LDRC Libel Defense Resource Center

BULLETIN

No. 19, Spring 1987
(May 31, 1987)
(ISSN 0737-8130)

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LDRC Study #8

SUMMARY JUDGMENT MOTIONS IN LIBEL ACTIONS: (Two-Year Update) 1984-1986

LDRC's new Study of summary judgment motions in libel actions represents a follow-up to, and extension of, LDRC's two previous summary judgment studies, which collectively covered the four-year period 1980-1984. (See LDRC Bulletin No. 4 (Part 2) at 2-35; LDRC Bulletin No. 12 at 1-37).

In its first two summary judgment studies, LDRC examined empirically the results of a total of 246 summary judgment motions (110 in the first period and 136 in the second) decided in the wake of the Supreme Court's pronouncement in footnote 9 of Hutchinson v. Proxmire, 443 U.S. 111, 120 (1979). Hutchinson had seemed to question the appropriateness of summary judgment in certain media libel actions. In this context, the present LDRC Study of an additional 143 summary judgment motions during the period 1984-1986 represents a further evaluation of the fallout from Hutchinson and, as noted below, can also be viewed as describing, and coinciding with, the culmination of the "post-Hutchinson" period.

Indeed, ending as it does on the eve of the Supreme Court's recent watershed decision in Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986), which held that courts should apply ultimate substantive standards when considering motions for summary judgment, the new LDRC Study not only ends an era in libel litigation, but could also portend additional -- and favorable -- changes in the way summary judgment is employed to defeat libel claims and in the degree of success of such motions. This new LDRC Study, covering the two years directly preceding Anderson, documents that many courts had already been applying the heightened "clear and convincing" evidence standard while deciding motions for summary judgment in "actual malice" libel cases. But the Anderson Court's definitive sanctioning of this procedure at the summary judgment stage assures a continued high level of success in such motions, and quite possibly a greater degree of success in the future.

LDRC gratefully acknowledges the invaluable assistance of Howard Weingrad, Fordham Law School, Class of 1987, and Colleen Duffy, NYU School of Law, Class of 1989, in the preparation of this Study.

The Supreme Court in Anderson also tended to quiet any remaining analytical fears regarding the ill-effects of Hutchinson footnote 9. For the Court has now characterized that footnote as simply acknowledging the Court's "general reluctance to grant special procedural protections to defendants in libel and defamation actions in addition to the constitutional protections embodied in the substantive laws." Id. at 2514, n. 7. In other words, footnote 9 is not to be read either as disfavoring summary judgment or as questioning its substantive appropriateness in libel actions. Indeed, the arrival of the Anderson regime, expressly requiring courts to apply the higher "clear and convincing" standard at the summary judgment stage, would seem to insure that -- as a matter of substantive constitutional law -- summary judgment has been and will continue to be the rule rather than the exception in libel litigation. And this is precisely what this new LDRC Study reconfirms.

Summary of Findings

1. The new LDRC data for the period 1984-1986 reveals that defendants' summary judgment motions prevailed in 76% of the 143 cases studied. This success rate is even higher than, but overall consistent with, the four-year average of 74% documented in LDRC's previous studies.

2. Defendants' success rate for summary judgment motions at the trial court level continues to remain at 80%, the previous four-year average reflecting trial court grants in more than three-out-of-four cases.

3. On appeal, the summary judgment success rate is up from 66% during the previous two-year period to 73%. This figure includes appeals by both plaintiffs from grants of defendants' summary judgment motions and by defendants from denials of their motions.

4. Regarding the nature of the summary judgment standard articulated, the majority of courts in this most recent period prior to Anderson continued to apply a so-called "neutral" procedural standard for deciding summary judgment motions, neither favoring nor disfavoring these motions. Moreover, lower courts' reliance on Hutchinson continued to diminish, with only 7% of those cases identified by LDRC citing footnote 9 of Hutchinson. This is down considerably from the years 1980-1984.

5. The availability of summary judgment when actual malice is at issue (which footnote 9 had seemed to question) continues to be notable, albeit slightly down to 73% from the previous four-year figure of 77%, although up 2% from the most recent two-year period. Overall, more than 7 out of 10 defendants' summary judgment motions continue to be granted when actual malice is the dispositive issue.

6. The success rate of summary judgment motions in federal cases has increased slightly, with a 1% increase to 73% from the 72% figure found in the 1982-84 Study, while state cases continue to show an increase in defendants' success rate (up 3%, to 77%, from the 74% figure found in the 1982-84 Study).

7. When motions for summary judgment are made in cases involving public-official or public-figure plaintiffs, defendants prevailed in 78% of the cases, down 2% from the 1982-84 Study. In private-figure cases defendants prevailed substantially less frequently -- in 58% of the cases, also down from 65% in the 1982-84 Study. However, this disparity may not be as significant as it would seem, because in fully 28% of the cases studied the public/private distinction was either irrelevant or unclear.

8. Dispositive legal issues other than actual malice with high defendant success rates included: opinion (87% success rate); substantial truth (100%); defamatory meaning (93%); fair report privilege (100%); statute of limitations (100%); republication (100%). Dispositive issues with lower success rates included: privacy (65%); public figure (67%); negligence (30%); gross irresponsibility (50%); private figure (40%). Overall, these statistics are consistent with LDRC's previous studies.

9. In the period studied, and even before Anderson, a substantial plurality of courts (45%) applied the "clear and convincing" standard in deciding motions for summary judgment when actual malice was the dispositive issue. 17% adverted to the issue, but declined to use the "clear and convincing" standard. And in 33% of the actual malice cases it was not clear from the opinion which, if any, standard was applied.

Background

Before 1979, when considering defendants' motions for summary judgment in libel actions, more and more courts were affording special procedural protections, grounded in the substantive

constitutional protections applicable to defamation actions under New York Times v. Sullivan and its progeny. See, e.g., Oliver v. Village Voice, 417 F.Supp. 235 (S.D.N.Y. 1976) (summary judgment "may well be the 'rule' rather than the exception"). Then, in 1979, the Supreme Court seemed to question the appropriateness of summary judgment, at least in "actual malice" defamation cases. In footnote 9, of Hutchinson v. Proxmire, 443 U.S. 111, 120 (1979), the Court stated that "we are constrained to express some doubt about the so-called 'rule.' The proof of 'actual malice' calls a defendant's state of mind into question, and does not readily lend itself to summary disposition." Hutchinson, 443 U.S. at 120, n. 9. Initially, many feared that footnote 9 might deal a "potentially crippling legal blow" to media defendants in libel litigation. Tybor, The Libel War Escalates, Nat'l L. J., April 21, 1980 at 1, col. 3. LDRC's initial 1982 Study of summary judgment motions sought to assess whether Hutchinson had, in fact, adversely affected the availability of summary judgment.

That LDRC Study, covering the two-year period immediately following Hutchinson, documented that the impact of footnote 9 had not yet been substantial. Indeed, that LDRC Study concluded that "despite Hutchinson, summary judgment [was] still being granted in the great majority of cases raising the issue of actual malice ..." (See LDRC Bulletin No. 4 (Part 2) at 5.) Thereafter, LDRC did a followup Study in 1984 to reassess the potential negative impact of footnote 9. At the time of that second LDRC Study, the Supreme Court in Calder v. Jones, 465 U.S. 783 (1983), had cited and seemingly reaffirmed the Hutchinson footnote, implying that "no special rules apply for summary judgment." Id. at 791. The Court in Calder recognized the constitutional protections embodied in the substantive libel laws but asserted that extra procedural protections granted to defendants would be a form of "double counting." Id. at 790. Accordingly, concern remained that this view would continue to impact negatively on the availability of summary judgment in media libel actions. LDRC's 1984 Study documented, however, that summary judgment continued to be granted in almost 3 out of 4 cases.

In sum, what the first two LDRC summary judgment studies seemed to indicate was that the substantive protections embodied in the Sullivan actual malice standard so enhanced the media defendant's chances of favorable summary judgment disposition that they overcame whatever procedural questions had been raised regarding summary judgment by the Supreme Court in Hutchinson and Calder. Therefore, the labels that were applied -- i.e., whether summary judgment was said to be "preferred" in media libel actions, or whether it was to be decided under some kind of

"neutral" procedural standard -- tended to have less significance than the overriding substantive influence of the heavy constitutional burdens on libel plaintiffs under Sullivan. Perhaps the most significant remaining issue after Hutchinson and Calder was whether, in spite of the Supreme Court's continuing procedural cautions, trial courts would sustain their favorable summary judgment grant rate and continue to afford media defendants this kind of heightened protection by incorporating the substantive evidentiary standard of "clear and convincing" proof into the consideration of a motion for summary judgment.

Ultimately, the Supreme Court considered and favorably disposed of this issue in Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986). There, the Court held that the heightened evidentiary requirements which apply to proof of actual malice in many libel cases must be considered for purposes of a motion for summary judgment. Thus, "where the factual dispute concerns actual malice ... the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." Id. at 2513. Moreover, as noted, the Court in Anderson alleviated the confusion it had created in Hutchinson by stating that footnote 9 was only intended to prevent courts from granting procedural protection in addition to constitutional, substantive protection. While in one sense this may mean that courts should neither favor nor disfavor summary judgment in defamation actions, nonetheless the net effect of Anderson is to make clear that even "neutral" application of the substantive summary judgment standard now definitively recognized -- i.e., use of the "clear and convincing" standard of proof at the summary judgment stage -- will insure at least as favorable a result as a procedural standard "favoring" summary judgment. That is, media libel defendants will continue to prevail in the substantial majority of summary judgment motions, albeit because of what are now denominated "substantive," and not "procedural," protections.

The Current Study

With all of this as background, LDRC undertook to study summary judgment motions during the two-year period beginning where the last LDRC Study ended, on August 21, 1984, and continuing through June 25, 1986, the date the Supreme Court decided Anderson v. Liberty Lobby. The primary focus of the Study was twofold: first, to document the impact of Hutchinson (and Calder) during these final two years of unsettled law regarding

the availability of summary judgment in defamation actions; and, second, to document the extent to which Anderson's adoption of the "clear and convincing" standard in considering summary judgment motions can be expected to affect the availability of summary judgment in the future. All summary judgment motions reported in the Media Law Reporter during this time period were included. (A more detailed description of the methodology of this Study appears below at pp. 14-15.) Although this new Study looks most closely at the phasing out of Hutchinson and the ushering in of Anderson, all motions for summary judgment during the period were considered, whether or not they involved the actual malice standard, in order to assess the media's overall summary judgment experience as well as to explore other related issues. The findings of this new LDRC Study of 143 media libel actions are reflected in the tables and summary judgment case list which appear at the end of this report. The major conclusions are summarized above. What follows are additional comments on selected issues.

Assessing LDRC's Most Recent Summary Judgment Findings

(i) Actual Malice

Actual malice was the dispositive issue in 35% of the motions studied during the most recent two-year period. This figure is identical to the percentage in the previous study covering the period 1982-84, yet both figures are down substantially from the perhaps unusually high 60% figure in the first study. Overall, in the six years covered, actual malice was the dispositive issue in 42% of the summary judgment motions studied. This figure is still notable in light of the numerous other legal grounds that can form the basis for a meritorious summary judgment motion in defamation and privacy actions. The overall success rate of 76% in these cases over the last six years, slightly higher than the overall summary judgment grant rate in all libel actions, is all the more notable considering the far lower success rates in other kinds of civil actions where state of mind is in controversy.

(ii) "Clear and Convincing" Standard

LDRC's previous studies had demonstrated the significance of the substantive evidentiary standard when applied at the summary judgment stage. However, over the six years studied, from Hutchinson until the very day Anderson was decided, the courts had been in substantial disagreement over the application of the constitutionally-based "clear and convincing" standard in deciding

summary judgment motions. Nonetheless, over the last six years just under half of the courts (82/165) considering the issue expressly relied upon such a heightened standard of proof in deciding motions involving actual malice. A minority of courts expressly declined to use the heightened standard, opting instead for the less stringent preponderance standard. In other cases, while courts adverted to the issue of whether the standard should apply at the summary judgment stage, it was left unclear as to whether the "clear and convincing" standard was ultimately used or adopted by the court. Finally, a small number of courts did not pass on the issue since it was apparent that the plaintiffs had failed to meet their burden of proof under either standard.

(iii) Public-Figure vs. Private-Figure Actions

The success rate of defendants' summary judgment motions in public-figure (or public-official) libel actions dropped only fractionally from the previous study (from 80% to 78%), making the overall, six-year figure 78%. In private figure cases, on the other hand, the summary judgment success rate continued to decline throughout the six years, from 75% to 65% to the present 57%, leaving an overall six-year figure of 67%. (It should be noted that in 28% of the cases analyzed in LDRC's current Study, the public- or private-figure status of the plaintiff was not clear.) These differing results are perhaps to be expected given the distinctions in the law regarding the burden placed upon plaintiffs in either situation. The high burden placed on public plaintiffs (even higher after Anderson) makes summary judgment more difficult for such plaintiffs to resist than in private-figure cases where the burden is lower. Despite the lesser burden placed upon private-figure plaintiffs, defendants prevailed in the majority of all cases -- even private-figure actions. This favorable summary judgment success rate was achieved largely as the result of the application of those common law privileges available in private-figure cases -- viz, truth, opinion, defamatory meaning, and other like procedural devices. In contrast, when the moving libel defendant was constrained to base its summary judgment motion on the issue of mere negligence, the minimum standard of fault required by Gertz, the defendant success rate was far lower, at a very unfavorable 19% for the overall six-year period.

(iv) Federal vs. State Cases

The success rate of summary judgment motions in federal cases is 73%, a slight increase from the previous study's figure of 72%. This brings the six-year average to 74%. Curiously, the

success rate in state courts continues to rise, from 73% to 74% to the current figure of 77%, or 74% overall. Notably, Hutchinson was cited 11 times in all of the cases studied during the most recent Study, 7 times in the federal courts and 4 times in the state courts. Also with regard to any ill-effects which may be lingering as a result of Hutchinson, federal courts cited the Hutchinson footnote in 12% of the cases analyzed by LDRC. State courts cited the Hutchinson footnote in just 5% of the cases analyzed. Although the state figure is down slightly from the 7% figure found in the 1982-84 Study, the rate at which federal courts cited Hutchinson was up 6%.

