

LDRC Libel Defense Resource Center

BULLETIN

No. 11, Summer-Fall, 1984
(November 15, 1984)
(ISSN 0737-8130)

INSIDE THIS ISSUE

LDRC Study #5 -- Defamation Trials, Damage Awards and Appeals: Two-Year Update	1
*Summary of Findings	1
*Study #5	4
*Tables	
A. Trial Results	10
B. Damages	15
C. Post Trial and Appeals	19
D. Awards Left Standing	22
*Case List	25
* LDRC Study #5 Press Release	35
LDRC Jury Project --	
Part 2: Jury Instructions on File at LDRC	38
*Jury Instructions Bank	
-- Issue Listing	40
-- Case List	42
Supreme Court Report --	
Consolidated Case List for 1983-84 Term	45



BULLETIN

LDRC Study #5 -- Defamation Trials,
Damage Awards and Appeals:
Two-Year Update



"Your Honor, the jury has reached a sensational verdict."

Drawing by Levin; © 1984 The New Yorker Magazine, Inc.
By special permission;
all rights reserved

LDRC Study #5

DEFAMATION TRIALS, DAMAGE AWARDS AND APPEALS:
TWO-YEAR UPDATE (1982-1984)

In this issue LDRC presents a comprehensive, two-year update of its 1982 "Trials, Damages and Appeals" Study (LDRC Study #1).

In preparing this updated Study, LDRC analyzed 63 defamation and privacy trials involving media defendants which have been held in the last two years. The results of these trials were then compared with the results of the 54 trials analyzed for Study #1.

LDRC's findings are reported below. In general, they are consistent with LDRC's earlier findings. With regard to both damages awarded at trial and the results of appeals, the data confirms and continues previously-reported trends. However, with regard to the results of trials, the new Study documents some improvement from the media defendants' point of view.

In addition to presenting the raw empirical findings, some effort is made to identify trends or to suggest the possible significance of this new data. However, for a more complete understanding of the full significance of the developments reported herein, this Study (and its 1982 predecessor) should also be read in tandem with the related LDRC studies of Summary Judgment Motions (Bulletin No. 4 (Part II), Study #2) the comprehensive update of that study which will appear in Bulletin No. 12; of Appellate Review (Bulletin No. 7, Study #3) and of Motions to Dismiss (Bulletin No. 8, Study #4).

Summary of Findings

1. The new LDRC data reveals a marked increase in the success rate of media defendants at trial. Whereas in Study #1 defendants prevailed in only 11% (6 of 53) of cases that went to trial, the new LDRC data shows defendants' winning 46% (29 of 63) of cases at the trial stage.

LDRC gratefully acknowledges the invaluable assistance of Andrew M. Gold, second-year student at the Benjamin N. Cardozo School of Law in New York City, in the preparation of Study #5.

LDRC BULLETIN No. 11

2. While defendants in Study #1 prevailed in 17% (1/6) of bench trials, defendants in this Study succeeded in 90% (9/10) of bench trials. Some improvement was also experienced before juries, although not as dramatic as before judges, with a defense loss rate of 62% (33/53), down from the 89% loss rate (42/47) experienced in 1980-1982.
3. While the results at trial have shown some significant improvement, where trials are lost damages awards continue to be unacceptably excessive. The average award remains at more than \$2 million, although fractionally lower than in the 1982 Study.
4. However, the percentage of cases in which million dollar awards have been entered has increased, from less than 20% to almost 33%.
5. Also, the number of million-plus awards has increased, from 9 between 1980 and 1982, to 11 in the most recent two-year period. Before 1980 only 1 million-dollar award had been entered in the entire history of libel litigation.
6. Punitive damage awards show the same disturbing upward trend. 41% (7/17) of punitive awards were in excess of \$1,000,000 in the recent period, versus 30% (9/30) in the previous Study.
7. After trial, media defendants continue to fare well. In fact, by all measures, defense success rates are higher over the past 2 years. In post-trial rulings, for example, trial judges have shown some greater willingness to grant judgments notwithstanding the verdict -- 5 in the current Study as opposed to 2 in Study #1. However, trial court remittiturs decreased from 9 in the earlier Study compared to 3 in the present Study.
8. At the appellate level, plaintiffs' verdicts continue to be overturned in the substantial majority of cases. Out of 19 actions resolved, less than 33% (6/19) of awards were affirmed. In 68% (13/19) of the appeals, judgment was entered for the defendant or a new trial was ordered. This is consistent with Study #1 where, of 42 actions resolved, only 33% (14/42) awarded damages (either by affirmance or by reduction) and 62% (26/42) entered judgment for defendant.

LDRC BULLETIN No. 11

9. Consistent with, and even improving upon, the 1982 Study, the awards which survive post trial motions and appeals continue to be relatively small. With regard to "megaverdicts," another two years have passed with still no million dollar award finally affirmed on appeal. Only 6 awards have thus far been affirmed in the new Study. The largest such award was \$200,000. This is half the size of the largest award (of \$400,000) from Study #1. The average total award in the 6 affirmances was also substantially down compared to the earlier period -- \$60,416 compared to an average of \$119,456 in the 14 awards from 1982. On the punitive front, the 3 surviving punitive awards in the current Study averaged \$59,166, against an average of \$110,480 in 1982.
10. With regard to parties plaintiff, public official plaintiffs had succeeded in all 11 trials in Study #1. In this Study, public officials' rate of success dropped to 50% (7/14). Public figures had won 86% (12/14) previously; in the new Study they won only 56% (19/34).
11. Different types of defendants also fared differently. The greatest improvement was shown by broadcast defendants who were successful in 73% (8/11) of their actions, as opposed to only 11% (1/9) in Study #1. Newspapers continued to suffer the greatest number of losses, but magazines faced the highest percentage of million dollar verdicts. In the current Study 75% (3/4) of magazine losses exceeded \$1,000,000. However, all 6 affirmances on appeal were against newspapers. In the 1982 Study newspapers accounted for only 50% (7/14) of the finally affirmed awards.
12. With regard to legal standards applied, plaintiffs who were faced with an actual malice standard prevailed in 47% (14/30) of the cases, as opposed to 89% (25/28) in the earlier Study. However, when plaintiffs succeeded in overcoming the actual malice standard, they were handsomely rewarded for their efforts. 36% of actual malice cases (5/14) resulted in \$1,000,000 awards, with 44% (4/9) of the punitive awards over \$1,000,000 coming in such cases.

LDRC BULLETIN No. 11

13. In private figure actions, plaintiffs subject to a negligence standard prevailed in 72% (13/18) of the cases. This is basically consistent with the 77% (10/13) figure in Study #1. On appeal, 67% (4/6) of affirmances were in cases where a negligence standard was applied, whereas only 36% (5/14) of awards in the prior Study were in cases where negligence was the applicable standard.
14. Regarding results by jurisdiction, in federal courts defense wins increased from 18% (2/11) of the cases in the earlier Study to 75% (9/12) in the current Study. However, while federal courts only granted 3 awards, 2 of them exceeded \$1,000,000. State court results showed a 60% (31/51) plaintiff win rate in the current Study compared with an 88% rate (38/43) in Study #1.

LDRC Studies of Trials, Damages and Appeals

Since 1982, when LDRC presented its first study of defamation trials and damage awards (see LDRC Bulletin No. 4 (Part 1) at 2-17) (Study #1) LDRC has continued to monitor the results of trials in defamation and privacy actions against media defendants. In Bulletins No. 5, No. 6, No. 7 and No. 9, updated findings were presented that analyzed, in a serial fashion, new actions which were brought to the attention of LDRC, as well as further post-trial and appellate rulings in cases which were originally presented in Study #1. In this issue is presented LDRC's second major "Damages Watch" study, comprehensively listing and assessing developments in all cases which have come to LDRC's attention since August of 1982. Altogether, 63 cases are presented and analyzed. Of these, 46 cases were first reported in previous serial updates, while 17 cases have come to LDRC's attention since Bulletin No. 9 was published on January 31, 1984. These new cases are being listed in the LDRC Bulletin for the first time.

LDRC BULLETIN No. 11

(i) Study #1

The 1982 Study focused on 6 areas of analysis: 1) percentages of cases won and lost by plaintiffs and defendants; 2) the number of cases in which damages were awarded, compensatory and/or punitive; 3) the size of the initial damage awards; 4) the size of punitive damage awards; 5) results of post trial motions, and; 6) results of appeals.

(ii) The 1984 Study

In this Study, the scope of LDRC's analysis has been expanded. In addition to the previous categories, the cases have also been analyzed by: the type of plaintiff bringing the action (public official, public figure, private figure); the standard of liability applied by the court (actual malice, negligence, other); the type of media defendant (print or broadcast); and whether the action was brought in state or federal court. It is hoped that by further breaking down the cases they can be more closely scrutinized and any meaningful trends can be identified.

This Study is divided into 4 sections. Part A is a presentation and analysis of basic findings -- who wins and who loses at trial in media libel actions, broken down into the various categories enumerated above. Part B is devoted to damages, and also breaks down damage awards into the above-mentioned categories. Part C maps out the results of post-trial rulings and appeals in cases that were initially decided against media defendants, also commenting on the relatively small number of appeals taken by plaintiffs from defense wins at the trial court level. Part D analyzes the cases in which damage awards have been upheld, whether affirmed in their entirety or reduced. In each section, charts and tables are used to compare the results of this Study to the results of the 1982 Study.

LDRC BULLETIN No. 11

The LDRC Data Sample

One final note is in order regarding LDRC's data gathering methods. The primary sources are reports on cases in the Media Law Reporter and also information received from the growing number of attorneys and organizations involved in libel actions who regularly inform LDRC of the results of their cases. Finally, major news and trade publications are monitored. Despite these systematic efforts, it is always possible that some cases do not come to LDRC's attention. While it is doubtful that cases in which large awards have been entered would escape notice, as such cases ordinarily receive wide attention in the media, it may happen that some unreported cases, particularly those in which damage awards were modest or verdicts were entered for defendants, have escaped LDRC's attention. LDRC continues to seek to broaden its data base, and subscribers are encouraged to report to LDRC any actions in which they are involved or that come to their attention. Finally, it should be made clear that these statistics are based only on actions that go to trial. As LDRC has previously reported in its studies of Motions to Dismiss (see LDRC Bulletin No. 8 at 1-61) and Summary Judgments (LDRC Bulletin No. 4 (Part II), (Study #2)), the great majority of all media libel actions are resolved prior to trial -- most of them favorably to the media defendant.

