attorney</u>	<u>Case Used</u>
Terry Clark	Blakemore v. ABC
Sam Klein	Edgehill v. Municipal Publications
Dave Kohler	Lipscomb v. Richmond Newspapers
John McCrory	Kassel v. USA Today
Brady Williamson	Weigel v. Capital Times
Jim Brelsford	Murray v. F. Lee Bailey
	Barry v. Time Inc.
Jerome Dougherty	Beasley v. Hearst

MOTIONS IN LIMINE (cont'd)

M. To Declare Plaintiff Libel-Proof

<u>Attorney</u>	<u>Case Used</u>
Jim Brelsford	Rewald v. Time Inc.
Dick Rassel	Schultz v. Newsweek
Terry Clark	Brooks v. ABC

N. To Establish Availability of Common Law Privilege

<u>Attorney</u>	<u>Case Used</u>
Jim Brelsford	Johnson v. Half Moon Bay Review
	Murray v. F. Lee Bailey
Jerome Dougherty	Oldenburg v. Wall Street Journal
	Beasley v. Hearst
	Winans v. Straight Arrow Publications

III. INNOVATIVE JURY SELECTION TECHNIQUES
(See Pages 7-9 of August 1988 Report)

A. Pre-Voir Dire Written Questionnaire

<u>Attorney</u>	<u>Case Used</u>
Terry Adamson	Shockley v. Atlanta Constitution
Peter Axelrad	Capital Gazette v. Stack
David Hudson	Hunter v. South Eastern Newspaper Co.
Peter Banta	McCoy v. Bergen Evening Record
Sam Colville	McMillan v. Kansas City Star
James Henderson	Marley v. Investigative Reporters and Editors

B. Special Questions to Jury on Media Habits

<u>Attorney</u>	<u>Case Used</u>
Dave Klaber	Oweida v. Tribune Review
Dick Rassel	Locricchio v. Detroit News
Peter Axelrad	Eagleston v. Bowie News
	Capital Gazette v. Stack
F. Wilson Chockley	Collins v. Storer Communications

INNOVATIVE JURY SELECTION TECHNIQUES (cont'd)

C. Individualized Voir Dire

<u>Attorney</u>	<u>Case Used</u>
Terry Adamson	Shockley v. Atlanta Constitution
Peter Axelrad	Clark & Constable v. Washingtonian
	Capital Gazette v. Stack
Tom Leatherbury	Hardy v. A.H. Belo Corporation
Dave Kohler	McGuire v. Charlotte Broadcasting
Sam Klein	Sprague v. Walter
	Coleman v. Philadelphia Newspapers

D. Miscellaneous Techniques/Juror Education During Voir Dire

<u>Attorney</u>	<u>Case Used</u>
George Clark	Miskovsky v. Oklahoma Publishing Co.
	Tavoulareas v. Washington Post
Terry Clark	Marshall Motors v. NBC
	Boddie v. ABC
Robert Warren	Ramada Inns v. Dow Jones
Dick Rassel	Locricchio v. Detroit News

E. Special or Blue Ribbon Juries

<u>Attorney</u>	<u>Case Used</u>
Dave Kohler	Lipscomb v. Richmond Newspapers

IV. PROCEDURES DURING TRIAL

A. Libel Specific Pre-Charge

<u>Attorney</u>	<u>Case Used</u>
Robert Nelson	Crittendon v. Combined Communications
James Henderson	Godbehere v. Phoenix Newspapers
Sam Klein	Dunlap v. Philadelphia Newspapers
	Sprague v. Walter
Robert Warren	Ramada Inns v. Dow Jones
Floyd Abrams	Newton v. NBC
Dave Kohler	Lipscomb v. Richmond Newspapers
David Branson	Duncan v. WJLA-TV
Robert Vanderet	O'Melveny & Myers
Thomas Leatherbury	Uni-Copy v. KVUE-TV
Dave Klaber	Oweida v. Tribune Review

PROCEDURES DURING TRIAL (cont'd)