Future Prospects for Summary Judgment

Perhaps, the most striking finding in the new LDRC Study is the sheer consistency among each of the three studies' findings regarding overall grants in favor of libel defendants' motions for summary judgment. Considering the many variables which can alter any judicial proceeding's outcome, we have no explanation for the fact that the win/loss ratio for defendants' summary judgment motions has remained almost exactly the same over the past six years -- 75%, give or take a single percentage point. These remarkably consistent results also compare quite favorably to the 78% or 79% success rate found by Professor Franklin during the earlier four-year period, 1976-1980 -- see LDRC Bulletin No. 4 (Part 2) at Table 1, page 10. Accordingly, at least as a pure statistical matter, all of the Supreme Court's procedural cautions, in Hutchinson and in Calder have had little if any impact upon a defendant's chances for prevailing on a motion for summary judgment. As this Study and LDRC's two previous studies have shown, summary judgment continues to be granted in 3 out of 4 cases in libel litigation -- clearly the empirical rule rather than the exception.

As noted, LDRC's present Study cuts off precisely at the onset of Anderson, which held that courts should consider summary judgment motions in light of the heightened proof standard that would apply at trial. From all appearances, Anderson is, if anything, likely to increase the frequency with which courts grant summary judgment in public-figure defamation actions. Although a small number of early post-Anderson decisions have circumvented its mandate in denying summary judgment, see infra, pp. 9-11, nevertheless after Anderson libel defense counsel should certainly be more aggressive in their use of summary judgment in appropriate cases. And, until proven otherwise, one must expect an even greater rate of defense success on summary judgment in libel actions to follow in Anderson's wake.

Seeing Anderson in its Broader Context

In order fully to assess the decision's significance, it should be understood that Anderson was actually one of two cases decided by the Supreme Court this past Term, each of which should have some positive impact on the success rate of defendants' summary judgment motions in libel cases. In Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2553 (1986), a non-libel case, the Supreme Court held that where a nonmoving party has the burden of proof as to any material issue at trial, and has had full opportunity to make discovery on that issue, then on a motion for summary judgment that party must affirmatively establish the existence of a disputed and material factual issue as to that essential element of its case. The moving party need not demonstrate the negative -- i.e., that the nonmoving party failed factually to support its case. Rather, it is the nonmoving party that must affirmatively fulfill its burden of production. If not, "[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof." Id. at 2553. The moving party may therefore discharge its burden by merely "pointing out to [the court] that there is an absence of evidence to support the nonmoving party's case." Id. at 2554.

Celotex, when combined with Anderson, will almost certainly improve defendants' chances for succeeding on motions for summary judgment in many kinds of cases, including libel. As noted, Celotex relieves the moving party of the burden of negating the nonmovant's unsupported claims. Anderson, on the other hand, further adds to the nonmovant plaintiff's burden in libel cases by requiring that they meet the heightened standard of proof that would be required at trial. As one court recently noted, "[b]oth Anderson and Celotex reaffirm the principle that the summary judgment procedure should be used to dispose of cases that should not be tried." Apex Oil v. Dimauro, 641 F.Supp. 1246, 1257 (S.D.N.Y. 1986). This notion has even greater force in the context of "actual malice" libel litigation. In that situation, Anderson requires that the plaintiff meet the clear and convincing standard at the summary judgment stage. Furthermore, Celotex requires that the nonmovant plaintiff must affirmatively fulfill this burden and not be allowed to prevail simply because the movant defendant failed to negate plaintiff's burden with actual evidence. Rather, the defendant need only point out to the trial court that the plaintiff has failed to put forth evidence such that a jury could find actual malice by "clear and convincing" evidence. Similarly, since libel plaintiffs have the burden of

proof on several of the key elements of a defamation claim -- including, for example, the burden as to proof of falsity now definitely placed on all libel plaintiffs as a matter of constitutional command under Philadelphia Newspapers v. Hepps, 106 S.Ct. 1558 (1986)-- Celotex will have significance in a variety of libel litigation contexts. Accordingly, Anderson, when combined with Celotex, should bode well for the future as to defendants' success rate on motions for summary judgment in libel cases.

Attempts to Circumvent "Anderson"

Although the result in Anderson would appear to suggest that defendants' chances for prevailing on motions for summary judgment in future libel cases could well improve, recent decisions by a small number of courts have found ways to diminish Anderson's favorable potential. One district court, for example, allowed a case to go to the jury because it interpreted Anderson merely to stand for the proposition that the plaintiff must prevail if it is "possible 'clearly and convincingly' to draw an inference of malice . . ." Adler v. Conde Nast Publications, 643 F.Supp. 1558, 13 Med. L. Rptr. 1409 (S.D.N.Y. 1986) (emphasis added). In Adler, plaintiff Renata Adler brought a libel action against Conde Nast, publisher of Vanity Fair magazine, and Washington Communications, publisher of the Washington Journalism Review. After granting summary judgment for defendant Washington Communications, the district court denied defendant Conde Nast's motion for summary judgment. In so doing, the court noted that the real problem was to determine precisely what the Supreme Court meant by its ruling in Anderson that malice must be established by "clear and convincing evidence." Adler, 13 Med. L. Rptr. at 1415. Instead of looking to Anderson for the correct interpretation, the district court cited Yiamouyannis v. Consumers Union, 619 F.2d 932, 940 (2d Cir. 1980), cert. denied, 449 U.S. 839 (1980), a case that was itself strongly influenced by Hutchinson footnote 9. The Adler court cited Yiamouyannis for the proposition that: "a judge in denying a defendant's summary judgment motion must conclude that . . . a reasonable jury could find malice with convincing clarity." Id. The court noted both the original emphasis of the word "could" in Yiamouyannis and that the case was cited with approval by the Supreme Court in Anderson. Adler at 24-25. Thus, by delving into a lower court's limiting language in order to determine the "precise" meaning of Anderson, the district court in Adler wrongly concluded that Anderson allows plaintiffs to prevail on a defendant's motion for summary judgment upon the scant showing that it is "possible" for a jury "to draw an inference of malice from facts which the jury is entitled to find by ordinary evidentiary rules." Id.

Such a limited construction of Anderson, if followed, could insure that defendants' chances at prevailing on motions for summary judgment in "actual malice" cases would, at best, be effectively the same as they were before Anderson. The Adler court was incorrect in its determination of the rule in Anderson. In holding that courts deciding summary judgment motions must consider the standards of proof applicable at trial, the Supreme Court in Anderson, supra at 2514, did not, as Adler suggests, intend that courts should allow a plaintiff to prevail, without adducing clear and convincing evidence of the underlying material facts at the summary judgment stage, but upon a mere "possibility" that such an inference of malice could be drawn at trial. Rather, in the Supreme Court's own words "there is no genuine issue if the evidence presented [by plaintiff] is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence." Anderson at 2513. In other words, the plaintiff must put forth the same requisite quantum of evidence at the summary judgment stage. Id. at 2513-14. Thus, fairly read, Anderson adds to the plaintiff's burden in actual malice libel cases; Adler's holding, on the other hand, undermines Anderson's mandate by inappropriately relieving the plaintiff of this burden and leaving the court on summary judment to speculate as to the possibility or hope that the plaintiff will raise inferences at trial.

In another case, a district court was asked to reconsider its prior denial of summary judgment in light of Anderson. Newton v. NBC, 13 Med. L. Rptr. 1224 (D. Nev. 1986). Despite Anderson, the court in Newton reaffirmed its prior ruling, holding that plaintiff had shown "clearly and convincingly that the defamatory [statements were false]." Newton, 13 Med. L. Rptr. at 1229. In reaching this result and instead of focusing on Anderson's positive language regarding the disposition of summary judgment motions, the district court emphasized various cautionary dicta in Anderson to justify its denial. Quoting Justice White, the Newton court noted that "[n]either do we suggest that trial courts should act other than with caution . . . and may deny summary judgment . . .here the better course would be to proceed to a full trial." Newton at 1229. Thus, the court in Newton overemphasized cautionary language to such an extent that defendant's motion for summary judgment was denied. In sum, practitioners should be aware that although the obvious purport of Anderson is to suggest more frequent use and grant of summary judgment, certain language wrenched out of context from Anderson can, as in Newton, be misread as suggesting that courts proceed to trial rather than grant summary judgment when, in their discretion, they conclude that such is the "better course." Such a misreading circumvents

Anderson's clear bases for more -- not less -- aggressive use of the summary judgment technique.

Are the States Bound by the Rule of Anderson?

It has already been noted that Anderson, properly construed and applied, can be of substantial assistance to libel defendants seeking summary judgment. It must be remembered, however, that Anderson (as well as Celotex) was a federal court action construing Federal Rule 56. The question arises, will the benefits of Anderson also be available to libel defendants in state court actions? The resolution of the question may in turn depend on whether Anderson is viewed as establishing a rule of constitutional dimension, or whether it is read narrowly as merely a decision construing the application of federal procedure rules otherwise inapposite to state procedures.

Recently, in Dairy Stores v. Sentinel Publishing, 13 Med. L. Rptr. 1594 (N.J. Sup. Ct. 1986), a New Jersey state court held that, at least in certain circumstances, Anderson may not require the states to adopt its ruling. The New Jersey Supreme Court read Anderson to mean that the clear and convincing standard is mandated only "when the actual malice test applies as a matter of federal practice or constitutional law." Dairy Stores at 1606. Consequently, since the New Jersey Supreme Court had predicated its decision in that case on common law actual malice and not federal constitutional law, the court chose to employ a less stringent, procedural standard. The Dairy Stores decision should not be read to suggest that state courts are not bound by the federal rule in Anderson in appropriate circumstances but only that where the issue is purely a matter of state common law, the rule in Anderson is not necessarily controlling.

As noted, the Supreme Court of New Jersey decided the case under a common law rule. In fact, that Court had imposed a higher substantive standard of fault than required by the federal Constitution. After creating the state law rule the New Jersey court was then asked to decide the proper evidentiary standard applicable to that state common law rule on a motion for summary judgment. The court did not reject the rule in Anderson because it was not, for these purposes, a First Amendment case at all. The question thus remains whether a state court when faced with a case involving constitutional actual malice could, while working within this federal mandate, apply a lesser procedural standard for summary judgment than that adopted in Anderson, thereby circumventing the heightened standard of proof required by the First Amendment.

Several years ago, the New York Court of Appeals in Karaduman v. Newsday, 51 N.Y.2d 531 (1980), addressed similar issues from still another perspective. In that case, the court adopted a higher standard regarding the availability of summary judgment for application in a case governed by New York State's unique "gross irresponsibility" standard of fault. In so doing the court declined to follow Hutchinson's negative dicta as to the availability of summary disposition and, instead, relied on state procedural law:

> "[Q]uestions concerning the sufficiency of a party's submissions to defeat a motion for summary judgment are principally a matter of state procedural law, and the analysis which the Supreme Court may use in denying a motion for summary judgment under the Federal Rules of Civil Procedure may differ substantially from the analysis that we would use under our own procedural statutes." Karaduman, 51 N.Y.2d at 544.

The fact that a state court may be free to chose a higher standard under the state's procedural rules than that required by the U.S. Supreme Court does not at all mean that it is necessarily free to impose a lower standard in the face of a governing constitutionally-based ruling. Indeed, notwithstanding the New York Court of Appeals procedural reasoning in Karaduman rejecting an assertedly lower federal standard, a New York intermediate appellate court recently adopted, without hesitation, the rule in Anderson regarding the application of the higher clear and convincing standard to a motion for summary judgment in the libel context. Scachetti v. Gannett Co., 507 N.Y.S.2d 337 (A.D. 4th Dept. 1986). Other state courts have held similarly. See, e.g., Long v. Egnor, 346 S.E.2d 785 (W.Va. 1986); Dombey v. Phoenix Newspapers, 724 P.2d 562 (Ariz. 1986); LaMon v. Butler, 722 P.2d 1373 (Wash. App. 1986).

Finally, state practitioners should certainly also urge their courts to follow the rule in Anderson since those courts may view Anderson as a decision which comports with their own state procedural rules, many of which are, in any event, modelled after Federal Rule 56. State courts have often, in such circumstances, looked to federal decisions under Rule 56 for guidance in construing their own state procedures. In sum, it is to be hoped that state courts will adopt and enforce the rule in Anderson with the result that the media's chances for prevailing on motions for summary judgment will be further enhanced.

Methodology

The Summary Judgment Case List in this Study contains data regarding 143 libel cases. These cases represent all summary judgment cases reported in Volumes 10, 11, 12 and 13 of the Media Law Reporter, August 21, 1984 through June 25, 1986. All of the summary judgment cases were decided subsequent to Hutchinson v. Proxmire, 443 U.S. 111 (1979), and directly prior to Anderson v. Liberty Lobby, 106 S.Ct. 2505 (1986). Accordingly, the LDRC data is a followup to LDRC's two previous summary judgment studies which also analyzed summary judgment cases decided subsequent to Hutchinson.