PART A: BASIC FINDINGS -- TRIAL LEVEL

While it is certainly premature to proclaim that the days of 80% or 90% plaintiff victory rates in libel actions are over, LDRC's newest data on the results of media libel trials is encouraging.

In the 1982 Study, fully 87% (47/54) of all the actions that went to trial were decided against media defendants. Since that time, 54% (34/63) saw media defendants losing at the trial stage. Whereas the 1982 Study showed plaintiff victories in 89% (42/47) of the cases submitted to juries, and the prior studies by Professor Franklin showed a similar high plaintiff success rate of 83%, this Study finds plaintiffs prevailing in

LDRC BULLETIN No. 11

"only" 62% (33/53) of jury trials. The acceptability of a 62% loss rate, albeit that it shows a significant improvement over prior data in libel trials, should not be overstated. A twenty-year survey of all civil trials showed an overall plaintiff victory rate more than 10% lower than these figures. Moreover, data on loss rates for medical malpractice and product liability actions show even lower long-term defendant loss rates of between 30 and 40% (See LDRC Bulletin No. 9 at 24-25).

This trend toward improved trial success rates for media defendants can be incrementally traced through the Damages Watch serial updates presented in Bulletins No. 6, No. 7 and No. 9. In Bulletin No. 6, it was noted that defendants' success rate improved from the 13% figure in Bulletin No. 4 to 17% in the updated sampling. In Bulletin No. 7, defendant's success rate continued to climb, reaching 27%. However, as the number of new cases reported in each update was relatively small, and any successful defense could dramatically affect the statistical findings, it was not felt that a significant trend could be proclaimed. In Bulletin No. 9, defendants showed a 58% success rate in the newest sampling. This was the first time period in the 4 years of LDRC's ongoing compilation of data that defendants had succeeded in over 50% of trial level actions. In the cases which have come to LDRC's attention since the publication of Bulletin No. 9, reported here for the first time, fully 59% of defendants won at trial. This may appear to indicate a levelling off in the trend toward improved defense rates, although a continuation of favorable trial results even at this rate of success over some longer period of time would certainly begin to represent a significant trend away from the disastrous rates experienced during the entire period 1976 to 1982.

In bench trials the change is even more dramatic, although the sample base remains quite small as most media libel cases are still tried before juries. While plaintiffs previously prevailed in 83% (5/6) of bench trials in Study #1, current figures show a 10% win ratio -- only 1 plaintiff victory in 10 bench trials. This seeming reversal of judicial attitudes toward libel plaintiffs, though based on a small sample universe, might also suggest an explanation for the noteworthy, albeit less dramatic shift in jury verdicts. If, indeed, judicial attitudes are beginning to swing to the side of stricter application of First Amendment protections of media

LDRC BULLETIN No. 11

defendants at the trial court level, then similarly strict judicial readings of the law could result in jury instructions and other trial court rulings more favorable to media defendants. This, of course, would represent a long overdue move toward bringing trial courts more in line with the attitudes of appellate tribunals reviewing trial court records with a mandate to exercise "independent" review to protect First Amendment rights. Beyond possible stricter judicial enforcement of legal standards, it is not possible to conclude, from the new LDRC data, whether these improved results at trial reflect a general shift in public or jury attitudes toward the media, or in the quality of cases going to trial, or in the performance of defense counsel, or in some combination of these factors. A more careful study of such factors over a longer period of time would be required before confident conclusions could be drawn.

Despite this absence of conclusive explanations for the improvement in defense performance at trial, there are a number of notable trends that can at least be described based on the new LDRC data. For example, a breakdown of trial results by type of plaintiff and legal standard applied appears to suggest that the actual malice standard for public official and public figure plaintiffs is being enforced much more rigorously, especially the requirement of clear and convincing evidence. In the 1982 LDRC Study fully 89% (25/28) of plaintiffs succeeded in overcoming the actual malice standard. Now that rate has dropped dramatically to 47% (14/30). As a result of this turnabout, public official plaintiffs who won all 11 actions that were covered in the 1982 Study, succeeded in only 50% (7/14) of the trials documented since that time.

Interestingly, while the number of public official/figure actions reaching trial is identical in the two time periods, the number of private figure actions has doubled, from 17 to 34. This could be a result of the difficulty of applying a negligence standard at the dismissal or summary judgment stages, see LDRC Bulletin No. 6 at 41, although this conclusion cannot be made with confidence given the vagaries of the LDRC data sample. The 34 private figure plaintiffs whose actions reached trial had a better record of success at trial than public figures during the same period. However, only 56% (19) were successful. This should be contrasted with the 1982 Study, where 76% (13/17) of private figure plaintiffs won at trial.

LDRC BULLETIN No. 11

When a negligence standard was explicitly applied, 72% (13/18) of plaintiffs succeeded, compared with 77% (10/13) in the 1982 Study. Clearly, plaintiffs who need only overcome a negligence standard on liability are continuing to succeed at trial with great frequency.

In another notable development, broadcast defendants have seen a great improvement in their success rate at trial. Where only 11% (1/9) of broadcast defendants succeeded at trial in the 1982 Study, 73% (8/11) have been victorious at trial since then. (See also LDRC Bulletin No. 8 at 67-70.) Why such a dramatic change has occurred in this area is not clear. It is possible to hypothesize that the larger broadcasting organizations have begun to screen actions brought against them more carefully, pressing harder to dispose of weaker cases during motion practice prior to trial, and when trial cannot be avoided, investing greater resources into trial preparation -- an investment far easier to justify in this period of potential million-dollar damage awards at the trial court level.

The success by broadcasters as a group can be contrasted to the experience of another major media sector -- newspaper publishers. In both absolute and relative terms, newspapers continue to be the most vulnerable media in defamation actions. In 1982, 68% (30/47) of all defendant losses were in actions against newspapers. The 30 losses came in 34 actions, a loss rate of 88%. In this study, 76% (26/34) of the losses were suffered by newspapers, who lost 65% (26/40) of their actions. By comparison, the remaining defendants in this Study lost only 35% (8/23) of their actions.

A significant improvement in defendants' success can also be noted in federal courts, from only 2 victories in 11 trials (18%) in Study #1 to 9 wins in 12 (75%) in the current data. One can only speculate that the federal courts may be more adept at enforcing the strict constitutional standards that should be applied in media defamation actions. In the state courts, though there has been considerable improvement in defendants' success rates (from 12% in 1982 to 39% in this Study), the turnaround is far less dramatic than in the federal courts.

LDRC BULLETIN No. 11

A. Trial Results*

Table A-1
Overall Sample

	<u>New Study (1982-84)</u>	<u>Study #1 (1980-82)</u>
Number of cases	63	54
Jury	53	48
Bench	10	6

Table A-2
Trier of Fact

	<u>Plaintiff wins/Total**</u>	<u>Plaintiff wins/total</u>
Jury	33/53 (62%)	42/47 (89%)
Bench	1/10 (10%)	5/6 (83%)
Total	34/63 (54%)	47/54 (87%)

Table A-3
Type of Plaintiff

	<u>Plaintiff wins/Total</u>	<u>Plaintiff wins/Total</u>
Public Official	7/14 (50%)	11/11 (100%)
Public Figure	6/11 (55%)	12/14 (86%)
Private Figure	19/34 (56%)	13/17 (76%)

* For all charts, columns of figures on the left hand side of the page represent findings in this Study, while columns on the right side represent the 1982 LDRC Study.

** Figure to left of slash represents the number of plaintiffs that won at trial in this category. Figure to right of slash indicates total number of cases brought to trial in this category.

LDRC BULLETIN No. 11

Table A-4
Type of Media Defendant

	<u>Plaintiff wins/Total</u>	<u>Plaintiff wins/Total</u>
Print		
Newspaper	26/40 (65%)	30/34 (88%)
Magazine	4/9 (44%)	7/9 (78%)
Book	1/1 (100%)	0/0
Other	0/2 (0%)	0/0
<u>Print Total</u>	31/52 (60%)	37/43 (86%)
Broadcasting		
Television	2/9 (22%)	5/6 (83%)
Radio	1/2 (50%)	3/3 (100%)
<u>Broadcasting Total</u>	3/11 (27%)	8/9 (89%)

Table A-5
Standard of Liability Applied by Court

	<u>Plaintiff wins/Total</u>	<u>Plaintiff wins/Total</u>
Actual Malice	14/30 (61%)	25/28 (88%)
Negligence	13/18 (72%)	10/13 (77%)
Other*	5/10 (50%)	1/1 (100%)

Table A-6
Jurisdiction Where Action Brought

	<u>Plaintiff wins/Total</u>	<u>Plaintiff wins/Total</u>
State	31/51 (61%)	38/43 (88%)
Federal	3/12 (25%)	9/11 (82%)

-
- Either gross irresponsibility or some other standard not fully identified or articulated in materials available to LDRC.

LDRC BULLETIN No. 11

PART B: DAMAGES

While it is generally encouraging to observe the marked increase in defendant victories at trial over the past two years, for those defendants who do not succeed damage awards continue to rage out of control. In fact, hard as it is to believe, on the damages front the record has gotten worse.

For example, out of the 34 damage awards entered in this Study, almost one-third, 11, exceeded \$1,000,000. In the 1982 Study less than 20% of the awards (9/47) reached 7 figures. And it is well to remember that before 1980 only one award in the history of media defamation litigation had exceeded a million dollars.

As to punitive damages, the picture is equally bleak. More than 40% of the punitive awards entered in this Study were in excess of \$1,000,000 (7/17), compared to less than 30% (8/30) in the earlier Study.

In addition to the sheer size of the awards, what is most noticeable about the damages breakdown in the new LDRC data is the hourglass shape of the awards. It appears that juries either make a relatively realistic attempt to calculate actual, compensable injury and assign a value to it (47% of awards (14/34) were less than \$100,000) or, surely influenced by passion, prejudice and a desire to punish the defendant out of all proportion to any imaginable injury, juries go to the other extreme and pull gigantic figures out of mid-air. Consistent with this pattern of excess is the one case where a judge granted an award. In that case, the private figure plaintiff was awarded \$7,000,000 in damages, \$5,000,000 of that punitive. (Post-trial motions regarding judicial disqualification are still pending in that action.) Thus, whereas the awards were spread fairly evenly across the chart in the old Study, only 2 awards in the new data were between \$500,000 and \$1,000,000, and none between \$250,000 and \$500,000. In sum, with few exceptions, awards in the new Study were either under \$100,000 or over \$1,000,000.