B. Midstream Charges

None

C. Interim Summations

Attorney

Case Used

Robert Warren
Floyd Abrams

Ramada Inns v. Dow Jones
Newton v. NBC

D. Special Terminology For "Actual Malice"

Attorney

Case Used

David Hudson
David Branson
Dave Klaber
Sam Klein

Hunter v. Southeastern Newspapers
Duncan v. WJLA-TV
Oweida v. Tribune Review
Fitzpatrick v. Philadelphia Newspapers
Rorvik v. Bromhall
Lipscomb v. Richmond Newspapers
Ramada Inns v. Dow Jones
Sisler v. Bridgewater News
Kassel v. USA Today

Dave Kohler
Robert Warren
John McCrory

E. Use of Charts and Graphics

Attorney

Case Used

Terry Adamson
Andrew Hughes

Shockley v. Atlanta Constitution
Karaduman v. Newsday
Marks v. Investigative Reporters
Kassel v. USA Today
Uni-Copy v. KVUE-TV

John McCrory
Tom Leatherbury

F. Juror Notetaking and Related Procedures

Attorney

Case Used

John McCrory
Dick Rassel

DeRoburt v. Gannett
Locricchio v. Detroit News

V. ACCESSIBLE AND UNDERSTANDABLE JURY INSTRUCTIONS, FORMS OF SPECIAL VERDICTS AND DELIBERATIONS, AND RELATED PROCEDURES
(See pages 12-14 of August 1988 Report)

A. Especially Clear Language in Final Instructions

<u>Attorney</u>	<u>Case Used</u>
George Gabel	Stocks v. Wade
Terry Clark	Marshal Motors v. NBC
Dave Kohler	Lipscomb v. Richmond News
	McGuire v. Charlotte Broadcasting
David Branson	Duncan v. WJLA-TV
Sam Klein	Hepps v. Philadelphia Newspapers
Bob Vanderet	Galloway v. CBS
Terry Adamson	Shockley v. Atlanta Constitution
David Hudson	Hunter v. Southeastern Newspapers
Robert Warren	Ramada Inns v. Dow Jones
Theodore Sherbow	Holly v. Embry

B. Special Verdict Forms

<u>Attorney</u>	<u>Case Used</u>
Richard Creighton	Connaughton v. Harte Hanks
Gregory Diskant	Ramada Inns v. Dow Jones
Tom Leatherbury	Uni-Copy v. KVUE-TV
	Hardy v. A.H. Belo Corporation
John McCrory	Kassel v. USA Today
	DeRobert v. Gannett
Dick Rassel	Locricchio v. Detroit News
Peter Axelrad	Clark & Constable v. Washingtonian
George Gabel	Stocks v. Wade
Theodore Sherbow	Holly v. Embry

C. General Verdicts With Interrogatories

<u>Attorney</u>	<u>Case Used</u>
Peter Axelrad	Clark & Constable v. Washingtonian
F. Wilson Chockley	Collins v. Storer Communications
Richard Creighton	Connaughton v. Harte-Hanks

D. Seriatim Special Verdicts

<u>Attorney</u>	<u>Case Used</u>
George Gabel	Stocks v. Wade
Neil Shapiro	Ashburn v. Columbia Pictures
Sam Klein	Fitzpatrick v. Philadelphia Newspapers

ACCESSIBLE AND UNDERSTANDABLE JURY INSTRUCTIONS, FORMS OF
SPECIAL VERDICTS AND DELIBERATIONS, AND RELATED PROCEDURES
-- Continued

E. Written Instructions In Jury Room

<u>Attorney</u>	<u>Case Used</u>
Dick Rassel	Locricchio v. Detroit News
Neil Shapiro	Diaz v. Oakland Tribune

F. Bifurcation/Trifurcation

<u>Attorney</u>	<u>Case Used</u>
Richard Creighton	Connaughton v. Harte-Hanks
James Henderson	Godbehere v. Phoenix Newspapers
Andrew Hughes	Karaduman v. Newsday
Alan Isaacman	Falwell v. Flynt
	Keeton v. Hustler
Sam Klein	Coleman v. Philadelphia Newspapers
	Fitzpatrick v. Philadelphia Newspapers

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