The cases in the Summary Judgment Case List are arranged alphabetically and all cite to the Media Law Reporter. In all but one of the listed cases it was the defendant(s) who had moved for summary judgment and the results are given in the "rulings" column which notates whether the rulings were issued by original jurisdiction or by appellate courts affirming or reversing previous rulings of lower courts. Also, notation is made where partial summary judgment motions were filed or where partial rulings were made. The "dispositive issue/defense" column lists the primary issue on which the court appeared to base its summary judgment ruling. LDRC realizes that such characterizations may be somewhat judgmental in cases which presented more than one issue for the court's disposal. However, LDRC believes these characterizations to be reasonably accurate and useful for the purposes of this Study. Most notably, cases in which actual malice was the dispositive issue, and where the plaintiff was either a public official or public figure, are labeled as such in order to highlight the large percentage of cases reflecting the same litigation postures referred to in Hutchinson footnote 9 and in Calder and Anderson. Indeed, two of the remaining four columns in the Summary Judgment Case List deal with issues specifically pertaining to actual malice/public-figure libel litigation. The fifth column notes those cases which actually cited Hutchinson. If a case adverted to footnote 9, LDRC delineated whether the case followed or distinguished the dicta in Hutchinson footnote 9. The sixth column notates differing classifications of the summary judgment standard employed by the court. The data indicates whether the court favored or disfavored summary judgment or whether the court articulated a "neutral" standard. Finally, the column also notates whether the cases showed no clear delineation of the standard. The seventh column includes information pertaining to the court's use of the "clear and convincing" standard when passing on a motion for summary judgment in a public-figure/public-official, actual malice case. LDRC added

this column to the new Study in order to highlight and, to some degree, foreshadow the significance of the Anderson decision which, as noted, mandates the use of the "clear and convincing" standard during summary judgment whenever this same substantive evidentiary standard would be used at the trial level. The column also notes whether the court used the "clear and convincing" standard during summary judgment, whether the standard was noted but not used by the court or whether it was not clear from the opinion as to the use of the standard. The eighth column comments on other significant issues present in the case including the court's reasoning as to the use of the "clear and convincing" standard at the summary judgment stage.

TABLE 1

Overall Results of Summary Judgment Motions
(Trial or Appellate Level)*

Total Defendant Wins**

(1984-86)	LDRC Study #8 108/143 (76%)
(1982-84)	LDRC Study #6 100/136 (74%)
(1980-82)	LDRC Study #2 82/110 (75%)
(1980-86)	6-Yr. Average 290/389 (75%)
Franklin Data: (1976-80)	
Trial	81/101 (80%)
Appellate	73/94 (78%)

Total Plaintiff Wins

1984-86	35/143 (24%)
1982-84	36/136 (26%)
1980-82	28/110 (25%)
1980-86	99/389 (25%)
Franklin Data: (1976-80)	
Trial	20/101 (20%)
Appellate	21/94 (22%)

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* LDRC's overall data includes the latest disposition of the summary judgment motion studied, either at the trial or appellate level.

** To remain consistent with LDRC's previous Studies, cases are considered defendant wins (1) where summary judgment was granted to the media defendants although denied to non-media defendants; and (2) where defendant only requested summary judgment on a certain issue and it was granted. On the other hand, cases are considered losses even if granted in part, if denied as to some media issues or media defendants.

TABLE 2

Disposition of Motions for Summary Judgment

Defendants' Summary Judgment Motions

	Granted	Denied
1984-86*	51/63 (81%)	12/63 (19%)
1982-84	59/74 (80%)	15/74 (20%)
1980-82	42/53 (79%)	11/53 (21%)
1980-86	151/190 (80%)	39/190 (20%)

* Includes only those 63 cases in which summary judgment motions were decided at the trial level but which were either not appealed, or in which appeals have not yet been decided. For the results of the 80 motions which have been decided on appeal, see Table 3-A below.

TABLE 3-A

Appellate Disposition of Trial Court Rulings on Defendants' Motions for Summary Judgment*

Trial Court Ruling		Appellate Disposition		
		Affirmed	Reversed and Remanded	Reversed and Dismissed
1984 - 1986				
	66 Granted	50**	17***	0
	14 Denied	3	1	6
1982 - 1984				
	50 Granted	34	12	4
	12 Denied	5	0	7
1980 - 1982				
	45 Granted	36	8	1
	12 Denied	8	0	4

* Comprises those 80 of the total 143 summary judgment motions in which appellate rulings have been issued regarding the initial grant or denial of defendants' motions for summary judgment.

** Includes 1 case in which intermediate level disposition reversing grant was subsequently reversed by highest court.

*** Includes 4 plaintiff wins whereby intermediate level disposition appealed. Of these 4, 2 courts affirmed reversal of defendant wins and 2 courts reversed affirmance of defendant wins.

TABLE 3-B

Overall Results of Summary Judgment Motions after Appellate Review

	Defendant's Motion Prevails After Appeal*	Defendant's Motion Rejected After Appeal**
1984 - 1986	56/77 (73%)	21/77 (27%)
1982-1984	41/62 (66%)	21/62 (34%)
1980-1982	40/57 (70%)	17/57 (30%)
LDRC 4-Year Average	137/196 (70%)	59/196 (30%)
Franklin Data (1976-1980)	73/94 (78%)	21/94 (22%)

* Defendant "prevails" on appeal in cases where trial court grants are affirmed or trial court denials are reversed.

** Defendant's motion is "rejected" where trial court denials are affirmed or trial court grants are reversed.

TABLE 4

Issues Found Dispositive on Motions for Summary Judgment

	Defendant's Motion Prevails	Defendant's Motion Rejected
Actual Malice	35 (73%)	14 (27%)
Substantial Truth	14 (100%)	0 (0%)
Defamatory Meaning	13 (93%)	1 (7%)
Privacy	11 (65%)	6 (35%)
Fair Report Privilege	6 (100%)	0 (0%)
Negligence	3 (30%)	7 (70%)
Gross Irresponsibility	1 (50%)	1 (50%)
Press First Amendment	1 (100%)	0 (0%)
Privilege	2 (100%)	0 (0%)
Statute of Limitations	3 (100%)	0 (0%)
Public Figure	18 (67%)	9 (33%)
Private Figure	2 (40%)	3 (60%)
Republication	1 (100%)	0 (0%)
Opinion	13 (87%)	2 (13%)

TABLE 5-A

Results of Summary Judgment Motions Involving
Public Figure/Official Plaintiffs

Defendant's Motion for Summary Judgment Prevails		Defendant's Motion for Summary Judgment Rejected	
Granted	33	Denied	8
Affirmed Grant	20	Affirmed Denial	1
Reversed Denial	3	Reversed Grant	7
	56 (78%)		16 (22%)

Total cases 72/104*

TABLE 5-B

Results of Summary Judgment Motions Involving
Non-Public-Figure/Official Plaintiffs

Granted	6	Denied	5
Affirmed Grant	9	Affirmed Denial	3
Reversed Denial	4	Reversed Grant	6
	19 (58%)		14 (42%)

Total cases 33/104*

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* There were 39 cases where the public figure status of plaintiff was not clear.

TABLE 6

Comparison of Results of Summary Judgment Motions in Federal vs. State Cases

	Defendant's Motion Prevails	Defendant's Motion Rejected
Federal		
1984-86	40/55 (73%)	15/55 (27%)
1982-84	36/50 (72%)	14/50 (28%)
1980-82	26/32 (81%)	7/32 (19%)
1980-86 average	102/137 (74%)	36/137 (26%)
State		
1984-86	68/88 (77%)	20/88 (23%)
1982-84	64/86 (74%)	22/86 (26%)
1980-82	56/77 (73%)	21/77 (27%)
1980-86 average	184/251 (74%)	63/251 (26%)

TABLE 7

Summary Judgment Motions in Federal Cases Broken Down by Circuit

	Defendant's Motion Prevails	Defendant's Motion Rejected
First Circuit	2 (67%)	1 (33%)
Second Circuit	5 (56%)	4 (44%)
Third Circuit	5 (62%)	3 (38%)
Fourth Circuit	1 (100%)	0 (0%)
Fifth Circuit	4 (67%)	2 (33%)
Sixth Circuit	2 (100%)	0 (0%)
Seventh Circuit	5 (100%)	0 (0%)
Eighth Circuit	3 (75%)	1 (25%)
Ninth Circuit	2 (50%)	2 (50%)
Tenth Circuit	4 (80%)	1 (20%)
Eleventh Circuit	3 (100%)	0 (0%)
D.C. Circuit	4 (80%)	1 (20%)

TABLE 8

Summary Judgment in State Cases Broken Down by State

	Defendant's Motion Prevails	Defendant's Motion Rejected
FL	5 (100%)	0 (0%)
NY	18 (72%)	7 (28%)
CA	6 (100%)	0 (0%)
RI	1 (100%)	0 (0%)
NH	1 (100%)	0 (0%)
TX	2 (50%)	2 (50%)
AZ	1 (100%)	0 (0%)
PA	1 (50%)	1 (50%)
OR	1 (33%)	2 (67%)
VT	1 (50%)	1 (50%)
IL	1 (33%)	2 (67%)
OH	3 (75%)	1 (25%)
CT	2 (100%)	0 (0%)
KS	1 (100%)	0 (0%)
MI	5 (83%)	1 (17%)
AL	2 (100%)	0 (0%)
MN	2 (67%)	1 (33%)
KY	2 (100%)	0 (0%)
CO	2 (100%)	0 (0%)
NJ	2 (67%)	1 (33%)
ID	1 (100%)	0 (0%)
WI	2 (100%)	0 (0%)
MA	3 (100%)	0 (0%)
WY	1 (100%)	0 (0%)
GA	2 (100%)	0 (0%)
VA	1 (100%)	0 (0%)

SUMMARY JUDGMENT CASE LIST

NAME OF CASE and Citation	RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	BASIS FOR DENIAL	DISPOSITIVE ISSUE/DEFENSE	N.9	SUMMARY JUDGMENT STANDARD EMPLOYED	USE OF CLEAR AND CONVINCING STANDARD	OTHER MATTERS	CASE STATUS
Anderson v. Cramlet 11 Med.L.Rptr. 1534 (D. Col. 1984)	granted	--	substantial truth	not cited	unfavored if state of mind issue reached	N/A	--	--
Anderson v. Cramlet 12 Med.L.Rptr. 2121 (10th Cir. 1986)	aff'd grant	--	substantial truth	--	neutral	--	substantial truth is affirmative defense to defamation action	--
Anderson v. Fisher 11 Med.L.Rptr. 1839 (Or. Ct. App. 1985)	rev'd grant	GIMF	privacy	not cited	--	N/A	--	remanded
Anderson v. Fisher Broadcasting 12 Med.L.Rptr. 1604 (Or. 1986)	aff'd grant	--	privacy	--	--	--	decided on common law rather than constitutional grounds	--
Appleby v. Daily Hampshire Gazette 11 Med.L.Rptr. 2372 (Mass. 1985)	aff'd grant	--	negligence	--	not clear	N/A	reasonable reliance on wire service does not give rise to negligence; allowing trial to take place, if meritless, dampens first amendment freedoms	
Aquilar v. Universal City Studios 12 Med.L.Rptr. 1485 (Cal. Ct. App. 1985)	aff'd grant	--	defamatory meaning	--	--	--	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis for Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Baia v. Jackson Newspapers 12 Med.L.Rptr. 1780 (Conn. Super. Ct. 1985)	granted	--	defamatory meaning	--	--	N/A	if court finds statement is not reasonably capable of defamatory meaning there is no further question for the jury and the case is ended	--
Bank of Oregon v. Ind. News 11 Med.L.Rptr. 1313 (Or. 1985)	aff'd reversal of grant	GIMF	private figure negligence	not cited	--	N/A	summary judgment inapplicable if negligence is the standard	remanded to circuit court
Barasch v. Soho Weekly News 12 Med.L.Rptr. 2050 (N.J. Super. Ct. 1986)	rev'd grant	--	private figure	--	--	--	remanded to decide whether plaintiff is limited public figure	remanded
Beech Aircraft v. National Aviation Underwriters 11 Med.L.Rptr. 1401 (D. Kan. 1984)	granted; denied as to other defendants	--	actual malice (public figure)	cited	not clear	standard at 1412 used	--	--
Benally v. Hundred Arrows Press 12 Med.L.Rptr. 1356 (D. N.M. 1985)	granted	--	privacy	--	--	--	--	--
Berryman v. Clark 12 Med.L.Rptr. 1462 (Mich. Cir. Ct. 1985)	granted	--	actual malice	--	--	not used	mere allegations of actual malice without more are not sufficient to establish a question of fact	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis for Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Bessent v. Times Herald 12 Med.L.Rptr. 1143 (Tex. Ct. App. 1985)	aff'd grant	--	actual malice	--	neutral	not clear	defendant must establish absence of malice (pre-Hepps)	--
Bessent v. Times Herald 12 Med.L.Rptr. 1622 (Tex. 1986)	rev'd affirmation of grant	--	actual malice	--	--	not clear	burden is on defendant to show absence of malice	remanded
Brafman v. Houghton 11 Med.L.Rptr. 1354 (N.Y. Sup. Ct. 1984)	granted	--	defamatory meaning	not cited	neutral	N/A	--	--
Brake and Alignment World v. Post-Newsweek 10 Med.L.Rptr. 2457 (Fla. Cir. Ct. 1984)	granted	--	truth	not cited	not clear	not an issue	--	--
Brake World v. Post-Newsweek Stations 11 Med.L.Rptr. 2183 (Fla. Dist. Ct. App. 1985)	aff'd grant	--	privilege (judicial proceeding)	--	--	N/A	--	--
Bryant v. Associated Press 11 Med.L.Rptr. 1090 (D. V.I. 1984)	granted	--	actual malice (public figure)	cited	neutral; traditional summary judgment standard applied	standard used	to grant summary judgment the court must conclude that no reasonable jury could find malice clearly and convincingly	--
Burgess v. Reformer 12 Med.L.Rptr. 1856 (Vt. 1986)	rev'd grant	--	private figure	--	favored	--	summary judgment continues to be the rule in defamation cases	remanded

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis for Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Bytner v. Capital Newspaper 12 Med.L.Rptr. 1148 (N.Y. Sup. Ct. 1985)	rev'd denial	--	actual malice	--	neutral	not clear	failure to come forth with sufficient proof to create an issue of fact as to malice requires dismissal	--
Capra v. Thoroughbred Racing 12 Med.L.Rptr. 2006 (9th Cir. 1986)	rev'd grant	--	privacy	--	--	--	reasonable jury could find press release not newsworthy	remanded
Cassady v. Marcum 11 Med.L.Rptr. 2046 (Ky. Cir. Ct. 1984)	granted	--	defamatory content	--	disfavored for actual malice (dictum)	N/A	--	--
Catalfo v. Jensen 12 Med.L.Rptr. 1867 (D. N.H. 1986)	granted	--	publication	--	--	--	--	--
Chalpin v. Amordian Press 12 Med.L.Rptr. 1422 (N.Y. Sup. Ct. 1985)	granted	--	opinion	--	--	N/A	opinion is a question of law to be determined by the court	plaintiff has not satisfied burden of proving falsity and defendants are entitled to summary judgment on this ground alone