LDRC BULLETIN No. 11

Two major issues are raised by these figures: why aren't judges reducing these obviously excessive and prejudicial awards and, what has led to such an extreme dichotomy in jury behavior? One hypothesis would suggest answers to both questions. Perhaps in those cases where gigantic verdicts are awarded by juries and left undisturbed by judges, a clear message has been sent from the bench to the jury giving express or unstated approval to punishing damages as opposed to realistic and limited compensation for harm. This message could be given by jury instructions or by judicial attitude throughout the trial. In any event, the extreme disparity in the two types of awards leads one to speculate in this manner on the underlying causes for such utterly unjustifiable and, in fact, lawless awards.

It is also illuminating to look more closely at the plaintiffs who have been winning these huge awards and under what circumstances. In the 1982 Study, no private figures secured awards over \$1,000,000. In this Study, five did. In the old Study, less than 20% (2/11) of the public officials who were awarded damages were awarded \$1,000,000 or more, now the figure is almost 60% (4/7). It was noted in Part A that in this Study plaintiffs seemed to be less successful at meeting the actual malice standard. For those who do, however, the rewards were outrageously excessive. Almost 40% (5/14) of the plaintiffs who overcame the actual malice hurdle received 7 figure awards. And, of the 9 punitive awards in actual malice cases, just under half (4) exceeded \$1,000,000. In the 1982 Study, actual malice plaintiffs also frequently broke the million dollar barrier (29%), but not so often as in the new Study. Thus, less than 30% (7/24) received a million-dollar award, with just over 25% (5/19) receiving punitive awards exceeding that amount. This data is consistent with the view, long held by many observers, that the actual malice rule, while it may be of assistance on the question of liability (particularly at the appellate level), provides little or no protection when liability has been found based on actual malice and the issue of damages is then presented. In fact, at that juncture, alleged proof of actual malice may be positively harmful in leading juries to award punitive damages without considering the more traditional standards of bad faith or malice in the common law sense of spite or ill will.

When a liability standard other than actual malice was applied (usually negligence, but sometimes gross irresponsibility or an ad hoc judicial standard), 30% (6/20) of

LDRC BULLETIN No. 11

the awards exceeded \$1,000,000 compared to just 10% (2/20) in the 1982 Study. Likewise, 37% (3/8) of the punitive awards in these cases were over \$1,000,000, as opposed to 22% (2/9) in the old Study. While it is difficult confidently to assess how the different standards affect a jury's damage calculations, it is again important to remember that, whereas a plaintiff facing only a negligence standard for liability must overcome a second barrier of proving actual malice to qualify for punitive damages, a plaintiff facing an actual malice standard for liability need only overcome that single obstacle to be eligible for the full panoply of damage awards.

While newspapers appeared to be the most vulnerable of the types of media defendants regarding a finding of liability, magazines had the highest percentage of multi-million dollar adverse judgments, 75% (3/4). Of course, this is a small sample strongly influenced by the unusual content of the particular magazines involved in those cases. The awards against other media defendants were too few in number to reflect any trends, but it should be noted that the only award against a book publisher exceeded \$1,000,000 and that 1 of the 2 awards against television defendants was in 7 figures. In the 1982 Study none of the 5 awards against television stations reached the \$1,000,000 mark, and there were no awards against book publishers.

In evaluating the average amount of damages awarded, it must be stressed that a small number of mega-verdicts can have an enormous effect on the overall average. However, the number of extraordinarily outrageous awards (in excess of \$10,000,000) is approximately equal in the 2 Studies.

In the 1982 Study, the average of the 47 initial damage awards was \$2,051,178.20. In the new Study, the 34 damage awards averaged \$2,033,367.00, a decrease of approximately \$18,000 but no less outrageous. Statistics compiled by Jury Verdict Research, Inc. (JVR) (see LDRC Bulletin No. 9 at 26) show that the average award for products liability cases in the years 1980-83 was \$785,651. The average for medical malpractice cases in the same period was \$665,764. In other words, the average damage award in a libel action has been nearly three times that of a product liability case, and more than three times larger than the average award in a medical malpractice action.

If one looks only at the punitive awards in libel actions, the figures are even more horrifying. In the 1982 Study 30 punitive damage awards were granted -- their average,

LDRC BULLETIN No. 11

\$2,520,901.60. In this Study, punitive damages were awarded in 16 cases -- the average award, \$2,980,093.70. It would certainly seem, if empirical experience is relevant -- and numbers of this magnitude surely would appear to be highly relevant -- that the case for abolition of punitive damages as inherently in conflict with First Amendment rights is impressive and gaining in strength with each new LDRC survey. Based upon this continuing statistical picture of excessive and constitutionally-tainted awards, seemingly intended not only to punish media defendants but to destroy them, not only to chill First Amendment activities but to freeze them, one would hope and expect the question of the constitutionality of punitive damages would eventually be given serious reconsideration.

B. Damages

Table B-1
Damage Awards

	<u>New Study (1982-84)</u>	<u>Study #1 (1980-82)</u>
<u>Total</u>	34	47
Jury	33	42
Judge	1	5

Table B-2
Total Number of Punitive Damage Awards

	<u>Awards/Total</u>	<u>Awards/Total</u>
Jury	16/33 (48%)	29/42 (69%)
Judge	1/1 (100%)	1/5 (20%)

Table B-3
Size of Initial Damage Awards

	<u>Total</u>	<u>Punitive</u>	<u>Total</u>	<u>Punitive</u>
0-\$9,999	1	2	1	3
\$10,000-24,999	4	0	4	3
\$25,000-99,999	11	4	12	6
\$100,000-249,999	5	2	9	1
\$250,000-499,999	0	1	6	4
\$500,000-999,999	2	1	6	4
1 million plus	11	7	9	8

LDRC Bulletin No. 11New StudyStudy #1

Table B-4
Damage Awards by Trier of Fact

	<u>Total</u>		<u>Punitive</u>		<u>Total</u>		<u>Punitive</u>	
	<u>Jury</u>	<u>Judge</u>	<u>Jury</u>	<u>Judge</u>	<u>Jury</u>	<u>Judge</u>	<u>Jury</u>	<u>Judge</u>
0-9,999	1	0	2	0	1	0	3	0
10,000-24,999	4	0	0	0	3	1	3	0
25,000-99,999	11	0	4	0	12	0	6	0
100,000-249,999	5	0	2	0	6	3	2	0
250,000-499,999	0	0	1	0	5	0	3	1
500,000-999,999	2	0	1	0	6	1	4	0
1 million plus	10	1	6	1	9	0	8	0

New StudyStudy #1

Table B-5
Total and Punitive Damage Awards by Type of Plaintiff*

<u>Total</u>				<u>Punitive</u>					<u>Total</u>				<u>Punitive</u>			
<u>PO</u>	<u>PF</u>	<u>Pr.F</u>	<u>NA</u>	<u>PO</u>	<u>PF</u>	<u>Pr.F</u>	<u>NA</u>		<u>PO</u>	<u>PF</u>	<u>Pr.F</u>	<u>NA</u>	<u>PO</u>	<u>PF</u>	<u>Pr.F</u>	<u>NA</u>
0	1	0	0	0	1	1	0	0-9,999	0	0	0	1	0	0	1	1
0	2	2	0	0	0	0	0	10,000-24,999	1	0	2	0	2	0	1	0
1	1	9	0	2	0	2	0	25,000-99,999	2	1	4	1	1	2	0	1
1	1	2	1	0	0	2	0	100,000-249,999	3	3	2	4	1	0	1	1
0	0	0	0	1	0	0	0	250,000-499,999	3	0	3	0	2	1	1	0
1	0	1	0	0	0	1	1	500,000-999,999	0	3	2	1	1	2	1	1
4	1	5	1	3	1	2	0	1 million plus	2	5	0	2	1	4	0	2

Table B-6
Total and Punitive Damage Awards by Type of Media Defendant**

<u>Total</u>					<u>Punitive</u>						<u>Total</u>					<u>Punitive</u>				
<u>Print</u>		<u>Bdcast</u>			<u>Print</u>		<u>Bdcast</u>				<u>Print</u>		<u>Bdcast</u>			<u>Print</u>		<u>Bdcast</u>		
<u>N</u>	<u>Mg</u>	<u>Bk</u>	<u>TV</u>	<u>Rad</u>	<u>N</u>	<u>Mg</u>	<u>Bk</u>	<u>TV</u>	<u>Rad</u>		<u>N</u>	<u>Mg</u>	<u>Bk</u>	<u>TV</u>	<u>Rad</u>	<u>N</u>	<u>Mg</u>	<u>Bk</u>	<u>TV</u>	<u>Rad</u>
1	0	0	0	0	2	0	0	0	0	0-9,999	0	0	0	0	1	1	0	0	0	1
3	0	0	0	1	0	0	0	0	0	10,000-24,999	2	0	0	0	0	2	0	0	0	0
9	1	0	1	0	3	1	0	0	0	25,000-99,999	6	0	0	1	1	3	0	0	0	1
5	0	0	0	0	2	0	0	0	0	100,000-249,999	8	1	0	3	0	3	0	0	0	0
0	0	0	0	0	1	0	0	0	0	250,000-499,999	4	1	0	0	1	2	2	0	0	0
2	0	0	0	0	1	0	0	0	0	500,000-999,999	3	2	0	1	0	4	1	0	0	0
6	3	1	1	0	2	3	1	1	0	1 million plus	6	3	0	0	0	4	3	0	0	0

LDRC Bulletin No. 11

Table B-7
Total and Punitive Damage Awards by Standard of Liability***

Total				Punitive				Total				Punitive			
Act	Mal	Neg	Oth	Act	Mal	Neg	Oth	Act	Mal	Neg	Oth.	Act	Mal	Neg	Oth.
1		0	0	1		0	1	0-9,999	0	0	1	0		1	1
2		1	1	0		0	0	10,000-24,999	1	1	1	2		0	1
3		7	1	3		0	1	25,000-99,999	3	3	2	3		0	1
2		2	1	0		2	0	100,000-249,999	7	2	3	3		0	0
0		0	0	1		0	0	250,000-499,999	4	2	0	3		1	0
1		0	1	0		0	1	500,000-999,999	3	2	1	3		1	1
5		3	3	4		1	2	1 million plus	7	0	2	5		0	2

New StudyStudy #1

Table B-8
Damages by Type of Court

Total		Punitive		Total		Punitive	
State	Fed	State	Fed	State	Fed	State	Fed
1	0	2	0	0-9,999	0	1	1
4	0	0	0	10,000-24,999	3	0	0
10	1	3	1	25,000-99,999	7	1	0
5	0	2	0	100,000-249,999	11	1	0
0	0	1	0	250,000-499,999	5	1	2
2	0	0	1	500,000-999,999	3	3	2
9	2	6	1	1 million plus	7	2	2

*Plaintiffs abbreviated as follows:

PO - Public Official

Pr.F - Private Figure

PF - Public Figure

NA - Not Available

**Defendants abbreviated as follows:

N - Newspaper Mg - Magazine

Bk - Book Rad - Radio

***Standards abbreviated as follows:

Act Mal - Actual Malice

Neg - Negligence

Oth - Other

LDRC BULLETIN No. 11

Table B-9
Average of Initial Awards

	<u>New Study (1982-84)</u>	<u>Study #1 (1980-82)</u>
Total	\$2,033,367.00 (34 awards)	\$2,051,178.20 (47 awards)
Punitive	\$2,980,093.70 (16 awards)	\$2,520,901.60 (30 awards)

PART C: POST-TRIAL RULINGS AND APPEALS IN CASES DECIDED
AGAINST MEDIA DEFENDANTS.