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis for Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Cooper School of Art v. Plain Dealer 12 Med.L.Rptr. 2283 (Ohio Ct. App. 1986)	aff'd grant	--	substantial truth	--	favored	standard used	summary judgment procedures are especially appropriate in first amendment area	--
Coughlin v. Westinghouse Broadcasting 11 Med.L.Rptr. 1681 (E.D. Pa. 1985)	granted	--	actual malice	cited	neutral	not clear	courts should not form presumption favoring summary judgment in order to protect a defendant's first amendment rights	--
Coughlin v. Westinghouse Broadcasting 12 Med.L.Rptr. 1529 (3d Cir. 1985)	aff'd grant	--	actual malice	--	--	not clear	--	--
Cox Communications v. Lowe 11 Med.L.Rptr. 2314 (Ga. Ct. App. 1985)	rev'd denial	--	privacy	--	--	--	--	--
Creel v. Crown Publishers 11 Med.L.Rptr. 1541 (N.Y. Sup. Ct. 1985)	granted plaintiff's motion	--	privacy	not cited	--	--	incidental use of newsworthy photograph is protected under first amendment	--
Creel v. Crown Publishers 12 Med.L.Rptr. 1558 (N.Y. Sup. Ct. 1985)	rev'd denial	--	opinion	--	--	--	also, reversed grant of plaintiff's summary judgment motion -- see related case, supra	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Crites v. Mullins 12 Med.L.Rptr. 1111 (Tex. Ct. App. 1985)	aff'd grant	--	substantive truth	--	--	N/A	defendant's published account is substantive and therefore conditionally privileged as a matter of law	--
Dairy Stores v. Sentinel Publishing 11 Med.L.Rptr. 2056 (N.J. Super. Ct. 1985)	aff'd grant	--	actual malice	--	--	N/A	New York Times v. Sullivan standard and actual malice standard extended to product disparagement action	remanded
D'Alfonso v. A.S. Abell 11 Med.L.Rptr. 2117 (4th Cir. 1985)	aff'd grant	--	fair report privilege	--	--	N/A	defamatory language as a threshhold question to be determined by the court, at 2118	--
Dally v. Orange County 12 Med.L.Rptr. 1715 (N.Y. Sup. Ct. 1986)	rev'd denial	--	actual malice	--	neutral	standard used	--	--
Dameron v. Washington 12 Med.L.Rptr. 1508 (D.C. Cir. 1985)	aff'd grant	--	public figure	--	--	--	--	plaintiff admitted lack of malice proof
Daruw v. Kennedy & Kennedy 11 Med.L.Rptr. 1504 (Ill. App. Ct. 1984)	aff'd grant	--	defamatory meaning, libel per se	not cited	neutral	N/A	language not actionable per se	--
Davis v. Costa-Gavras 10 Med.L.Rptr. 2484 (S.D.N.Y. 1984)	granted	--	actual malice (public figure)	not cited	not clear/ neutral	standard used	threat of litigation insufficient to put defendant on notice of "probable falsity"	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Della-Donna v. Gore 12 Med.L.Rptr. 2310 (Fla. Dist. Ct. App. 1986)	aff'd grant	--	public figure	--	--	--	--	--
Deluca v. Newsday 12 Med.L.Rptr. 1525 (N.Y. Sup. Ct. 1985)	granted	--	actual malice	--	--	standard used	--	--
Dental Care Clinic v. McDonough 12 Med.L.Rptr. 2323 (Ohio Ct. App. 1986)	aff'd grant	--	substantial truth	--	--	--	court determines as a matter of law whether specific published statements are opinion	--
Dibernardo v. Tonawanda 12 Med.L.Rptr. 2100 (N.Y. App. Div. 1986)	denial aff'd (in part)	GIMF	actual malice	--	disfavored	--	malice, which turns in part on defendant's state of mind, is generally not amenable to summary judgment	--
Dobson v. WBRE-TV 12 Med.L.Rptr. 1427 (Pa. Super. Ct. 1985)	aff'd grant	--	defamatory meaning	--	--	N/A	documentary incapapable of defamatory meaning	--
Dougherty v. Capital Cities 12 Med.L.Rptr. 1952 (E.D. Mich. 1986)	granted	--	actual malice	--	neutral	--	summary judgment is neither favored nor disfavored in defamatory cases involving media defendants	--
Faloona v. Hustler 11 Med.L.Rptr. 2121 (N.D. Tex. 1985)	granted	--	privacy	--	--	N/A	court makes threshhold privacy determination as to defamation	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Fitzgerald v. Herald Co. 12 Med.L.Rptr. 2264 (N.Y. App. Div. 1985)	rev'd grant	GIMF	negligence	--	--	--	reversed grant as to certain defendants	--
Freihofer v. Hearst 12 Med.L.Rptr. 1056 (N.Y. 1985)	denied	--	privacy	--	--	N/A	--	--
Fried v. Dailey Review 11 Med.L.Rptr. 2145 (Cal. Ct. App. 1985)	aff'd grant	--	public figure	--	--	standard favored	--	--
Goodlett v. New York Magazine 11 Med.L.Rptr. 2138 (Cal. Ct. App. 1985)	aff'd grant	--	statute of limitations	--	favored	N/A	--	--
Grimes v. Swank 11 Med.L.Rptr. 2205 (Cal. 1985)	granted	--	actual malice	not cited	favored 2206	standard used	summary judgment should be granted unless plaintiff can show actual malice clearly and convincingly	--
Hall v. Rogers 11 Med.L.Rptr. 2082 (R.I. 1985)	aff'd grant	--	actual malice (public figure)	not cited	--	not clear	--	--
Hamer v. Jones 12 Med.L.Rptr. 1777 (W.D. La. 1986)	granted	--	truth	--	--	N/A	statement is substantially true if it is not a significant variation from truth	--
Harris v. Easton 11 Med.L.Rptr. 1209 (Pa. Super. Ct. 1984)	rev'd grant	GIMF	privacy	not cited	--	--	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Harris v. School Annual Publishing 11 Med.L.Rptr. 1710 (Ala. 1985)	aff'd grant	--	defamatory content	--	--	--	if communication is not reasonably capable of defamatory meaning summary judgment is proper	--
Hartnett v. CBS 12 Med.L.Rptr. 1824 (N.Y. Sup. Ct. 1986)	granted	--	fair report privilege	--	--	--	court treated action as motion to dismiss	--
Hawks v. Record Printing 11 Med.L.Rptr. 1742 (N.Y. Sup. Ct. 1985)	aff'd denial	GIMF	gross irresponsibility; reckless disregard (private figure)	--	--	--	issue of reckless disregard presents factual questions for jury	--
Heitkemper v. Fox 11 Med.L.Rptr. 2246 (Wisc. Ct. App. 1985)	aff'd grant	--	actual malice	not cited	--	standard used	--	--
Herbert v. Lando 11 Med.L.Rptr. 1233 (S.D.N.Y. 1984)	granted; denied in part	--	actual malice (public figure)	not cited	neutral	standard used	--	--
Herbert v. Lando 12 Med.L.Rptr. 1593 (2d Cir. 1986)	aff'd grant	--	actual malice	cited	neutral	standard used	Second Circuit continues to use standard in actual malice/summary judgment cases -- sees no reason to depart from New York Times v. Sullivan because determination of no malice is made at summary judgment stage and not after trial	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Herink v. Harper & Row 11 Med.L.Rptr. 1927 (S.D.N.Y. 1985)	granted	--	privacy	--	--	N/A	--	--
Holbrook v. Chase 12 Med.L.Rptr. 1732 (Idaho D.C. 1985)	granted	--	truth	--	neutral	N/A	--	--
Ingenere v. ABC 11 Med.L.Rptr. 1227 (D. Mass. 1984)	granted	--	fair report privilege	not cited	--	--	proper scope of fair report privilege is a matter of law appropriate for summary disposition	--
Jackson v. Longcope 11 Med.L.Rptr. 2282 (Mass. 1985)	aff'd grant	--	defamatory content (libel proof plaintiff)	--	--	--	libel proof plaintiff not entitled to trial in order to merely receive nominal damages	--
Jadwin v. Minneapolis Star 11 Med.L.Rptr. 1905 (Minn. 1985)	aff'd grant as to corporation, rev'd grant as to individual	--	public figure (negligence standard)	not cited	neutral at 1914	not cited	cites to LDRC n.17, 18 at 1916; corporation as plaintiff must prove actual malice by media defendant if matter is of public interest	remanded
Jadwin v. Minneapolis Star 12 Med.L.Rptr. 1621 (Minn. D.C. 1985)	granted	--	defamatory content	--	--	--	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
James v. Southwestern Newspapers 12 Med.L.Rptr. 2029 (W.D. Tex. 1986)	granted	--	substantial truth	--	--	--	statement which is substantially true cannot form basis of defamation action	--
Janklow v. Newsweek 11 Med.L.Rptr. 1995 (8th Cir. 1985)	rev'd grant	GIMF	opinion	--	--	standard used	not developed adequately to enable court to rule on issue of actual malice	remanded
Jenson v. Times Mirror 12 Med.L.Rptr. 2137 (D. Conn. 1986)	granted in part; denied in part	--	actual malice	--	disfavored	standard explicitly not used	testimony of but one witness, with some reasonable basis for credibility, is sufficient to require a jury to decide	?
Joseph v. Xerox 11 Med.L.Rptr. 1085 (D. D.C. 1984)	granted	--	actual malice (public figure)	not cited	not clear/ neutral	acknowledges split in circuits and notes plaintiff fails at either standard	plaintiff has wholly failed to raise any issue of actual malice	--
Karnell v. Campbell 12 Med.L.Rptr. 1703 (N.J. Super. Ct. 1985)	aff'd grant	--	opinion	--	--	N/A	--	--
Katz v. Newsday 11 Med.L.Rptr. 2456 (N.Y. Sup. Ct. 1985)	granted	--	opinion	--	--	N/A	court will consider publication as a whole	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Keller v. Miami Herald 11 Med.L.Rptr. 1032 (S.D. Fla. 1984)	granted	--	defamatory content	not cited	--	not an issue	pure opinion as a matter of law	--
Keller v. Miami Herald 12 Med.L.Rptr. 1561 (11th Cir. 1985)	aff'd grant	--	opinion	--	--	--	summary judgment as a a matter of law since cartoon was not capable of being interpreted as defamatory statement/fact	--
Kennedy v. Ministries, Inc. 10 Med.L.Rptr. 2459 (E.D. Pa. 1984)	denied	GIMF	defamatory meaning	not cited	neutral/ not clear	not an issue	whether communication susceptible to defamatory meaning is an issue for the jury	--
King v. Globe Newspaper 12 Med.L.Rptr. 2361 (Mass. Super. Ct. 1986)	renewed motion granted	--	actual malice	cited	neutral	standard explicitly not used	traditional procedure rules require judge to exercise extra measure of caution in granting summary judgment when state of mind is an issue	--
Koch v. Goldway 11 Med.L.Rptr. 1362 (C.D. Cal. 1984)	granted	--	opinion	not cited	neutral	N/A	whether a statement is fact or opinion is a question of law to be decided by the court	--
Korkala v. W.W. Norton 12 Med.L.Rptr. 1271 (S.D.N.Y. 1985)	granted	--	opinion	--	--	N/A	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Kurz v. Evening News Association 11 Med.L.Rptr. 2340 (Mich. Ct. App. 1985)	aff'd grant	--	actual malice	not cited	favored	not clear	mere allegation of actual malice is not enough to take case to jury	--
Lamphier v. Knight-Ridder News 12 Med.L.Rptr. 2154 (S.D. Fla. 1986)	granted on reconsideration	--	statute of limitations	--	--	--	--	--
Lauderback v. ABC 10 Med.L.Rptr. 2241 (8th Cir. 1984)	rev'd denial	--	opinion	not cited	favored	not an issue	--	rev'd and remanded
Lavin v. New York Times 11 Med.L.Rptr. 1873 (3d Cir. 1985)	aff'd grant	--	fair report privilege	not cited	neutral	N/A	proper application of fair report privilege fully vindicates defendant's first amendment rights	--
Lekutanaj v. News Group 12 Med.L.Rptr. 1782 (N.Y. Sup. Ct. 1986)	granted	--	fair report privilege (substantial truth)	--	--	N/A	--	--
Lemmer v. Arkansas Gazette 12 Med.L.Rptr. 1522 (E.D. Ark. 1985)	granted	--	actual malice (public figure)	--	neutral(?)	standard used	plaintiff failed to show clearly and convincingly that defendant acted with reckless disregard of the truth	--
Lewis v. Coursolle Broadcasting 12 Med.L.Rptr. 1641 (Wis. 1985)	aff'd grant	--	actual malice (public figure)	--	--	not clear	-	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Liberty Lobby v. Anderson 11 Med.L.Rptr. 1001 (D.C. Cir. 1984)	rev'd grant	GIMF	actual malice (public official)	cited	neutral/ not clear	explicitly rejects use of standard at summary judgment stage	imposing increased proof would change threshhold summary judgment inquiry	rev'd by Supreme Court
Little v. Washington Post 11 Med.L.Rptr. 1428 (D. D.C. 1985)	granted	--	privacy (consent)	not cited	N/A	N/A	if the evidence would compel a directed verdict or JNOV against plaintiff, then there is no GIMF	--
Lizak v. Association Indemnity Corp. 11 Med.L.Rptr. 1966 (S.D. Miss. 1985)	granted	--	libel, per se; defamatory meaning	--	--	N/A	as a matter of law, letter is not defamatory	--
Lucille Farm Products v. Dow Jones 11 Med.L.Rptr. 2240 (N.Y. Sup. Ct. 1985)	granted	--	substantial truth	--	--	N/A	court has the duty to determine as a matter of law whether publication is libellous	--
Lyman v. O'Brien 12 Med.L.Rptr. 1116 (Mich. Ct. App. 1985)	aff'd grant	--	actual malice	--	not clear	standard used	summary judgment, as a general rule, should not be granted before discovery is complete	--
Marshall v. Courier Journal 12 Med.L.Rptr. 2350 (Ky. Ct. App. 1986)	aff'd grant	--	fair report privilege	--	--	--	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Martin v. Penthouse 12 Med.L.Rptr. 2058 (Cal. Ct. App. 1986)	aff'd grant	--	privacy	--	--	--	--	--
McCammon & Assoc. v. McGraw-Hill 12 Med.L.Rptr. 1846 (Colo. Ct. App. 1986)	aff'd grant	--	privacy (libel per se)	--	--	--	libel per se must unmistakably be recognized as injurious	--
McKeon v. The Gazette 11 Med.L.Rptr. 1507 (Conn. Sup. Ct. 1984)	granted	--	privilege	not cited	neutral	N/A	--	--
Mehelas v. Arends 12 Med.L.Rptr. 1373 (Mich. Ct. App. 1985)	rev'd denial	--	actual malice (public matter)	--	neutral	standard not used	plaintiff must demonstrate facts which raise an issue of actual malice	--
Milkovich v. News Herald 11 Med.L.Rptr. 1598 (Ohio 1984)	rev'd affirmation	--	opinion	not cited	--	--	factual assertions as a matter of law	remanded
Minton v. Thomson 12 Med.L.Rptr. 1301 (Ga. 1985)	aff'd grant	--	privilege (police report)	--	--	--	--	--
Moreno v. Time 11 Med.L.Rptr. 2196 (N.Y. Sup. Ct. 1985)	granted	--	dafamatory meaning (humor)	--	--	N/A	defamatory meaning is question of law to be determined by the court	dismissed complaint
Morrell v. Forbes 11 Med.L.Rptr. 1869 (D. Mass. 1985)	granted in part; denied in part (defamation)	GIMF	negligence	not cited	--	N/A	defendant's summary judgment motion denied as to defamation; granted as to emotional distress	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Motsinger v. Kelly 11 Med.L.Rptr. 2459 (Va. Cir. Ct. 1985)	granted	--	opinion	--	--	N/A	--	--
Murray v. Bailey 11 Med.L.Rptr. 1369 (NY Sup. Ct. 1985)	granted; slander denied	--	actual malice (public figure)	--	--	standard used (failure at either standard)	--	--
Namlod, Ltd. v. Newsday 11 Med.L.Rptr. 1057 (N.Y. Sup. Ct. 1984)	granted	--	defamatory meaning (libel per se)	not cited	--	not an issue	--	--
Nash v. Keene Publishing 12 Med.L.Rptr. 1025 (N.H. 1985)	rev'd grant	GIMF	public official/, actual malice	cited	disfavored	not used	court erred in concluding that no GIMF existed; some evidence of reckless disregard; proof of awareness of falsity will require an assessment of defendant's credibility at trial	--
Nelson v. Globe 12 Med.L.Rptr. 1785 (S.D.N.Y. 1986)	granted	--	private figure (negligence)	--	--	--	gross irresponsiblity standard, information published from dependable source negates influence of irresponsibility	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Newton v. NBC 12 Med.L.Rptr. 1252 (D. Nev. 1985)	denied	--	actual malice	--	--	clear and convincing explicitly not used	until Court rules otherwise, plaintiff in libel case is not required to establish the nonexistence of IMF by clear and convincing evidence	--
Nobles v. Eastland 10 Med.L.Rptr. 2523 (Tex. Ct. App. 1984)	rev'd grant	GIMF	actual malice (public official)	not cited	not clear	not clear	Defendant must disprove plaintiff's libel suit (Hepps switches burden of proof)	rev'd and remanded for trial on merits
Novi Ambulance v. Farmington Observer 11 Med.L.Rptr. 1644 (Mich. Cir. Ct. 1985)	granted	--	actual malice (public figure)	not cited	not clear	not clear	--	--
Nussbaumer v. Time 11 Med.L.Rptr. 1398 (Ohio Ct. Com. P. 1985)	granted	--	substantial truth	not cited	not an issue	N/A	--	--
O'Brien v. Troy 12 Med.L.Rptr. 2355 (N.Y. Sup. Ct. 1986)	aff'd partial grant	--	negligence	--	--	--	issue of negligence goes to jury; actual malice not found for punitives	--
O'Donnell v. CBS 11 Med.L.Rptr. 1922 (N.D. Ill. 1985)	granted	--	actual malice (public figure)	not cited	neutral	standard used	granting defendant's motion on clear and convincing standard does not imply a special rule favoring summary judgment	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
O'Donnell v. CBS 12 Med.L.Rptr. 1697 (7th Cir. 1986)	aff'd grant	--	actual malice	--	neutral	standard not used, yet distinguished as irrelevant	under either standard plaintiff has failed to produce evidence sufficient to defeat a summary judgment motion	--
Ollman v. Evans 11 Med.L.Rptr. 1433 (D.C. Cir. 1984)	aff'd grant	--	opinion	not cited	neutral	N/A	distinction between fact and opinion is matter of law	--
Orenstein v. Bergen Record 12 Med.L.Rptr. 1408 (N.Y. Sup. Ct. 1985)	granted	--	substantial truth	--	--	N/A	viewed in context of entire article, caption was substantially true and thus writing is absolutely privileged	--
Phyfer v. Fiona Press 12 Med.L.Rptr. 2211 (N.D. Miss. 1986)	denial	--	public figure	--	--	--	trial judge, not jury decides whether plaintiff is public figure	--
Pollnow v. Poughkeepsie Newspapers 12 Med.L.Rptr. 1910 (N.Y. 1986)	aff'd grant	--	substantial truth	--	--	--	defendants failed to prove falsity	--
Price v. Viking Press 12 Med.L.Rptr. 1689 (D. Minn. 1985)	denied (granted in part)	--	actual malice	cited	not clear	--	plaintiff entitled to discovery on actual malice issue -- summary judgment cannot be granted before discovery is taken	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Pritchard v. Herald 13 Med.L.Rptr. 1239 (N.Y. Sup. Ct. 1986)	aff'd grant	--	defamatory meaning	--	--	--	--	--
Quezada v. Daily News 12 Med.L.Rptr. 2097 (N.Y. Sup. Ct. 1986)	aff'd grant	--	grossly irresponsible (*negligence*)	--	favored	--	privacy claim dismissed after denial	--
Readers Digest v. Marion County Superior Court 11 Med.L.Rptr. 1065 (Cal. 1984)	rev'd denial	--	actual malice (public official)	cited	favored because of clear and convincing standard	standard	summary judgment remains a favored remedy in defamation cases involving the issue of actual malice under N.Y. Times standard	--
Reddick v. Craig 12 Med.L.Rptr. 1664 (Colo. Ct. App. 1985)	aff'd grant	--	actual malice	--	favored	standard used	summary judgment is particularly appropriate in cases concerning actual malice	--
Redco Corp. v. CBS 11 Med.L.Rptr. 1861 (3d Cir. 1985)	aff'd grant	--	opinion	not cited	--	--	court may determine that alleged defamatory statements are true if a reasonable jury could come to only one conclusion	--
Redmond v. Sun Publishing 12 Med.L.Rptr. 2217 (Kan. 1986)	aff'd grant	--	public figure (truth)	--	--	--	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Reed v. Northwestern Publishing 11 Med.L.Rptr. 1382 (Ill. Ct. App. 1984)	rev'd grant	GIMF	actual malice (public figure)	cited	disfavored	standard not used	with N.9 in mind, we conclude that summary judgment should not have been granted here	rev'd and remanded
Rety v. Sattin 11 Med.L.Rptr. 1097 (Fla. Cir. Ct. 1984)	granted	--	actual malice (public figure)	not cited	favored	standard used	plaintiff has burden of proving malice with clear and convincing evidence	--
Roehsler v. ABC 11 Med.L.Rptr. 2444 (D. N.J. 1985)	denial	GIMF	privacy (false light)	--	neutral	N/A	defendants failed to illustrate no GIMF re accuracy or fairness of broadcast	--
Rouch v. Enquirer & News 11 Med.L.Rptr. 1758 (Mich. Ct. App. 1984)	rev'd grant	--	negligence	--	--	--	in Michigan, private figure plaintiff only need prove negligence	remanded
Rutledge v. Phoenix 12 Med.L.Rptr. 1969 (Ariz. Ct. App. 1986)	aff'd grant	--	privacy (emotional distress)	--	--	--	failure to state cause of action for emotional distress precludes claim for public disclosure of private facts	--
Schiavone Construction v. Time 12 Med.L.Rptr. 1153 (D. N.J. 1985)	denied	GIMF	actual malice (public figure)	--	neutral at 1153, perhaps not clear	not clear	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Sharon v. Time 11 Med.L.Rptr. 1153 (S.D.N.Y. 1984)	denied	GIMF	actual malice (public figure)	cited Calder	neutral	standard used	evidence would have to be sufficient to justify a conclusion that plaintiff proved actual malice clear and convincingly	--
Smith v. Copley Press 12 Med.L.Rptr. 1775 (Ill. Ct. App. 1986)	rev'd grant	GIMF	public official	--	--	N/A	plaintiff not public official	remanded
Solar Enterprises v. Polich 12 Med.L.Rptr. 1844 (Minn. Dist Ct. 1985)	granted; denied as to individual	--	actual malice (public figure)	--	favored	--	summary judgment in cases of actual malice is frequently granted	--
Spelson v. CBS 11 Med.L.Rptr. 1900 (7th Cir. 1985)	aff'd grant	--	opinion	--	--	N/A	--	--
Stephano v. News Group 11 Med.L.Rptr. 1303 (N.Y. 1984)	rev'd reversal of grant	--	privacy	not cited	--	--	--	--
Szechuan Star v. Clancy Ltd. 12 Med.L.Rptr. 2069 (N.Y. Sup. Ct. 1986)	granted	--	opinion	--	--	not clear	motion to dismiss treated as motion for summary judgment	--
Tschirgi v. Wyoming State Journal 12 Med.L.Rptr. 1182 (Wyo. 1985)	aff'd grant	--	truth	--	--	N/A	--	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Turner v. Garrow 12 Med.L.Rptr. 2314 (W.D. Tenn. 1986)	granted	--	actual malice	--	--	standard explicitly not used	finding that report is fair and accurate creates a presumption of actual malice	--
Weisburgh v. Mahady 12 Med.L.Rptr. 2293 (Vt. 1986)	aff'd grant	--	truth	--	--	--	--	--
Westmoreland v. CBS 10 Med.L.Rptr. 2417 (S.D.N.Y. 1984)	denied	GIMF	actual malice (public official)	not cited	not clear	not used	failed to follow Yiamouyiannis in Second Circuit	--
Williams v. New York Times 11 Med.L.Rptr. 1364 (Fla. Dist. Ct. App. 1984)	aff'd grant	--	first amend-ment	--	--	--	--	--
Wilson v. Birmingham Post 12 Med.L.Rptr. 1668 (Ala. 1986)	aff'd grant	--	common law malice	--	--	--	--	--
Woods v. Evansville Press 11 Med.L.Rptr. 2201 (S.D. Ind. 1985)	granted	--	actual malice (public figure)	not cited	favored	standard used	plaintiff may not rest on assertion that testimony may raise a credibility issue	--

Name of Case and Citation	Ruling on Defendant's Motion for Summary Judgment	Basis Denial	Dispositive Issue/Defense	N.9	Summary Judgment Standard Employed	Use of Clear and Convincing Standard	Other Matters	Case Status
Woods v. Evansville Press 12 Med.L.Rptr. 2179 (7th Cir. 1986)	aff'd grant	--	actual malice	--	--	standard used	if court concludes that no reasonable jury could find actual malice with convincing clarity, the defendant is entitled to judgment as a matter of law	--
Zerangue v. Tsp Newspapers 12 Med.L.Rptr. 1814 (W.D. La. 1986)	granted	--	actual malice	--	--	standard used	plaintiff must come forth with clear and convincing evidence at threshold stage of summary judgment	--
Zimmerman v. Board of Publications 11 Med.L.Rptr. 1545 (D. Colo. 1984)	granted	--	actual malice (public figure)	not cited	favored	standard used	summary judgment particularly appropriate in defamation cases	--
Zucker v. Rockland County 11 Med.L.Rptr. 2213 (N.Y. Sup. Ct. 1985)	aff'd denial	GIMF	negligence	--	--	--	gross irresponsibility under the circumstances is a question of fact to be decided by jury	

LDRC 50-STATE SURVEY 1987 -- KEY FINDINGS

The fully updated LDRC 50-State Survey 1987 (generally covering developments through December 31, 1986) was recently published. (If you have not yet ordered your copy of the 1987 Survey, complete the attached order form at the end of this Bulletin). As in the past, this year's 50-State Survey highlights trends in the law of libel, privacy and related claims. It is thus appropriate this year, as in years past, to briefly summarize the key findings of the 1987 Survey for our Bulletin readers.

However, as is noted in the 50-State Survey itself, it is important to recognize that, just as each of the state survey reports provides no more than an overview or outline of the law, the "key findings" that follow provide no more than a shorthand description of general patterns in the law. In particular, the numbers and statistics (provided below) are no more than approximations and general descriptions of basic trends. While we believe they provide generally reliable quantifications of our findings, they should not be considered or cited as precise measures of the exact state of the law in any or every jurisdiction.

Similarly, neither this summary of key findings nor the status summaries in the 1987 Survey volume should be used as a substitute for consulting the individual state reports in the Survey and, beyond them, the actual cases or statutes to which they refer.

APPELLATE STANDARD OF REVIEW

In 1984, the Supreme Court in Bose v. Consumers Union, 466 U.S. 485 (1984), reaffirmed "independent appellate review" as the appropriate standard for appellate courts reviewing cases tried under an actual malice standard.