To some extent it is perhaps premature to comment conclusively on post-trial motions and appeals when many actions from the new Study are still pending. Nevertheless, there are already some findings that bear mention. Also, note that post-trial data reported before the 1982 Study reflects appeals that have been decided subsequent to the 1982 Study. Many of these subsequent findings have been reported in the serial updates published by LDRC since 1982.

1. Post-Trial Rulings

Within these overall findings, perhaps the most noteworthy development in the area of post-trial rulings is the increase in judgments granted notwithstanding the juries' verdicts (JNOV's). Where only 3 JNOV's were granted in 13 post-trial rulings in the 1982 Study (23%), the new data reveals 5 JNOV's in 9 post-trial rulings (55%) by the trial court. In contrast, while damage reductions were granted in 9 cases in the old Study, only 3 have been granted in the new Study.* These findings again appear to substantiate a theory that judges have become more likely to enforce stricter standards of liability. Where judges in the 1982 Study were willing to reduce excessive damages, they were not willing to take the more decisive action of granting a JNOV. Now, that trend appears to have reversed, with judges more likely to go all the way in overruling a jury than to take the halfway measure of merely reducing an award. While this is a useful step forward, it is still difficult to understand why more trial judges, when faced with such obviously excessive awards, do not at the very least reduce those awards to some sensible level. This would still not address the inherently suspect nature of massively excessive awards, but it would at least reduce the impact on the particular defendant and would assure that a meaningful appeal would be possible.

* This may increase as other post-trial motions still pending are decided.

2. Appeals

Again, it must be noted that the data on appeals in the new Study is necessarily far from complete. Indeed, due to the time required to complete the appellate process, it could easily be some years before many of the cases are finally put to rest. Still, while later developments may to some extent affect the current findings, it appears safe to draw certain conclusions based upon this and the earlier LDRC data. First among these is that defendants' success rate on appeal has, thus far at least, remained consistent with the earlier Study. Where plaintiffs retained some award in 14/42 appealed cases (33%) in the old Study, 6/19 (32%) of appealed cases have seen affirmances thus far in the new Study. Curiously, in the area of reduced damages, whereas 14% (6/42) of the appeals in the 1982 Study resulted in reduced damage awards, no award has yet been reduced on appeal in the new Study. The significance of this shift is limited, however, since no finding of liability has yet to be affirmed in the current Study where the size of the award was in the megaverdict category.

In the two years since LDRC published its first Study, 15 of the cases in that earlier study have seen subsequent actions in the appellate process. Of those, 1 was affirmed, 5 awards were reduced and 9 cases saw judgments entered for the defendant. LDRC will continue to publish the results of appeals taken in previously reported actions.

Finally, in the small number of cases where appeals were taken by plaintiffs in actions where defendants won at trial, of the 12 such appeals taken by plaintiffs in this Study, one resulted in a remand but the remaining 11 all resulted in affirmance of the judgment for the defendant. To the extent defendants continue to win at the trial court level, this impressive record of success in protecting those favorable judgments will take on increased significance.

C. Post Trial and Appeals

Table C-1
Post-Trial Rulings in Cases Decided Against Media Defendants

	<u>New Study (1982-84)</u>	<u>Study #1 (1980-82)</u>
Total Damage Awards	34	47
JNOV	5	3
Damages Reduced	3	9
New Trials	1	1
Pending	5	-

LDRC BULLETIN No. 11

Table C-2
Appeals in Cases Decided Against Media Defendants

Number of Appeals	28	46
Award Affirmed	6	8
Award Reduced	-	6
New Trial	4	2
Judgment for Defendant	9	26
Pending or Settled	9	4

Table C-3
Plaintiff appeals from trial victories for Defendant

<u>Plaintiff wins/Total</u>	<u>Plaintiff wins/Total</u>
1/12	2/2

In the new Study the one plaintiff win on appeal is a remand and two of the defendant wins are cases where the plaintiff won an intermediate appeal but defendant ultimately won the final appeal.

PART D: AWARDS LEFT STANDING (either affirmances of entire award or affirmances of reduced award).*

While this Study has documented gratifying improvement in the success rates of media defendants at trial, and has shown the continued high rate of success in reversing or drastically reducing plaintiffs' verdicts at either the post-trial or appeals stages, nonetheless some damage awards continue to be finally entered as judgments against media defendants.

* Note that many post-trial motions and appeals for cases charted in this Study are still pending. Also, note that data for the 1982 Study reflects post-trial rulings that have taken place subsequent to publication of the 1982 Study, many of them previously reported in LDRC's serial updates.

LDRC BULLETIN No. 11

In the most recent Study (83%) 5/6 of the affirmed awards came in private figure actions, and (67%) 4/6 were in cases where a negligence standard was applied, leaving only 1 public figure and 2 actual malice awards finally affirmed. This compares to (36%) 5/14 public official/figure final affirmances and (50%) 7/14 actual malice awards from the 1982 Study. This again supports the hypothesis that the actual malice standard is being applied more rigorously, both before and after the Supreme Court's strong reaffirmation of the independent review standard in Bose v. Consumers Union. On the other hand, this continues to suggest potentially disturbing questions concerning the reviewability of a finding of negligence in media libel actions. (See LDRC Bulletin No. 6 at 42-43.) Curiously, all 6 of the damage awards finally affirmed were against newspapers. Previously only (50%) 7/14 were newspaper actions.

Wholly consistent with LDRC's findings in 1982, those few awards which are ultimately upheld tend to be relatively small ones.* Once again no million-dollar award has yet been finally upheld on appeal. Indeed, the average of the small number of awards upheld in the new Study is substantially down from 1982. That average, \$60,416, is only one half the \$119,456 average in the earlier Study. Punitive awards reflect the same relationship, an average of \$59,166 for the 3 punitive awards upheld in the new Study versus \$110,4800 for the 8 upheld in the old Study.

-
- * 1984 finally affirmed awards: \$2,500; \$15,000; \$30,000; \$40,000; \$75,000; \$200,000.
1982 finally affirmed awards: \$8,800; \$15,000; \$35,000; \$50,000; \$50,000; \$60,000; \$65,000; \$69,500; \$70,000; \$150,000; \$200,000; \$230,000; \$269,117; \$400,000

LDRC BULLETIN No. 11

D. Awards Left Standing (affirmed or reduced)

	<u>New Study (1982-84)</u>	<u>Study #1 (1980-82)</u>
Total Awards	6	14

Table D-1
Upheld Award by Trier of Fact

Jury	6	12
Judge	0	2

Table D-2
Upheld Award by Type of Plaintiff

Public Official	0	3
Public Figure	1	3
Private Figure	5	6
Not Available	0	2

Table D-3
Upheld Award by Type of Media Defendant

Print		
Newspaper	6	7
Magazine	0	4
Broadcasting		
TV	0	1
Radio	0	2

Table D-4
Upheld Award by Standard of Liability

Actual Malice	2	7
Negligence	4	5
Other	0	2

Table D-5
Upheld Award by Jurisdiction

State	6	11
Federal	0	3

LDRC BULLETIN No. 11

Table D-6
Damage Awards Upheld

<u>New Study</u>			<u>Study #1</u>	
<u>Total</u>	<u>Punitive</u>		<u>Total</u>	<u>Punitive</u>
1	0	0-9,999	1	1
1	0	10,000-24,999	1	1
3	1	25,000-99,999	7	2
1	1	100,000-249,999	3	3
0	0	250,000-499,999	2	1
0	0	500,000-999,999	0	0
0	0	1 million plus	0	0

Table D-7
Average Award Upheld

	<u>New Study</u>	<u>Study #1</u>
Total	\$60,416	\$119,456
Punitive	\$59,166	\$110,480

A NOTE ON THE MOST RECENT LDRC CASES

As a way of further assessing the overall trends that have been identified above, it is useful to analyze the 17 cases that have most recently come to LDRC's attention and which have not previously been reported by LDRC.

The overall trend of increased defendant success at trial (which began to evidence itself in the Damages Watch Update in Bulletin No. 7 and fully blossomed in Bulletin No. 9) continues, and even appears to be gaining momentum. In fact, defendants were successful in 59% of the most recent trials (10/17) and in 53% (8/15) of jury trials. However, a surprising, and potentially disturbing, trend is that the public officials/figures' success rate appears to be on the rise again, and plaintiffs faced with the actual malice standard fared better in this recent sample than in the cases that make up the remainder of this Study.

LDRC BULLETIN No. 11

In this sample, public officials won 60% (3/5) of their actions, compared to 44% (4/9) for the rest of the Study. The public figure success rate has soared to 75% (3/4) from 43% (3/7) in the earlier cases. Similarly, plaintiffs succeeded in meeting the actual malice standard in 60% (6/10) of the recent actions, compared to 40% (8/20) in the other cases comprising this Study. Conversely, private figure plaintiffs only prevailed in 25% (2/8) of recent cases, and in the 4 cases where a negligence standard was applied, plaintiffs were shut out. When those 4 recent defense victories in negligence cases are removed from the overall findings of this Study, it reveals that plaintiffs had won 93% (13/14) of the negligence cases reported prior to this most recent data. Perhaps some of the reasons for these trends lie, again, in the summary judgment stage. Only the strongest actual malice cases can get past the burden of showing clear and convincing evidence. Therefore, if the standard is rigorously applied at the summary judgment stage, it would logically follow that the cases surviving to trial would have a higher likelihood of success. On the other hand, since applying the negligence standard may arguably more often entail disputed fact issues, a lesser number of private figure actions are being weeded out at the summary judgment stage, potentially leaving a larger number of non-meritorious private figure actions to proceed to trial. Still, this data base is small and the most recent tendencies would appear to be too preliminary to be considered a definitive trend.