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* LDRC gratefully acknowledges the invaluable assistance of Colleen D. Duffy, NYU School of Law, Class of 1989, in the preparation of the "Key Findings" report. Ms. Duffy was also substantially responsible for preparation of the revised tables and charts which appear in the LDRC 50-State Survey 1987, upon which this summary is largely based.

According to this year's Survey, at least 23 (up 1 from last year) jurisdictions now expressly apply the independent review standard, with another 8 (up 2 from last year) applying the arguably more expansive "de novo" review standard.

While presumably all jurisdictions will ultimately consider themselves bound to apply Bose in some fashion, presumably because an appropriate occasion to consider the issue has not arisen, according to this year's Survey ten jurisdictions continue to apply the same standard of review in defamation actions as would usually be applied in any other civil case. Two jurisdictions (Florida & Nebraska) also indicate that special standards for appellate review in libel actions will be applied, but the state reports do not define what those special standards would be. In those states specifically reported as undecided, at least two (Delaware and Tennessee) appear to apply the same standard of review as would be applied in any civil case.

State court developments in this area were also favorable this year. The Illinois Supreme Court affirmed the Third District Appellate Court's holding that verdicts finding the existence of actual malice must be reviewed de novo. New cases applying independent review post-Bose were also decided in Arizona and Connecticut. New cases that were decided in Virgin Islands, California and Colorado require de novo review of evidence of actual malice.

BROADCASTER'S SPECIAL PRIVILEGE

Previous LDRC Surveys revealed that as many as 35 jurisdictions had adopted statutes providing special privileges to broadcasters, primarily where the law required that political candidates or other individuals be given coverage or access for equal time, fairness or other purposes, without the possibility of review or control by the broadcaster. A number of these privileges apply, or also apply, to cablecasters. In 1987 no significant new developments on this issue were reported.

BURDEN OF PROOF

In 1986, the Supreme Court finally addressed the issue of appropriate burden of truth or falsity, focusing specifically on the burden issue of private-figure plaintiffs' libel actions, when it decided Philadelphia Newspapers, Inc. v. Hepps,

12 Med. L. Rptr. 1977, 106 S. Ct. 1558 (1986). The court held that, at least where a newspaper publishes speech of public concern, a private-figure plaintiff cannot recover damages without also meeting its burden or proving that the statements at issue are false.

According to the 1987 Survey, at least 36 jurisdictions imposed the burden of proof of falsity upon the plaintiff in a libel action, up 5 from last year. Nearly all of these relied upon their interpretation of constitutional requirements.

Presumably because Hepps has only just now definitively decided the burden issue, according to the 1987 Survey there were, however, 10 jurisdictions, down 1 from last year, that continued to impose at least the initial burden of proof of truth upon the defendant; 9 by judicial decision, 1 by statute. In the remaining jurisdictions it was undecided or unclear which party bore the burden of proof.

Prior to last year, the Survey had not distinguished between public- and private-figure plaintiffs with respect to burden of proof. In anticipation of the Hepps decision, LDRC requested preparers of the 1985-86 Survey, and requested the same for the 1987 Survey, to report separately on the truth/falsity burden issue regarding public plaintiffs and private plaintiffs.

Twenty states were reported in the latest Survey to have drawn a distinction between public and private plaintiffs; and 9 of these states distinguished between "private" and "public" plaintiffs by imposing the burden of proving falsity on public plaintiffs while imposing the burden of proving truth on defendants in private-plaintiff libel actions. The remaining 13 reporting jurisdictions expressly declined to transfer the burden of proof whether "private" or public plaintiff.

A new Arizona case reported in this year's Survey reaffirms the constitutional shift of burden as to truth/falsity in all cases involving matters of public concern, based on Hepps. New cases in Arkansas, Michigan, Minnesota, Nebraska, Ohio, Connecticut, Pennsylvania and South Carolina also reaffirm this position, post-Hepps. But a new Texas case suggests that the burden as to truth/falsity remains on the defendant.

With regard to the burden of proof as to the requisite degree of fault in constitutional libel actions, at least 45 jurisdictions imposed the burden of proof of fault upon the plaintiff. Nearly all of these relied upon their interpretation of constitutional

requirements. However, one jurisdiction put the initial burden on defendants and then allowed it to shift to plaintiff, and in 6 jurisdictions there is either divided authority on who bears the burden or no reported cases.

Finally, twenty-eight jurisdictions drew a distinction between "public" and "private" plaintiffs with regard to the burden of proving fault; with 3 of these reporting states also making a distinction for issues of public, as opposed to private, concern regarding "private" plaintiffs. The remaining jurisdictions reported no such distinction.

COMMON LAW PRIVILEGES

Fair report, fair comment and other common law privileges have proven to be of continuing utility to the media in its coverage of events of significant public concern, both in states where post-Sullivan constitutional principles have not been fully developed and even in those that have also broadly recognized constitutional principles.

According to the 1987 Survey, at least 46 jurisdictions recognize some form of fair report privilege, the same number as last year, 20 by statute and the remainder by common law. At least 25 jurisdictions, up 2 from last year, recognize a qualified privilege for fair comment, although only 3 do so by statute. At least 14 jurisdictions, up 2 from last year, recognize a qualified privilege under common law to report on matters of public interest or concern.

In 1987, the status of long-standing common law privileges did not dramatically change. However, there were some new developments of interest. Several new cases reported in 1987 appear to involve "non-media" privileges. Cases in Georgia and Kansas set forth the circumstances in which the fair report privilege can be defeased through proof of actual malice. In New Jersey, the State Supreme Court decision in an important new media case "re-evaluated, extended and strengthened" the common law privilege of "fair comment." New cases dealing with the fair report privilege were decided in Texas, Tennessee, Michigan, Minnesota, Missouri, Montana, New York, Ohio, Oklahoma, Illinois and Alabama.

CONSTITUTIONAL OPINION PRIVILEGE UNDER GERTZ

Despite the questions raised in 1982 by Justices White and Rehnquist in a dissent from denial of certiorari, and reiterated in his dissent to the denial of certiorari in Ollman v. Evans during the 1985 Term by Justice Rehnquist (see LDRC Bulletin No. 17 at 38), the constitutional opinion privilege has continued to gain substantial momentum and may well be the most active single issue in the libel field today. As many as 38 jurisdictions, up 3 from last year's figures, have now recognized special constitutional protection for opinion in reliance upon Gertz. At least 11 jurisdictions, including some in which Gertz is followed, also recognize common law privileges for opinion. Only 14 jurisdictions have not yet addressed the impact of Gertz on statements of opinion.

In the 1987 Survey, new cases considering the constitutional opinion privilege were reported in 20 jurisdictions; Gertz was specifically cited in 4 of these cases.

A new Third Circuit case recognizes Constitutional protection for opinion. An important new case in Washington adopts the Restatement rule for distinguishing facts from opinion. A new Tennessee case accords protection even to "unjustified" or "unreasonable" opinions. A new Ohio Supreme Court case effectively overrules a prior restrictive ruling, broadly recognizing constitutional protection for opinion based on a "totality of circumstances" test to distinguish fact from opinion. A new Massachusetts case recognizes the opinion privilege for columnists and in the context of "clearly designated" 'opinion' articles.

DAMAGES

The 1987 Survey reflects few changes from last year with respect to the state of the law governing damage awards in libel actions. Seven jurisdictions still bar punitive damage awards entirely, whether generally in all civil actions or specifically in libel actions. Thirty-two jurisdictions recognize constitutional limitations on the availability of punitive damages either under a retraction law, common law provisions, or both.

A new federal district court case in Illinois holds that punitive damages are available to public figures and that juries

may consider attorneys' fees in calculating awards. A new Louisiana appellate court case reduces a plaintiff's award substantially in following a special rule allowing courts of appeals to reduce or increase damages on the ground of abuse of discretion. Although punitive damage awards are generally not allowed in the jurisdiction, a new Michigan case holds that both "exemplary" and "punitive" damages may be awarded if defendant acted with common law malice and plaintiff demanded retraction that was not given. A new New Hampshire statute prohibits punitive damages unless otherwise authorized by statute, and no statute in the jurisdiction authorizes such damages in defamation actions.

With regard to actual damages, as many as 34 jurisdictions have recognized Gertz limitations on recoverable actual damages (same number as last year), although 3 of those restrict such Gertz benefits to public figure or media actions. Three jurisdictions still appear to presume damages.

A new Colorado case appears to allow presumed damages in a non-public figure situation. An Illinois case (reversed on appeal subsequent to publication of the 1987 Survey) holds that a jury may not presume "substantial" damages in the absence of proof of actual damages. A new Maryland case allows damages for loss of consortium even in absence of physical injury. And the Michigan report indicates that damages limitations of state "tort reform" legislation do not appear to cover libel suits.

DEFENDANTS' REMEDIES

As the cost of defending even frivolous claims is ever increasing, more and more media libel defendants have given serious consideration to pursuing their own counterclaims against libel plaintiffs for malicious prosecution, abuse of process or similar violations, or at the least have sought to secure costs and attorneys' fees against unsuccessful libel plaintiffs.

The 1987 Survey indicates that 42 jurisdictions, up 13 from last year, may provide potentially meaningful remedies against such meritless claims. (This substantial increase would appear to be largely the result of legislation enacted under the rubric of general tort reform -- see also LDRC Bulletin No. 18 at 5-6, 14-16.) As many as 12 jurisdictions have already specifically recognized such remedies in the libel context, up 2 from last year. Survey reports indicate that 9 additional jurisdictions

provide for remedies under state law, but those reports question their usefulness or meaningful availability. Only 2 jurisdictions explicitly provide no remedies to the libel defendant. But in one of the two jurisdictions, North Dakota, a new statute allows awarding of attorneys' fees if the other party's pleadings were frivolous or made in bad faith.

In Ohio, a new case suggests that defamation defendants cannot maintain actions for malicious prosecution. However, another Ohio case suggests that defamation defendants might pursue counterclaims for abuse of process with greater success. Recently enacted legislation in Vermont allows a prevailing defendant, specifically in a defamation action, to recover attorneys' fees for "frivolous" libel claims. A new Wisconsin case holds that malicious prosecution may not be asserted as a counterclaim.

DISCOVERY OF EDITORIAL MATTER AND THE EDITORIAL PROCESS

Potentially intrusive discovery into the journalistic editorial process has become a controversial issue in libel litigation, with a number of widely-publicized decisions ordering discovery of editorial matter which the media defendant had vigorously sought to protect. Of the 12 jurisdictions that had considered this discovery issue, only 3 had denied discovery (Massachusetts, Louisiana and New Jersey), with 3 permitting such discovery and 6 permitting discovery but with certain limitations.

A new Florida Supreme Court (non-defamation) decision reported in this year's Survey reversed an intermediate appellate court and held that there is a qualified privilege not to reveal a confidential source to a prosecutorial investigation. A federal case newly reported in Massachusetts' survey refuses to allow discovery of, inter alia, reporter's notes in a libel action.

INVASION OF PRIVACY

For several years now, the Survey has included detailed information covering the four traditional branches of the tort of invasion of privacy: false light; intimate facts; intrusion and misappropriation/right of publicity; and the extent to which these four torts have been recognized under common law, and by statutory and constitutional provisions in the jurisdictions surveyed. The primary focus is on the use of the privacy action in actions against the media based upon editorial content.

According to the 1987 Survey, at least 45 jurisdictions now recognize one or more of the four common law torts, up 3 from last year, with 22 of these recognizing all four branches. In at least 24 jurisdictions, some form of privacy right is provided for by statute or constitutional provision or both; explicit constitutional protection exists in 8 of these jurisdictions. Only one state (Minnesota) appears to have expressly declined to recognize the privacy tort in any form, while three others (New York, Virginia, Oklahoma) have narrowly confined recognition to a statutory cause of action for misappropriation.

The false light tort has been explicitly recognized in at least 26 jurisdictions, up one from last year. Four jurisdictions have declined to adopt false light; in 24 others the issue is unsettled, or else undeveloped in the media context. A new state court of appeals case in Arizona holds that the requirement for false light claims is "extreme and outrageous conduct." Another new state appellate court case in Illinois holds that absolute privilege applies to false light claims. Several recent intermediate appellate court decisions in Ohio interpret an earlier Ohio Supreme Court case as holding that no cause of action for false light exists in the state. Additional case law development on false light was also reported in California, Maryland, Missouri, Tennessee and Washington.

At least 27 jurisdictions provide some right of action for the unauthorized publication of private facts, with only 5 clearly declining to do so. In Nevada, the State Supreme Court recently rejected an invasion of privacy claim regarding private facts. With regard to both false light and intimate facts, the plaintiff's right to recover is limited in a few jurisdictions (12 and 11 respectively) by a requirement that actual malice be proven or that the invasion be shown to be "highly offensive." In addition, a "newsworthiness" defense is recognized in at least 9 jurisdictions, up 2 from last year. New case law development on "intimate facts" was reported in this year's Survey in California, Illinois, Maryland, North Carolina, Texas and Washington. New Ohio cases find liability under the private facts doctrine and a new statute in Wisconsin establishes "highly offensive" as the standard for an intimate facts claim.

The 1987 Survey reports that the tort of intrusion has been recognized in at least 32 jurisdictions, up 4 from last year; has not been recognized in 1 (Virginia) and remains unsettled in 21. In four of the states that recognize the tort of intrusion as a cause of action, the invasion must be highly offensive. A

new California case sets the standard of "offensiveness" for intrusion actions. A New Illinois state appellate case recognizes for the first time a cause of action for intrusion. Additional case law development on intrusion was reported in Maryland, Michigan, Tennessee and Wisconsin.

The 1987 Survey indicates that 33 jurisdictions, up 3 from last year, recognize the tort of misappropriation/right of publicity in some form, although recognition is limited in 11 jurisdictions to common law or statutory misappropriation. New cases regarding this tort were reported in New Jersey, Oregon, Texas and Virginia. In New Jersey, new cases hold that misappropriation is the only privacy action that survives death and that misappropriation is not limited to famous persons.