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
<u>Ane v. Miami Herald</u> (Fla. Ct. App. 3rd Dist., 10/12/82)	Jury/Plaintiff	\$5,000 v. Publisher \$10,000 v. Author \$15,000 Total	Private Figure/ Newspaper/Negligence	---	Affirmed
<u>Ayers v. Des Moines Register</u> , 9 Med.L. Rprr. 1401 (Iowa Dist. Ct., 3/15/83)	Judge/Defendant	---	Public Figure/ Newspaper/Actual Malice	---	---
+ <u>Beamer v. Nashiki</u> 10 Med.L.Reptr. 1171 (Hawaii 1983), 670 P.2d 1264 (1983)	Jury/Plaintiff	\$35,000 General	Public Figure/ Newspaper/Actual Malice	---	Damages vacated Case remanded
<u>Benjamin v. Cowles Publishing Co.</u> , unreported (Spokane Wash., Super. Ct. 8/13/82)	Jury/Plaintiff	\$219,000	**/Newspaper/*	JNOV granted	---
<u>Bloch v. Mountaineer Publishing Co., Inc.</u> unreported, No. 811559 (Cir. Ct. Va., 6/24/82)	Jury/Plaintiff	\$150,000 Actual	Public Figure/ Newspaper/Actual Malice	JNOV granted	JNOV affirmed
+ <u>Braun v. Flynt</u> , 10 Med.L.Rptr. 1497 (5th Cir. 1984)	Jury/Plaintiff	\$20,000 Actual \$75,000 Punitive \$95,000 Total	Private Figure/ Magazine/*	Petition for rehearing denied	Vacated and remanded
<u>Cape Publications v. Bridges</u> , 8 Med.L.Rptr. 2535 (Fla. D.C.A. 5, 1982)	Jury/Plaintiff	\$ 1,000 Actual \$ 9,000 Punitive \$10,000 Total	Private Figure/ Newspaper/*	---	Reversed, judgment entered for defendant

- * - Standard other than actual malice or negligence, or not announced
 ** - Plaintiff's status not determined or not available
 + - Case not previously reported in LDRC serial updates

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
Casper v. Washington Post, 8 Med.L.Rptr. 2370 (E.D. Pa. 1982)	Judge/Defendant	---	Public Official/ Newspaper/Actual Malice	---	---
Catafalmo v. The Florida Clearing House on Criminal Justice, (Fla. Cir. Ct. Orange Co. 10/12/83)	Judge/Defendant	---	Public Official/ Newspaper/Actual Malice	---	---
DeGregario v. The, News Printing Co., 9 Med.L.Rptr. 1045 (N.J. Super. Ct. App. Div. 1982)	Jury/Plaintiff	\$25,000 Punitive	Public Official/ Newspaper/Actual Malice	---	Reversed, judgment entered for defendant
DiGregorio v. Time, Inc., Civil 82-0012/B (D.R.I., 11/8/83)	Jury/Defendant	---	Public Figure/ Magazine/Actual Malice	---	---
+ DeLoach v. Beaufort Gazette, 10 Med.L.Rptr. 1733 (S.C. 1984)	Jury/Plaintiff	\$15,000 Actual \$25,000 Punitive \$40,000 Total	Private Figure/ Newspaper/Actual Malice	---	Affirmed, petition for cert. pending
Douglas v. Hustler Magazine, Inc., unreported (N.D. Ill., E. Div., 7/15/83, 81-C-6939)	Jury/Plaintiff	\$1,000,000 Actual \$1,500,000 Punitive \$2,500,000 Total	Public Figure/ Magazine/Actual Malice	---	Pending

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
Edgehill v. Philadelphia Magazine, 9 Med.L.Rptr. (News Note No. 18 5/31/83) (Philadelphia common pleas)	Judge/Plaintiff	\$2,000,000 Actual \$5,000,000 Punitive \$7,000,000 Total	Private Figure/ Magazine/Negligence	Pending; regarding judicial dis- qualification	---
+ Embers Supper Club v. Scripps-Howard, 10 Med.L.Rptr. 1729 (Ohio 1984)	Jury/Defendant	---	Private Figure/ Television/ Negligence	---	Ct. of App. affirmed, S. Ct. reverses and remands
Fred-Frederick Chrysler-Plymouth v. WJLA, Inc., un- reported (D. Md., Civil Action No. 481-3151) 8/31/82	Jury/Defendant	---	**/Television/*	---	---
Galloway v. CBS, Inc., (Cal. Sup. Ct., L.A. Co., No. C.345900) unreported	Jury/Defendant	---	Private Figure/ Television/ Actual Malice	Motion for new trial pending	---
+ Gaynes v. Allen, 10 Med.L.Rptr. 1178 (Mich. Ct. App. 1983) 339 N.W.2d 678	Jury/Defendant	---	Private Figure/ Newspaper/Actual Malice	---	Directed verdict affirmed
+ Geisler v. ABC, 10 Med.L.Rptr., (News Note No. 14)(No. 82-3692) 1984	Jury/Defendant	---	Private Figure/ Television/ Negligence	---	---

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
<u>Goodrich v.</u> <u>Waterbury</u> <u>Republican-American,</u> 108 Conn. 107, 448 A.2d. 1317, 8 Med.L.Rptr. 2329 (1982)	Judge/Defendant	---	Public Figure/ Newspaper/Actual Malice	---	Affirmed
<u>Greenleigh</u> <u>Associates v. New</u> <u>York Post, N.Y.L.J.</u> at 12, col. 6, 2/15/83 (Sp. T.N.Y. Co.)	Jury/Plaintiff	\$750,000 Actual	Private Figure/ Newspaper/*	Pending	---
<u>Harris, et.al. v.</u> <u>The Gazette, Inc.,</u> (Vir. Cir. Ct. Goochland Co., Law Nos. 82-16, -17 and -18) unreported	Jury/Plaintiff	\$50,000 Actual	Private Figure/ Newspaper/ Negligence	---	Pending
<u>Hawkins v. Oden, 9</u> <u>Med.L.Rptr. 1750</u> (1983)	Judge/Defendant	---	Public Official/ Radio/Actual Malice	---	Affirmed
+ <u>Hunter v.</u> <u>Southeastern</u> <u>Newspapers Corp.,</u> unreported, Civil Action CV 181-150, (S.D. Ga. 1984)	Jury/Defendant	---	Private Figure/ Newspaper/ Negligence	---	---
<u>International</u> <u>Security Group,</u> <u>Inc. v. The Outlet</u> <u>Co., No.</u> 79-CI-10293 (Tex. Dist. Ct. 224th Jud. Dist., Bexar Co.)	Jury/Plaintiff	600,000 Actual \$1,000,000 Punitive \$1,600,000 Total	**/Television/*	Motions denied	Pending

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
KARK-TV v. Simon, 10 Med.L.Rptr. 1049 (Ark. 1983)	Jury/Plaintiff	12,500 Each Plaintiff 25,000 Total	Private Figure/ Television/ Negligence	---	Reversed and remanded
+ Kerr v. El Paso Times, unreported (1984)	Jury/Plaintiff	\$500,000 Actual \$3,000,000 Punitive \$3,500,000 Total	Public Official/ Newspaper/Actual Malice	JNOV motion pending	---
Kohn v. West Hawaii Today, 9 Med.L.Rptr. 1238 (Hawaii 1982)	Jury/Plaintiff	\$35,000 Special \$40,000 General \$75,000 Total	Private Figure/ Newspaper/ Negligence	---	Affirmed
+ Lal v. CBS, 10 Med.L.Rptr. 1276 (3rd Cir. 1/19/84)	Judge/Defendant	---	**/Television/*	---	Directed verdict affirmed
Lerman v. Flynt Distributing Company, Inc., unreported, 81 Civ. 2281 (HFW) (S.D.N.Y.)(See also Lerman v. Chuckleberry Publishing, Inc., 496 F. Supp. 1105 (S.D.N.Y. 1980) and 521 F. Supp. 228 (S.D.N.Y. 1981))	Jury/Plaintiff	\$7,000,000 Actual \$33,000,000 Punitive \$40,000,000 Total	Private Figure/ Magazine/*	Reduced punitive award to \$3,000,000	Pending
Levine v. CMP Publications, Inc., unreported (N.D. Texas)	Jury/Plaintiff	\$1,000,000 Actual \$500,000 Punitive \$1,500,000 Total	Private Figure/ Newspaper/*	Remitted to \$200,000 actual and \$100,000 punitive	Pending

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
<u>Lawrence v. Bauer</u> <u>Publishing and</u> <u>Printing, Ltd., 8</u> <u>Med.L.Rptr. 1536</u> <u>(N.J.) cert.</u> <u>denied 51 U.S.L.W.</u> <u>3360 (1982)</u>	Jury/Plaintiff	\$22,500 Actual	Public Figure/ Newspaper/Actual Malice	---	Reversed
<u>Lewis v. Port</u> <u>Packet Corporation,</u> <u>(Vir. Cir. Ct.</u> <u>Alexandria, At-Law</u> <u>6692, 12/2/82)</u> <u>unreported</u>	Jury/Plaintiff	\$50,000 Actual \$100,000 Punitive \$150,000 Total	Private Figure/ Newspaper/ Negligence	---	Pending
<u>Lexington Herald</u> <u>Leader v. Graves,</u> <u>9 Med.L.Rptr. 1065</u> <u>(Ky. 12/28/82)</u>	Jury/Plaintiff	\$100,000 Actual	Public Official/ Newspaper/Actual Malice	---	Reversed
<u>Lipscomb v.</u> <u>Richmond News,</u> <u>unreported</u> <u>(Richmond, Va.</u> <u>Cir. Ct.)</u>	Jury/Plaintiff	\$1,000,000 Actual \$45,000 Punitive \$1,045,000 Total	Public Official/ Newspaper/Actual Malice	Remitted to \$100,000	Petition for appeal to State S. Ct. pending
<u>Little Rock</u> <u>Newspapers v.</u> <u>Dodrill, 10</u> <u>Med.L.Rptr. 1063</u> <u>(Ark. 1983)</u>	Jury/Plaintiff	\$40,000 Mental Anguish	Private Figure/ Newspaper/ Negligence	---	Reversed and remanded
<u>Lovitt and Nash v.</u> <u>Hustler, 9</u> <u>Med.L.Rptr. (News</u> <u>Note No. 35)(Ind.</u> <u>Wash. Co. Cir.</u> <u>Ct.)(10/4/83)</u>	Jury/Defendant	---	Private Figure/ Magazine/Actual Malice	---	---

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
<u>Macon Telegraph v. Elliot, 9</u> Med.L.Rptr. 2392 (Ga. 1983)	Jury/Plaintiff	\$50,000 Actual \$150,000 Punitive \$200,000 Total	Private Figure Newspaper/ Negligence	---	Affirmed
<u>Marchiando v. Brown, 8</u> Med.L.Rptr. 2233 (N. Mex. 1982)	Jury/Defendant	---	Private Figure/ Newspaper/ Negligence	---	---
<u>Martinez v. Democrat-Herald, No. 81-2475-J2</u> (Or. Ct. App., 9/28/83)	Jury/Defendant	---	Private Figure/ Newspaper/*	---	Affirmed
<u>Matthews v. Charlottesville Newspapers, Inc., (Charlottesville City Cir. Ct.) unreported</u>	Jury/Plaintiff	\$25,000 Actual	Private Figure/ Newspaper/ Negligence	---	Pending
<u>Miami Herald Publishing Co. v. Frank, No. 82-1190</u> (Fla. Dist. Ct. App., 10/18/83)	Jury/Plaintiff	\$30,000 Actual	Private Figure/ Newspaper/ Negligence	---	Affirmed
+ <u>Newsom v. Henry, 10 Med.L.Rptr. 1421</u> (Miss. 1983)	Jury/Plaintiff	\$2,500 Punitive	Public Figure/ Newspaper/ Actual Malice	---	Affirmed
+ <u>Pacella v. Milford Radio Corp., 18</u> Mass. App. Ct. 6 (4/17/84)	Jury/Plaintiff	\$15,000 Total	Public Figure/Radio/ Actual Malice	JNOV granted	JNOV affirmed

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
+ <u>Parsons v. Sports Illustrated</u> , 10 Med.L.Rptr. (News Note No. 23) 1984	Jury/Defendant	---	Public Official/ Magazine/Actual Malice	---	---
<u>Peacock v. New York News</u> , unreported, (No. 18616/79) 3/29/83	Jury/Defendant	---	Private Figure/ Newspaper/*	---	No appeal taken
+ <u>Pep v. Newsweek</u> , 10 Med.L.Rptr. (News Note No. 10)(No. 81 Civ. 1766) 1984	Jury/Defendant	---	Public Figure/ Magazine/Actual Malice	---	---
<u>Re v. Wilmington News Journal</u> , No. 81-C-SE-65 (Del. Super. Ct., 11/3/83)	Jury/Plaintiff	\$1,335,000 Actual	Private Figure/ Newspaper/ Negligence	JNOV denied, new trial granted	---
<u>Rhinehart v. Toledo Blade</u> , No. 42741 (Ct. of Common Pleas, Hancock Co. 1983)	Judge/Defendant	---	Private Figure/ Newspaper/Actual Malice	---	---
<u>Rogers v. Doubleday</u> , 9 Med.L.Rptr. 1615 (Tex. Ct. App. 9th Dist., 1982)	Jury/Plaintiff	\$2,500,000 Punitive	Public Official/ Book/Actual Malice	JNOV granted	Intermediate Ct. re-instates jury verdict, Texas S. Ct. renders judgment for defendant
<u>Roshto v. Hebert</u> , 9 Med.L.Rptr. 2417 (La. 1983)	Judge/Defendant	---	Private Figure/ Newspaper/*	---	Ct. of App. set aside trial ct. judgment and imposed damages. S. Ct. reversed

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
<u>Seal v. Birmingham</u> <u>Post Herald,</u> <u>unreported</u> (Ala. Cir. Ct., Madison Co., No. CV-81-969Y) 11/25/82	Jury/Defendant	---	Public Official/ Newspaper/Actual Malice	---	---
<u>Sibley v. Holyoke</u> <u>Transcript-Telegram,</u> <u>8 Med.L.Rptr. 2497</u> (Mass. Super. 1982)	Jury/Plaintiff	\$30,000 (Special Verdict)	Private Figure/ Newspaper/ Negligence	Ct. rejected jury special verdict	Affirmed
+ <u>Simonsen v. Malone</u> <u>Evening Telegram,</u> <u>10 Med.L.Rptr.</u> <u>1094</u> (N.Y. App. Div. 3rd Dept., 1983)	Jury/Defendant	---	Private Figure/ Newspaper/*	---	Affirmed
<u>Sisler v. Gannett</u> <u>Company, Inc.,</u> <u>unreported</u> (N.J. Super., Somerset Co., No. L-5628-81; S-8787) 5/27/83	Jury/Plaintiff	\$1,050,000 Total	Private Figure/ Newspaper/ Negligence	Motion for new trial denied	Pending
<u>Sprague v.</u> <u>Philadelphia</u> <u>Inquirer, 9</u> <u>Med.L.Rptr.</u> (News Notes No. 24, 9/12/83) (Philadelphia Common Pleas)	Jury/Plaintiff	\$1,500,000 Actual \$3,000,000 Punitive \$4,500,000 Total	Public Official/ Newspaper/Actual Malice	Pending	---

LDRC BULLETIN NO. 11

<u>NAME OF CASE (and Citation)</u>	<u>TRIER OF FACT/ PREVAILING PARTY AT TRIAL</u>	<u>DAMAGES AWARDED</u>	<u>TYPE OF PLAINTIFF/ TYPE OF DEFENDANT/ STANDARD APPLIED</u>	<u>POST-TRIAL RULINGS</u>	<u>RESULTS OF APPEALS</u>
Stack v. Capital-Gazette Newspapers, Inc., 8 Med.L.Rptr. 1704 (Md. Ct. App. 1982), reversing, 7 Med.L.Rptr. 1265 (Md. Ct. Sp. Ap.)	Jury/Defendant	---	Public Figure/ Newspaper/Actual Malice	---	Md. Ct. Sp. Ap. reversed and remanded. Md. Ct. App. reversed and re-instated directed verdict for defendant.
Van Dyke v. KUTV, 9 Med.L.Rptr. 1546 (Utah 1983)	Jury/Defendant	---	Public Official/ Television/ Actual Malice	---	Affirmed
+ Wanless v. Rothballer, unreported, (Peoria County No. 77-L-5147) 3/29/84	Jury/Plaintiff	\$250,000 Actual \$250,000 Punitive \$500,000 Total.	Public Official/ Newspaper/Actual Malice	Pending	---
Washington v. Time, NO. 81-7729 (Ark. Cir. Ct., Pulaski Co., 1983)	Jury/Defendant	---	Private Figure/ Magazine/*	---	---
+ Williams v. ABC, Civil Action No. 82-5180 (W.D. Ark. 1983)	Jury/Defendant	---	Private Figure/ Television/ Negligence	---	---
+ Willis v. Perry, 10 Med.L.Rptr. 1217 (Col. Ct. App. 1983)	Judge/Defendant	---	Public Official/ Newspaper/Actual Malice	---	Directed verdict for defendant affirmed



SPECIAL ALERT

NEW STUDY FINDS IMPROVED
MEDIA RECORD IN LIBEL TRIALS

FOR IMMEDIATE RELEASE OCTOBER 9, 1984:

New York, New York -- The Libel Defense Resource Center (LDRC) today released new data on the results of libel trials against the media over the past two years. The new findings, derived from a study of 63 trials held between mid-1982 and mid-1984, updates LDRC's earlier two-year study of 54 libel trials between 1980 and 1982. (A summary of the major findings accompanies this release.)

The 1982 LDRC study had found that media defendants were losing more than 8 out of 10 cases that went to trial and almost 9 out of 10 cases that were tried before juries. That study, essentially confirming the results of previous studies dating back to the mid-1970's, had been widely cited in the growing debate over the proper role of libel claims against the media.

The new LDRC study shows that, for the first time in the past several years, there has been an improvement in the rate of media defense success at trial. The newly-released figures document an overall media loss rate when libel cases go to trial of 54%, down from 89% in the prior two-year period. Before juries the loss figure is 62%, also down from 89%.

Apart from this shift in trial results, the new LDRC Study is basically consistent with earlier data both as to damages awarded at trial and as to the results of post-trial appeals.

With regard to damages, the average initial award remained essentially unchanged at slightly over \$2 million dollars. However, the number and percentage of cases in which million-dollar awards were entered was up, as was the average size of punitive damages when awarded.

708 Third Ave., 32nd floor, New York, N.Y. 10017 • (212) 687-4745

In post-trial rulings the new LDRC Study found that the media continue to fare exceptionally well both as to damages and as to imposition of liability. With regard to liability after trial, the picture is, if anything, improved over the previously favorable figures. On appeal, 68% of judgments adverse to the media have thus far been reversed, essentially the same as the 69% found at this stage in the early study. If judgments entered by the trial court notwithstanding the verdict are included, the reversal rate in cases decided thus far improves to 75% in the current study, as compared to 71% previously. Finally, if reduced damage awards are also considered, the reversal or modification rate in the current study approaches 78%, a figure identical to the earlier study at this stage.

With regard to damages, the media's success in challenging the "megaverdicts" often awarded at trial continued during the most-recent study. Another two years have gone by, with the entry of almost a dozen additional million-plus awards, but still no million-dollar award has yet been finally affirmed on appeal. Those few awards that were finally affirmed are minute in comparison to the massive average initial award. Thus, the new Study found an average affirmed award of only \$60,000, down almost 50% from the average of \$120,000 in the earlier study. And the size of the largest affirmed award was also down, from one award of \$400,000 in the previous study, to the highest award of \$200,000 in the findings just announced.

* * *

In a statement accompanying the new LDRC Study, Henry R. Kaufman, LDRC's General Counsel, commented on these findings:

"The media's poor performance at trial before juries in libel cases, as previously documented by LDRC and earlier studies, has been the source of much comment. Libel plaintiffs have relied on these dramatic figures in support of their claims of media abuse. Media defendants, on the other hand, have expressed grave concern over the difficulty of defending reasonable journalistic practices at trial and before juries in these cases.