NEUTRAL REPORTAGE

A constitutionally-based privilege for neutral reportage has been seen by some observers as a partial solution to the chilling effect of libel actions on the media (LDRC Bulletin No. 5 at 12-13). According to the 1987 Survey, in 12 jurisdictions at least one court has specifically recognized a first amendment privilege for neutral reportage (up 3 from last year); and another 14 jurisdictions have recognized related principles that might lead to adoption of neutral reportage or yield similar protection under the common law. Only 4 jurisdictions have definitely rejected the neutral reportage privilege. In New York there is divided authority: the state court of appeals has rejected the neutral reportage privilege, but the Second Circuit has adopted it with certain limitations. The 1987 Survey reports that a federal district court in Indiana recognizes the privilege. Washington is reported to have recognized the privilege in a case cited in the 1987 Survey. New developments in the area were also reported in Alabama, Georgia, Michigan, New Jersey, Ohio and Texas.

NON-MEDIA DEFENDANTS UNDER GERTZ

The question of the availability of constitutional privileges particularly in actions brought by private-figure plaintiffs, against non-media defendants, is an issue left open by Gertz. The 1987 Survey revealed that some 27 jurisdictions applied (expressly or implicitly) Gertz rules to non-media defendants. Five jurisdictions expressly refused to apply Gertz in the non-media context. In 18 jurisdictions the issue did not appear

to have yet been considered. In 4 jurisdictions there is divided authority n the matter. New developments in the area were reported in Alaska, Arizona, Illinois, Kansas, New Jersey, Tennessee and West Virginia.

The question of the effect, if any, of the "issue of public concern" concept (Dun & Bradstreet v. Greenmoss; Philadelphia Newspapers v. Hepps) on the availability of constitutional privileges is also an open issue. Although the Supreme Court's plurality opinion held in Dun & Bradstreet that, at least in certain limited circumstances, speech that does not involve matters "of public concern" will not be covered by the constitutional protections of Gertz, a majority of the current justices of the Court appear to hold to the view that a distinction between media and non-media defendants should not be recognized. Justice O'Connor's footnote 4 in Hepps, 54 USLW at 4376 (LDRC Bulletin No. 17 at 19), suggests that the non-media issue remains open, at least with respect to the burden issue. This comment, however, was expressly controverted in the concurring opinion of Justice Brennan.

According to this year's Survey, the Greenmoss decision has already been cited on this issue in cases decided in Maine, New York, Texas and Virginia. The Court of Appeals in Arizona also applied Greenmoss in a recent libel case holding that the case involved private facts about a private individual.

A new Illinois case discusses the standard to be applied in matters of no public concern. A new Tennessee case holds that a private (non-media) figure is entitled to the same first amendment protection as a media defendant and a West Virginia case holds that where speech is of public concern a private defendant has the same first amendment protections as the press.

OTHER TORTS

In addition to defamation and invasion of privacy, the Survey covers 8 related torts which have been, or might be, asserted against the media in actions based on editorial content, intentional infliction of emotional distress, trade libel (or product disparagement), negligent infliction of emotional distress, simple negligence, prima facie tort, conspiracy, interference with contract, and product (or strict) liability.

Generally, the 1987 Survey reconfirms past years' findings that these alternative causes of action have not been asserted with

great success against media defendants. Only a few jurisdictions have had occasion to consider one or more of these torts in the media context. In many of these cases, the claims have been dismissed or otherwise rejected on the theory that a plaintiff should not be allowed to recover on a cause of action that is, in essence, for defamation, but where one or more elements of a successful defamation claim are lacking. Where courts have allowed an independent claim for one or another of these torts, the claims have generally been held to be subject to the same privileges and defenses that are available in an action for defamation.

The 1987 Survey reports some limited developments in these areas over the past year. Unsuccessful claims against the media for intentional infliction of emotional distress were brought in California, Colorado, Florida, Illinois, Michigan, Ohio, Oregon and Tennessee. However, a recent Fourth Circuit opinion in Virginia affirmed a jury's verdict of intentional infliction of emotional distress, holding that the claim is independent of any claim of libel and that Virginia's standard of liability satisfied the constitutional requirements of Sullivan, modified to fit the emotional distress tort. (N.B.: this case is now pending before the U.S. Supreme Court.)

According to this year's Survey, unsuccessful claims against the media for trade libel were brought in California, Massachusetts, and Michigan. A new trade libel case in New Jersey notes that the line between trade libel and defamation becomes increasingly blurred and holds that the same privileges should apply to both causes of action. A Texas case, however, recognizes "business disparagement" as a form of injurious falsehood if special damages can be shown. A recent media case in New Jersey awards damages to plaintiff-corporation for interference with contract.

Eleven jurisdictions, up 2 from last year, have considered the tort of intentional infliction of emotional distress/outrage in the media context. Ten jurisdictions, up 1 from last year, have considered the tort of trade libel in the media context. Two jurisdictions have considered prima facie tort, negligent infliction of emotional distress, simple negligence and product liability in the media context.

Nine jurisdictions have considered the torts of conspiracy and interference with contract in the media context.

PRIVATE FIGURE UNDER GERTZ

Since 1974, numerous lower state and federal courts have implemented the Gertz mandate to define state defamation law "fault" standards applicable to private-figure plaintiffs.

According to the 1987 Survey, 34 jurisdictions (up 1 from last year) have now adopted a standard of mere negligence. Only 2 jurisdictions have adopted a standard more demanding than simple negligence but less than actual malice. Three jurisdictions have adopted actual malice standards (including the State of New Jersey this past year). The standard is unsettled or unclear in 7 jurisdictions, with no reported cases in the remaining 8 jurisdictions.

RECOGNITION OF SHIELD PRIVILEGE IN THE LIBEL CONTEXT

According to the 1987 Survey, 40 jurisdictions recognize some form of shield privilege. However, only 16 of those jurisdictions have yet specifically recognized a claim for protection of confidential sources or information in the context of a libel or privacy action against a media defendant asserting this privilege. Three jurisdictions specifically reject the shield privilege in case law, and 5 jurisdictions have statutes still in force denying shield protection in the libel context.

According to this year's Survey, positive developments in the shield privilege area include new cases in Alaska, Florida, Michigan, Montana and New Jersey, refining and expanding the scope of shield protection in libel cases. In Florida, a new State Supreme Court decision reverses an intermediate appellate court, holding that there is a qualified privilege not to reveal a source in connection with a prosecutorial investigation. However, a new Connecticut case recognizes a qualified journalists' privilege, but holds that it must give way in a libel action. In a new Nebraska libel action, a newspaper was allowed to withhold the name of the author of a letter to the editor, with no imposition of sanction.

RETRACTION

According to the 1987 Survey, retraction laws have remained in effect in most jurisdictions. Some 31 jurisdictions still provide for retraction by statute, while another 11 jurisdictions recognize the effects of retraction under common law.

However, according to this year's Survey, in Arizona, where retraction is provided by statute, the state Supreme Court affirmed the state's Court of Appeals ruling that its "correction statute" violates the abrogation clause of the Arizona Constitution. New material outlining statutory requirements in Texas, Georgia and Indiana was reported in the 1987 Survey. New activity in this area was also reported in Florida.

STATUTES OF LIMITATIONS

According to the 1987 Survey, 28 jurisdictions provide one-year statutes of limitations for libel, 19 provide a two-year statute, and 6 a three-year statute. In 3 jurisdictions the statute for slander is shorter than for libel. In 26 jurisdictions, up 2 from last year, the single publication rule had been expressly recognized, 18 of them under common law and 8 by statute (generally the Uniform Single Publication Act). Two jurisdictions (Hawaii and Montana) expressly adhere to a multiple publication rule.

According to this year's Survey, a new Arizona case holds that privacy actions are governed by a two-year statute of limitations although libel actions have a one-year statute of limitations. New cases reported in the 1987 Survey indicate that Oregon and Virginia have adopted the single publication rule. However, cases in Washington and Ohio report that these states have not adopted the single publication rule.

SUMMARY JUDGMENT

LDRC's recent two-year update of summary judgment motions in libel actions (see, supra, pp. 1-45) indicates a continuation of the trend toward summary judgment as the favored remedy -- at least statistically -- in libel actions against the media. That Study, which examined 143 summary judgment motions made during the period 1984-1986, revealed that defendants' motions for summary judgment continued to be granted in three out of four cases overall.

LDRC's Summary Judgment Study ended with the Supreme Court's decision in Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986), which held that courts should apply ultimate substantive standards at the summary judgment stage. The Study thus portends additional and favorable changes in the way summary judgment is employed to defeat libel claims and in the degree of success of such motions in the future.

The Supreme Court in Anderson also quieted any remaining concerns regarding the ill-effects of footnote 9 of Hutchinson v. Proxmire, 443 U.S. 111, 120 (1979). The Court has now characterized that footnote as simply acknowledging the Court's "general reluctance to grant special procedural protections to defendants in libel and defamation actions in addition to the constitutional protections embodied in the substantive laws."

The new LDRC Summary Judgment Study also documents that many courts had already been applying the heightened "clear and convincing" standard while deciding motions for summary judgment in "actual malice" libel cases. The Anderson Court's definitive sanctioning of this procedure at the summary judgment stage assures a continued high level of success in such motions.

The 1987 50-State Survey also confirms a continuation of the favorable trends regarding summary judgment identified by LDRC's Summary Judgment Study. Twenty-two jurisdictions are reported in the Survey as "favoring" summary judgment motions. This year's Survey reports new cases granting summary judgment in Arizona, California, Colorado, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Minnesota, Mississippi, Washington, West Virginia, Wisconsin and the District of Columbia. Only 6 states appear to explicitly disfavor summary judgment in the libel context. Seventeen jurisdictions have continued to apply a neutral standard. The status of the summary judgment remedy remains unclear in at least 9 jurisdictions. In Florida, there is a sizable body of authority on both sides of the favoring/disfavoring issue and Michigan's approach to summary judgment is divided between a general state law disfavoring on one hand and numerous grants of summary judgments in libel actions on the other.

SURVIVABILITY AND DESCENDABILITY OF LIBEL AND PRIVACY CLAIMS

Although generally understood to be a universal "given" that the dead do not have a cause of action for libel and that such a cause of action previously asserted dies with the person allegedly defamed, at least one widely reported libel case and a minority of jurisdictions hold that a claim will survive. Also, the issue of survivability and descendability of privacy claims -- particularly right of publicity claims -- is the subject of a growing body of case law.

The LDRC 50-State Survey generally confirms the given wisdom regarding lack of survivability and descendability, but cannot

be fully definitive because the issues are open and undecided in a number of jurisdictions. Thus, regarding libel claims, at least 25 jurisdictions do not allow for survival or descent, while 5 (Michigan, New Jersey, Pennsylvania, Rhode Island, South Dakota) do appear to some extent. In another 24 jurisdictions the matter is unclear or there is no law on point, according to this year's Survey.

New developments in this area were reported in Alaska, which now has a statute providing that defamation actions do not survive. In addition, a new case reported in New Jersey holds that a libel action may not be maintained where plaintiff died prior to publication. However, the 1987 Survey reports that statutes in Oregon and Washington declare that "all causes of action or suits survive to (and against) the personal representative" of the deceased.

The situation regarding survival of privacy claims is even less definitive. In a majority of jurisdictions (41) the 1987 Survey reports no law on point, or the Survey reports do not address the issue. Arizona, Ohio and Massachusetts are the only jurisdictions indicated as expressly not recognizing survival or descent of privacy claims. Only 9 jurisdictions (California, Georgia, Kentucky, Michigan, New Jersey, New Mexico, Oklahoma, Pennsylvania, Wisconsin), were reported as recognizing survival or descent (not necessarily as to all branches of the privacy tort), with one other jurisdiction, Texas, divided on the issue. No further new developments in this area were reported this year.

1986 ANNUAL REPORT

Chairman and General Counsel's Note

If only in contrast to 1985's tumultuous events, 1986 seemed a somewhat quieter year for libel. There were even some hints from some quarters of a decrease in the pace of libel claims, although it is far too early to call this a "trend." In any event, the year was also characterized by distressing problems with libel insurance and by a continued incidence of excessive libel awards, concluding in December with the $19.3 million judgment in Newton v. NBC, the largest libel verdict ever against a news organization. On the legal front, despite fears that the Supreme Court might rewrite constitutional libel law to the media's disadvantage, during 1986 the Supreme Court handed down two very important and favorable libel opinions.

Throughout 1986 the Libel Defense Resource Center (LDRC) worked to reinforce recognition of the need for continued reform in the libel field. While LDRC certainly cannot take direct credit for the welcome victories in the Supreme Court, LDRC data was cited in several of the briefs of the parties and the amici submitted to the Court in those cases. In its efforts further to develop the bases for law reform in the libel field, in 1986 LDRC published an annotated version of its 5-year libel trends report in the Dickinson Law Review's Symposium issue on libel law developments. A major LDRC paper on libel insurance, libel defense costs and libel damage awards was presented to a conference on the "Economics of Libel" at Columbia University and the Gannett Center for Media Studies and will be published in book form this year. Finally, and perhaps most significantly, during 1986 LDRC played a pivotal role in identifying opportunities for legislative relief from libel excesses within the general tort reform movement. A stepped up LDRC tort reform effort, approved in November by the Steering Committee, will be among LDRC's most important activities in the coming year.

In the report that follows, more particulars of LDRC's program during its sixth full year of operations are presented. Once again we hope you will agree, this report reflects a year of continued accomplishment, on behalf of LDRC's more than five dozen supporting organizations, as well as on behalf of the even larger number of media organizations and media lawfirms -- and the public at large -- who also share a common interest in LDRC's purposes and activities.

Finally, we would, as always, give our thanks to those many, many individuals and organizations who gave their time and support -- moral and financial -- to LDRC in 1986. We look forward gratefully to continued support as LDRC enters 1987, its seventh year, with another ambitious agenda for positive action as outlined herein.