"On the eve of a number of important and widely publicized libel trials, it is noteworthy that the new figures just released by LDRC do show a meaningful improvement in the media's performance at the

trial court level. However, the period they cover is too short, and even the reduced level of losses is still too high, to proclaim victory in the fight to bring libel trial results more in line with the true merits of those claims that go to trial and more in accord with the constitutional protections guaranteed to media libel defendants. As long as any media defendant is required to expend substantial time and money trying meritless libel claims that should have been dismissed prior to trial, and as long as excessive and unjustified damages continue to be awarded, additional and concerted efforts for legal reform must be pursued.

"Nonetheless, while still further improvements are certainly called for, it is gratifying to observe that media defendants are beginning to win substantial numbers of cases at the trial court level. And surely it is no longer possible to conclude, despite previous suggestions to the contrary, that juries are inherently biased against the media or that it is impossible to win media libel cases at trial before juries. This, combined with the media's continued strong performance on post-trial appeals in libel cases (which should if anything improve in light of the Supreme Court's recent Bose decision reaffirming independent appellate review), gives some basis for envisioning additional improvements in the media's success in libel cases in the future."

* * *

LDRC is an information clearinghouse organized by leading media groups to monitor and study developments in libel and privacy litigation. Supporting organizations include leading publishers and broadcasters, media and professional trade associations representing newspaper, magazine and book publishers, broadcasters, journalists, authors, news directors and newspaper editors, and libel insurance carriers.

FOR FURTHER INFORMATION CONTACT:

Henry R. Kaufman
General Counsel, LDRC

(212) 889-2308 (office)
(212) 505-7772 (home)
(413) 528-3969 (weekend)

att: Summary of Findings

LDRC BULLETIN No. 11

LDRC JURY PROJECT (Part 2):
Update on Project and Bibliographic Listing
of Jury Instructions on File at LDRC

In Bulletin No. 10, LDRC reported on the first phase of its ongoing Jury Project. LDRC's initial study of state pattern jury instructions concluded that many state PJI's are substantially deficient in their treatment of defamation, privacy and related issues. Since that report, LDRC has continued to pursue its Jury Project. In this second part, LDRC has collected sets of jury instructions from actual defamation and privacy cases throughout the nation, for the purpose of evaluating those instructions and compiling the charges most useful to media defendants. Thus far, media attorneys have provided LDRC with over 40 sets of jury instructions, in many cases supplying both the defendant's requests to charge and the instructions which the court actually gave. The most useful of the charges on file will eventually be published in the LDRC Jury Instructions Manual. In the third phase of the Jury Project, LDRC may use the instructions in its files as a guide in developing a set of "model" jury instructions. LDRC would hope to produce instructions that will treat potential defamation and privacy issues in a manner as consistent as possible with the interests of media defendants, while at the same time being firmly grounded in legal precedent so as to make them substantially acceptable to trial courts.

As a first step in the development of the Jury Instruction Manual discussed above, LDRC has completed a bibliographic listing of the jury instructions on file at its offices. We now publish this listing pending final publication of the LDRC Jury Instruction Manual, in the belief that it can be of value to media attorneys seeking models or authority for jury instructions on specific issues in their pending cases.

Please remember that this index is not intended to be an exhaustive listing of every issue that can be submitted to juries in every case. Rather, LDRC has developed the index simply to provide a useful and convenient way of organizing the major issues contained in the numerous sets of instructions it now has on file. Further, please note that LDRC has made no judgments at this point on the relative usefulness of any of these instructions. Determining if any particular instruction is "good" or "bad," effective or not, was not the purpose of this initial bibliographic listing.

LDRC BULLETIN NO. 11

Finally, despite the gratifying response to LDRC's solicitation of jury instructions, its bank of charges from recent cases remains incomplete. Despite the growing number of charges on file at LDRC, an examination of this bibliographic listing makes clear that there are many recent cases from various jurisdictions that are still not represented in LDRC's files. Therefore, in order best to develop the Jury Instruction Bank as a resource for the media defense community, LDRC again encourages attorneys who have participated in libel or privacy jury trials to contribute sets of jury charges and other relevant materials from those cases. These additional charges will be incorporated into the bibliographic listing in future LDRC Bulletins.

Using the Bibliographic Index

The index that follows is divided into two charts. The "Issue Listing" identifies the issues covered in this bibliographic index. Each issue has been assigned an Issue Number. The issues are numbered consecutively, although for convenience, we have grouped them under eight broad areas of defamation and privacy law and procedure.

The "Case List" identifies, by case name, the sets of jury instructions on file at LDRC. The cases are grouped by state. Defendants' proposed draft instructions are designated by a (D) following the case name, while instructions actually given by the court are indicated by a (C).

Following each case name in the Case List is a listing of Issue Numbers representing the issues found in that case's set(s) of instructions. In cases where both the defendant's and the court's instructions are on file (indicated by (D & C) following the case name), the Issue Numbers listed for that case are contained in both sets of instructions, unless otherwise indicated by a (D) or a (C) following the Issue Number.

LDRC BULLETIN No. 11

JURY INSTRUCTIONS BANK --
Issue Listing

GROUP I GENERAL INSTRUCTIONS on LIBEL

1. Elements of Libel - Generally (includes slander)
2. Defamatory Meaning
3. Of & Concerning
4. Substantial Truth
5. Context and the Average Reader
6. Privileges (except constitutional privileges and opinion/fair comment - See Group III)

GROUP II STANDARDS OF LIABILITY

7. Actual Malice - Generally
 - a. Common law malice distinguished
 - b. Knowing falsity
 - c. Reporter's right to rely on sources/failure to investigate
 - d. Reckless disregard defined
8. Negligence Standard
9. Gross Irresponsibility

GROUP III BURDENS and OTHER EVIDENTIARY MATTERS

10. Burdens of Proof (includes truth & falsity, fault, etc.)
11. Clear & Convincing Evidence
12. Imputing Malice

GROUP IV CONSTITUTIONAL ISSUES

13. Constitutional Privilege - Generally
14. Public Figure/Official
15. Constitutional Opinion Privilege (includes fair comment)

LDRC BULLETIN No. 11

GROUP V

DAMAGES

- 16. Actual Damage
- 17. Compensatory Damage -Elements (includes general and special damages)
- 18. Punitive Damages
- 19. Nominal Damages
- 20. Plaintiff's Reputation as Element in Determining Damages
- 21. Proximate Cause

GROUP VI

JOURNALISM ISSUES

- 22. Investigative Reporting
- 23. Reporter's Privilege
- 24. Neutral Reportage
- 25. Republishing
- 26. Reliance on Sources (see #7C)
- 27. Newsworthiness, "Hot News", etc.

GROUP VII

NON-LIBEL TORTS

- 28. Invasion of Privacy - Generally
 - a. Right to publicity
 - b. False light
- 29. Related Torts (includes intentional infliction of emotional distress)

Group VIII

MISCELLANEOUS ISSUES

- 30. Retractions
- 31. Rhetorical Hyperbole (includes fiction, satire)

LDRC BULLETIN No. 11

JURY INSTRUCTIONS BANK --
Case List

ALABAMA

1. Seal v. Birmingham Post (D): 1, 2, 3, 4, 5, 7, 7a, 7b, 7c, 7d, 10, 11, 13, 15, 16, 18, 21, 22

CALIFORNIA

1. Diaz v. Oakland Tribune (D & C): 7, 7a, 7d, 10, 11(D), 13, 14, 16, 17(C), 18, 19(D), 21(C), 27, 28, 31(D)
2. Galloway v. CBS (D & C): 1, 2, 4, 5(c), 6(D), 7, 7d, 10, 11, 16, 17, 18(C), 20, 21, 27(D)
3. Narula v. Santa Paula Chronicle (D & C): 1, 2, 4, 6(D), 7, 7c(D), 7d, 10, 11, 12, 13(D), 14(D), 15(D), 16(D), 17, 18, 19(D), 21(D), 25(C), 27(D), 30
4. Rosenthal v. New Yorker Magazine (C): 1, 2, 4, 5, 7, 7a, 7d, 10, 11, 15, 16, 17, 18, 20, 21, 31
5. Stephens v. Thieriot (D): 1, 2, 4, 6, 7, 7a, 7b, 7c, 7d, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 29, 30
6. Unidentified California Case "A" (D)*: 1, 2, 4, 5, 7, 7a, 7c, 7d, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 30

DELAWARE

1. Unidentified Delaware Case "A" (C)**: 1, 2, 3, 8, 10, 16, 17
2. Unidentified Delaware Case "B" (D)***: 1, 7, 10, 11, 15, 16, 17, 18, 31

* These are defendants' draft proposed instructions. The attorneys who provided these instructions requested that the case name not be divulged.

** These instructions were given by the court, but the name of the case is not available.

*** Defendants' proposed instructions. Case name is unavailable.

LDRC BULLETIN No. 11

IDAHO

1. Caldero v. Tribune Publishing Co. (C): 1, 2, 4, 5, 6, 7, 10, 11, 13, 14, 15, 16, 17, 21, 23, 30

MARYLAND

1. Fred Frederick Chrysler-Plymouth v. WJLA (D): 1, 2, 4, 5, 8, 10, 15, 16, 17, 18

MICHIGAN

1. Schultz v. Reader's Digest (C): 1, 2, 3, 4, 6, 7, 7b, 7c, 7d, 10, 11, 16, 17, 18, 19, 23, 24, 25, 30

MINNESOTA

1. Zona Rosa Restaurant v. Northwest Publications (D): 1, 2, 4, 5, 6, 7, 7d, 8, 10, 11, 14, 16, 17, 21

NEW JERSEY

1. Graddy v. The News Printing Co. (D): 1, 2, 4, 7, 7c, 7d, 10, 11, 14, 16, 17, 18, 21
2. McCoy v. Bergen Evening Record (D & C): 1, 2, 3, 4, 6, 7, 7d, 10, 11(D), 13, 14(D), 16, 17, 18, 19, 21, 27, 30(D)
3. Sisler v. Gannett (D): 1, 2, 3, 4, 5, 6, 7, 7c, 8, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 30

NEW MEXICO

1. Marchiondo v. Journal Publishing Co. (C): 1, 2, 5, 7, 7d, 8, 11, 17, 18, 21

NEW YORK

1. Bartels v. Field Enterprises (D): 1, 2, 3, 4, 5, 7, 7b, 7c, 10, 11, 13, 14, 16, 17, 18, 31
2. Lerman v. FDC (D & C): 10, 12, 16, 17, 18, 19, 21, 28, 28a
3. Pep v. Newsweek (D)*: 1, 2, 3, 4, 5, 7, 7a, 7b, 7c, 7d, 10, 11, 13, 16, 17, 20, 21

* These are defendant's proposed draft instructions, which were "substantially given" by the court. We do not know the extent to which the instructions on file were modified by the court.

LDRC BULLETIN No. 11

OHIO

1. Boddie v. ABC (C): 1, 2, 3, 4, 5, 6, 7, 8, 10, 13, 15, 16, 17, 18, 21, 22, 27
2. Rinehart v. Toledo Blade (D): 4, 7, 10, 11, 18, 20, 21, 28b

OKLAHOMA

1. Miskovsky v. OPUBCO (D): 1, 2, 3, 4, 5, 6, 7, 7a, 7b, 7d, 10, 11, 13, 14, 15, 16, 18, 25, 31

RHODE ISLAND

1. DeGregorio v. Time, Inc. (D & C): 1, 2, 3(D), 4, 5, 7, 7b(C), 7d, 10, 11, 15, 16, 17, 18, 21

SOUTH CAROLINA

1. Parsons v. Time, Inc. (D & C): 2, 4, 5(C), 7, 7a, 7c, 7d, 10, 11, 13, 14, 16, 18, 21, 27(C), 28b, 29(C)

TEXAS

1. Levine v. Gutman (D & C): 2, 4, 5, 6(C), 7, 7b(C), 8, 9(D), 10(C), 11, 14, 15, 16, 17(C), 18, 21(C), 27(D)
2. Zimmerman v. Southwest Media Corp. (D & C): 2, 4(D), 5, 6(C), 7, 7b(D), 7c(D), 8, 11(C), 14(C), 15, 16, 18(C), 27

UTAH

1. Van Dyke v. KUTV (D): 1, 4, 7, 7c, 7d, 8, 10, 11, 16, 18, 21

WASHINGTON

1. Williams v. Seattle Times (D & C): 1, 2, 3, 5, 6, 7, 7a, 7b(D), 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 28, 28a

WYOMING

1. Pring v. Penthouse (D & C): 1, 2, 3, 5, 7, 7d, 8(C), 10, 11, 13, 14, 16, 17, 18, 19(C), 21, 28, 28b, 29, 31

DISTRICT OF COLUMBIA

1. Tavoulareas v. Washington Post (D): 1, 2, 4, 5, 7, 7a, 7b, 7c, 8, 9, 10, 11, 12, 13, 16, 17, 18, 21, 22, 24, 27

MISCELLANEOUS

1. Unidentified Case "A" (D)*: 1, 2, 4, 5, 7, 7a, 7b, 10, 11, 12, 13, 15, 24, 27

* Neither the jurisdiction nor the name of this case is available.

LDRC BULLETIN No. 11

Supreme Court Report
Consolidated Case List for 1983-1984

I. Media Defendants --
Unfavorable Decisions Left Standing (6)

Field Communications Corp. v. Braig, 456 A.2d 1366, 9 Med.L.Rptr. 1056 (Pa. Super. Ct. 1983), cert. denied, 52 U.S.L.W. 3828 (5/15/84, No. 83-502). See LDRC Bulletin No. 9 at 15.

Larson v. Fisher, 138 Cal. App. 3d 627, 188 Cal. Rptr. 216 (Ct. App. 4th Dist. 1982), cert. denied, 52 U.S.L.W. 3369 (11/7/83, No. 82-2082). See LDRC Bulletin No. 7 at 57.

Macon Telegraph Publishing Co. v. Elliot, 302 S.E.2d 692, 9 Med.L.Rptr. 2252 (Ga. Ct. App. 1983), cert. denied, 52 U.S.L.W. 3828 (5/15/84, No. 83-1219). See LDRC Bulletin No. 10 at 17.

National Enquirer, Inc. v. Burnett, 144 Cal. App. 3d 991, 193 Cal. Rptr. 206, 9 Med.L.Rptr. 1921, 52 U.S.L.W. 2132 (Ct. App. 2nd Dist. 1983), appeal dismissed, 52 U.S.L.W. 3609 (2/21/84, No. 83-1076). See LDRC Bulletin No. 10 at 17.

Rhinehart v. Seattle Times, 98 Wash. 2d 226, 654 P.2d 673, 8 Med.L.Rptr. 2537 (Wash. 1982), cert. denied, 52 U.S.L.W. 3874 (6/5/84, No. 82-1758). See LDRC Bulletin No. 7 at 57. See also cross-petition on other issue as to which the Supreme Court granted certiorari -- LDRC Bulletin No. 9 at 14 and see Section V below for the disposition of that case.

Scripps-Howard Broadcasting Co. v. Embers Supper Club, Inc., 9 Ohio St. 3d 22, 457 N.E.2d 1164, 10 Med.L.Rptr. 1729 (Ohio 1984), cert. denied, 52 U.S.L.W. 3874 (6/5/84, No. 83-1653). See LDRC Bulletin No. 10 at 17.

II. Media Defendants --
Favorable Decisions Left Standing (8)

Caron v. Bangor Publishing Co., 470 A.2d 782, 10 Med.L. Rptr. 1365 (Me. 1984), cert. denied, 52 U.S.L.W. 3891 (6/12/84, No. 83-1681). See LDRC Bulletin No. 10 at 17.

Fisher v. Larson, 138 Cal. App. 3d 627, 188 Cal. Rptr. 216 (Ct. App. 4th Dist. 1982), cert. denied, 52 U.S.L.W. 3369 (11/7/83, No. 82-2130). See LDRC Bulletin No. 7 at 56.

LDRC BULLETIN No. 11

Fleury v. Harper & Row Publishers, Inc., 698 F.2d 1022, 9 Med.L.Rptr. 1200 (9th Cir. 1983), cert. denied, 52 U.S.L.W. 3264 (10/3/83, No. 83-13). See LDRC Bulletin No. 19 at 15.

Graves v. Lexington Herald Leader Co., 9 Med.L.Rptr. 1065 (Ky. 1982), cert. denied, 52 U.S.L.W. 3828 (5/15/84, No. 83-619). See LDRC Bulletin No. 9 at 15.

Lane v. Arkansas Valley Publishing Co., 9 Med.L.Rptr. 1726 (Colo. Ct. App. 1983), cert. denied, 52 U.S.L.W. 3906 (6/19/84, No. 83-1528). See LDRC Bulletin No. 10 at 18.

Miskovsky v. Tulsa Tribune Co., 9 Med.L.Rptr. 1954 (Okla. 1983), cert. denied, 52 U.S.L.W. 3551 (1/24/84, No. 83-882). See LDRC Bulletin No. 9 at 16.

Miskovsky v. World Pub. Co., (Okla. 1983), cert. denied, 52 U.S.L.W. 3551 (1/24/84, No. 83-883). See LDRC Bulletin No. 9 at 16.

Montesano v. Don Rey Media Group, 9 Med.L.Rptr. 2266, (Nev. 1983), cert. denied, 52 U.S.L.W. 3791 (5/1/84, No. 83-1494). See LDRC Bulletin No. 10 at 18.

III. Non-Media Defendants --
Decisions Left Standing (5)

Demos v. Commercial Union, ___ F.2d ___ (7th Cir. 1983), unpublished decision, cert. denied, 52 U.S.L.W. 3263 (10/3/83, No. 82-2073). See LDRC Bulletin No. 9 at 15.

Lee v. Monsen, ___ F.2d ___ (7th Cir. 1983), unpublished decision, cert. denied, 52 U.S.L.W. 3509 (1/10/84, No. 83-464). See LDRC Bulletin No. 9 at 15.

Levine v. Silsdorf, ___ A.D.2d ___, 447 N.Y.S.2d 936, 9 Med.L.Rptr. 1815 (1st Dept. 1982), cert. denied, 52 U.S.L.W. 3263 (10/3/83, No. 82-2165). See LDRC Bulletin No. 7 at 57.

National Foundation for Cancer Research, Inc. v. Council of Better Business Bureaus, ___ F.2d ___ (4th Cir. 1983), cert. denied, 52 U.S.L.W. 3263 (10/3/83), No. 82-2153). See LDRC Bulletin No. 7 at 57.

LDRC BULLETIN No. 11

Rhodes v. Hogan, ___ F.2d ___ (6th Cir. 1983), unpublished decision, cert. denied, 52 U.S.L.W. 3874 (6/5/84, No. 83-1809). See LDRC Bulletin No. 10 at 18.

IV. Cases Filed But Not Yet Acted Upon (1)

Piedmont Publishing Co., Inc. v. Cochran, 62 N.C. App. 548, 302 S.E.2d 903, 9 Med.L.Rptr. 1918 (N.C. Ct. App. 1983), cert. filed, 52 U.S.L.W. 3689 (3/20/84, No. 83-1459) -- unfavorable -- media. See LDRC Bulletin No. 10 at 18 - 19.

V. Supreme Court Decisions (4)

Bose Corporation v. Consumers Union of the United States, Inc., ___ U.S. ___, 52 U.S.L.W. 4513, 10 Med.L.Rptr. 1625 (5/1/84, No. 82-1246), aff'g, 692 F.2d 189, 8 Med.L.Rptr. 2391 (1st Cir. 1982) See LDRC Bulletins No. 6 at 17, No. 7 at 50, No. 10 at 19.

Calder v. Jones, ___ U.S. ___, 52 U.S.L.W. 4349, 10 Med.L.Rptr. 1401 (3/20/84, No. 82-1401), aff'g, 138 Cal. App. 128, 187 Cal. Rptr. 825 (Ct. App. 2nd Dist. 1982). See LDRC Bulletin No. 10 at 19.

Keeton v. Hustler Magazine, Inc., ___ U.S. ___, 52 U.S.L.W. 4346, 10 Med.L.Rptr. 1405 (3/20/84, No. 82-485), reversing and remanding, 682 F.2d 33, 8 Med.L.Rptr. 1748 (1st Cir. 1982). See LDRC Bulletins No. 6 at 14, No. 10 at 19.

Seattle Times v. Rhinehart, ___ U.S. ___, 52 U.S.L.W. 4612, 10 Med.L.Rptr. 1705 (5/21/84, No. 82-1721), aff'g, 98 Wash. 2d. 226, 654 P.2d. 673, 8 Med.L.Rptr. 2537 (Wash. 1982). See LDRC Bulletins No. 7 at 57, No. 9 at 14, No. 10 at 19.

VI. Held Over to Next Term (1)

Dun & Bradstreet, Inc. v. Greenmoss Builder's, Inc., 9 Med.L. Rptr. 1902 (Vt. 1983), scheduled for reargument, 52 U.S.L.W. 3937 (6/26/84, No. 83-18). See LDRC Bulletin No. 10 at 20.