New York City
January 15, 1987

Harry M. Johnston, III, Chairman
Henry R. Kaufman, General Counsel

Background

The idea that ultimately led to the formation of the LDRC had its genesis in the late 1970's with the informal meetings and discussions of an "Ad Hoc Libel Group" -- several attorneys representing media organizations concerned about adverse developments in the libel field. Later, in 1979 and early 1980, proposals were entertained to formalize such activities under the aegis of a new "umbrella" organization. Finally, in November, 1980, these efforts culminated in the formation of a Steering Committee, the election of a Chairman and the appointment of a General Counsel for the new entity, the "Libel Defense Resource Center."

In its first years of operation LDRC moved rapidly from theory to reality. Substantial funding was provided by an impressive array of leading trade groups, professional organizations and media entities. An information bank and clearinghouse system were established and utilized by libel defendants and their attorneys. Various special projects and studies were formulated and undertaken. LDRC was increasingly looked to as a source of useful and authoritative information by attorneys practicing in the field as well as by journalists, academics, government officials and others with an interest in libel (and related privacy) developments.

Organization

LDRC was formally established in 1981 as an unincorporated, not-for profit tax exempt 501(c)(6) entity, governed by a Steering Committee comprised of one representative from each of LDRC's supporting organizations. Under its by-laws, LDRC's day to day operations are supervised by an Executive Committee of between 9 and 13 individuals, chosen from the larger Steering

Committee, headed by a Chairman selected by the Executive Committee, and administered by a retained General Counsel. LDRC maintains its headquarters and small staff at the offices of its General Counsel. Members of LDRC's Executive and Steering Committees include a number of the nation's most knowledgeable libel defense attorneys and representatives of most of the nation's leading media organizations.

Finances

In 1986, LDRC obtained voluntary financial contributions from 60 of its supporting organizations totalling more than $135,000. In addition, substantial revenues were also realized from interest on income; sales of LDRC materials, including the 50-State Survey, the quarterly Bulletin and brief bank digests; also, from copying and certain LDRC administrative and research fees; and from ticket sales in connection with the annual LDRC Steering Committee dinner. With these revenues, LDRC was able to fund a total budget (including all special projects and activities) of approximately $225,000 -- to pay for legal fees; fees for administrative staff; stipends for law student interns; fees for other legal research; rent for office space; printing and distribution of LDRC's quarterly Bulletins; the ongoing computerization of more than 1100 records including contributors, subscribers, press contacts, and LDRC's brief bank digests; the publication of another revised edition of the LDRC 50-State Survey; the publication of several major LDRC studies, reports and scholarly papers as summarized in this report; and all other day-to-day operations of the Center.

LDRC Steering Committee

The sixty-two organizations that comprised LDRC's Steering Committee in 1986 represent a broad spectrum of leading media groups, publishers, broadcasters, journalists, editors, authors and libel insurance carriers, some of whom may have never previously worked together in a formal way but all of whom share a common interest in responding effectively to continuing problems in the libel field. They are: American Broadcasting Companies, Inc.; American Newspaper Publishers Association; American Society of Journalists and Authors; American Society of Newspaper Editors; Associated Press Managing Editors Association; Association of American Publishers; Authors League of America; Bantam Books, Inc.; Bergen Evening Record Corporation; CBS Inc.; CMP Publications, Inc.; Capital Cities

Communications, Inc.; Cowles Media Company/Minneapolis Star and Tribune Company; Cox Enterprises, Inc.; Donald W. Reynolds Foundation; Doubleday & Company, Inc.; Dow Jones & Company; Dun & Bradstreet, Inc.; Employers Reinsurance Corporation; Forbes, Inc.; Gannett Company, Inc.; Harper & Row Publishers, Inc.; Houghton Mifflin Company; Knight-Ridder Newspapers, Inc.; Landmark Communications, Inc.; Macmillan Publishing Co., Inc.; Magazine Publishers Association; McClatchy Newspapers; McGraw-Hill, Inc.; Media/Professional Insurance, Inc.; National Association of Broadcasters; National Broadcasting Company, Inc.; National Newspaper Association; Newhouse Newspapers; News America Publishing, Inc.; Penthouse International, Ltd.; Philadelphia Newspapers, Inc.; Playboy Enterprises, Inc.; Radio-Television News Directors Association; Simon & Schuster/Gulf & Western Industries, Inc.; Society of Professional Journalists, Sigma Delta Chi; St. Martin's Press; St. Petersburg Times; Student Press Law Center; Texas Monthly, Inc.; The Boston Globe; The Copley Press, Inc.; The Dallas Morning News; The Hearst Corporation; The Journal-Gazette; The New York Times Foundation; The New Yorker; The Reader's Digest Association, Inc.; The Reporters Committee for Freedom of the Press; The Scripps-Howard Foundation; The Trenton Times; The Washington Post Company; Time Incorporated; Times Mirror Company; Tribune Company; Warner Communications, Inc.; and Westinghouse Broadcasting and Cable, Inc.

LDRC 50-State Survey

In 1986 LDRC once again published and marketed an updated volume of its annual 50-State Survey of current developments in media libel and invasion of privacy law. The 850-plus page 1985-86 Survey, which included a special report on Supreme Court developments by Professor Marc Franklin of the Stanford Law School, was published in May, 1986. This latest LDRC legal Survey was published on a somewhat different schedule than that of previous volumes, with information updated through the end of the prior calendar year and with the edition dated in the year of its intended use. In 1987, LDRC again plans to publish a revised and fully updated edition of the 50-State Survey. This new volume is intended for use throughout 1987 and will contain state-by-state information current through December 31, 1986. A Foreword to the 1987 Survey, being prepared for LDRC by the Coudert Brothers lawfirm, will survey international libel law developments and review international libel counselling issues.

LDRC Studies, Reports and Scholarly Publications

In working accurately to understand and to describe the realities of libel law and litigation in the United States and in order to reinforce recognition of the need for continued reform in the libel field, during 1986 LDRC published several major studies, reports and scholarly papers assessing libel developments from various points of view.

(i) Public Official Libel Actions Study

In March, LDRC published its special Study #7, reproduced in LDRC Bulletin No. 16, on "Public Official Libel Actions." Spurred by the exceptional interest of the public in the Westmoreland and Sharon libel actions, LDRC undertook to ascertain the current state of public official libel actions. The results of 267 such actions, against both media and nonmedia defendants, during two comparison periods, 1976-79 and 1979-84, were studied. LDRC found that, overall, reported actions of this kind had increased 68% between the two periods, and that such actions against the media increased by 78%. Indeed, the number of reported media libel cases in 1984, the last year studied, was 150% higher than the annual average of reported cases in the late 1970's. While many public official libel actions during both periods involved lower-level public personnel, more recent cases were brought by highly-placed officials and more by federal and foreign officials and candidates for public office. The success of public official libel plaintiffs rose marginally, from 4% in the period 1976-79 to 7% in 1980-84, but overall LDRC found that the success rate of public official libel actions remained but a tiny fraction of all cases commenced.

(ii) Dickinson Law Review Article

Also in the Spring of 1986, an expanded and annotated version of LDRC's 5-year libel trends report, "Libel 1980-85: Promises and Realities," was published in the Dickinson Law Review's "Symposium" issue on libel law developments, 90 Dickinson L. Rev. 545 (1986). The thesis of that report, premised on previous LDRC studies and empirical data, was that the more than twenty-year-old promise of constitutional protection from the undue chilling effects of libel claims "remains decidedly unfulfilled."

(iii) Gannett Center Study and Paper

In June, LDRC was invited to present a paper on the Economics of Libel for a Conference co-sponsored by the Gannett Center for Media Studies and the Columbia University Center for Telecommunications and Information Studies, including data on insurance premiums, defense costs and damage awards. An annotated version of that paper, entitled "Trends in Damage Awards, Insurance Premiums and the Cost of Media Libel Litigation," will be published in 1987 by the Gannett Center as part of a book on the proceedings of that Conference.

(iv) Historical Damage Trends

Also during the Summer, an expanded report on "Historical Trends in Media Libel Damage Awards," comparing current experience to the decades before and after New York Times v. Sullivan, was published in LDRC Bulletin No. 17, based on data prepared for the Gannett Conference. LDRC's report found that, in contrast to current trends, the average media libel award during the decade prior to 1964, excluding the distorting effects of the single million-dollar award during that entire decade, was under $50,000. The total of damages awarded in the thirty-seven cases in which libel judgments were entered during that period was less than a single average libel award during the 1980's. While adjusting for inflation accounts for some portion of this massive disparity, even in constant dollars the report found that today's media libel damage awards remain between 400% and 500% higher than the period 1954-1964. When the same analysis was performed for the period 1964-1977, LDRC found that the average media libel award during that period was $180,000 or, excluding the two awards (out of 73) that were in excess of $1 million, the average dropped to $134,000. Adjusting these figures for inflation still yielded average awards somewhere between 200% and 400% lower than the current experience.

(v) Fleming Appendices

In August, LDRC prepared two appendices for an amicus curiae brief submitted to the Supreme Court on behalf of Capital Cities/ABC and The Philadelphia Inquirer in Fleming v. Moore, a nonmedia case, in which the Supreme Court was urged on the basis of LDRC data and the data in Professor Franklin's Foreword to the 1985-86 50-State Survey, to grant more certiorari petitions challenging final judgments imposing excessive and unsupportable damage awards against libel defendants. One of these appendices

summarized recent trends in libel damage awards against the media; the second listed thirty recent million-dollar awards in media libel, privacy and related cases and their disposition.

(vi) Tort Reform Memorandum

In September, a memorandum was prepared for the LDRC Executive Committee summarizing recent developments in the area of general tort law and insurance reform and assessing how such reforms might be applied to libel and other related tort claims against the media (as well as against non-media defendants). LDRC found that in their 1986 legislative sessions more than 30 states had actually enacted tort or insurance reform legislation and that as many as 15 of the states passed reforms potentially covering libel and the media. Nine states had passed legislation to limit punitive damages or their availability and all nine laws appeared broad enough to apply to libel. A total of thirteen states had enacted caps of one kind or another on noneconomic damages. The applicability to libel of such caps is somewhat more difficult to discern than the limitations on punitive damages. Nonetheless, a strong argument can be made that libel is covered by most, if not all, of these bills. Finally, as many as twelve states had passed bills imposing penalties for frivolous actions. All of these reforms were defined broadly enough to cover frivolous libel/privacy claims against the media. A revised version of this tort reform memorandum is published in LDRC Bulletin No. 18.

(vii) Time/ATRA Report

Finally, at the end of 1986, LDRC worked with Time Incorporated on the development of a paper enumerating the justifications for including libel within tort reform legislation. That paper was scheduled to be presented to the American Tort Reform Association early in 1987.

LDRC Bulletin

In 1986 one of the primary means of disseminating information about LDRC's resources and materials continued to be the LDRC Bulletin. Published quarterly, the Bulletin reports on LDRC special studies and other activities, provides news of recent libel and privacy developments and lists available materials which can be ordered from LDRC. The LDRC Bulletin is available by subscription ($75 per year in 1986, same price in 1987). Income from Bulletin sales is used to support LDRC's

general budget. When combined with sales of back issues, special studies excerpted from the Bulletins, indexes and embossed binders, LDRC generated approximately $20,000 in revenues during 1986 to support LDRC programs and hopes to generate as much as $22,500 to support programs and activities in 1987. In addition to republishing many of the studies and reports discussed above, during 1986 the LDRC Bulletin covered the following topics, among others: comprehensive listings of Supreme Court actions and developments; an analysis of the libel and privacy rulings of Supreme Court nominees Rehnquist and Scalia (finding that none of their 26 combined rulings fully favored the media position); ongoing litigation updates, including LDRC's systematic tracking of trial results, damages and appeals; LDRC's annual summary of the "key findings" of the 50-State Survey; the texts of important speeches at the LDRC annual dinner; current news items of interest; and ongoing bibliographic listings of briefs available at LDRC, organized by case name and by legal issue, as well as listings of law review articles and other publications.

Information Services

(i) LDRC/CBS Computer Brief Bank

In 1986 LDRC continued to maintain its bank, originally developed in cooperation with the law department of CBS Inc., of substantive and bibliographic information covering some 75 key legal issues in 125 cases and encompassing some 250 legal points made in the digested briefs. Full digests and photocopies of any brief in the LDRC/CBS Brief Bank can be ordered through LDRC. As of 1985, LDRC had discontinued its full brief digesting service due to limited demand. However, in 1986 it began to offer more detailed listings of issues discussed in briefs on file at LRDC. These listings will periodically be published in the LDRC Bulletin and copies of the briefs will be available on order through LDRC.

(ii) LDRC Case Files

In 1986 LDRC continued to maintain, update and expand its state by state files of pending libel cases. When received by LDRC, often in advance of publication, case opinions or litigation documents are indexed by case name, state and legal issues(s) presented. Requests for further information, briefs and other materials are then made regarding important cases and issues and periodic follow-ups are also scheduled. As of the

end of 1986, LDRC had developed files of such opinions, briefs and other litigation materials in nearly 700 cases pending in all U.S. jurisdictions.

(iii) Special Issue Files

In 1986 LDRC continued to maintain its active special issue files covering well over 100 key legal issues, closely paralleling libel and invasion of privacy issues identified in the Media Law Reporter's classification guide. These files collect materials, in addition to those contained in the active LDRC case files or general archival materials, on high priority issues such as media vs. non-media standards; absolute privilege; libel claims involving reviews and criticism; libel actions against non-media defendants; appellate review; discovery; burden of proof; motions to dismiss; punitive damages; reporter's privilege in libel actions; state Gertz standards; statute of limitations; summary judgment; counterclaims for malicious prosecution; definition of actual malice and public figure; right of publicity; related editorial torts; bookseller, printer and distributor liability; invasion of privacy; venue in libel actions; neutral reportage; chilling effect; insurance and insurance law reform; and tort law reform; among many other issues.

(iv) Other Special Collections

In 1986 LDRC also continued to add to its special collections of law review articles and separate files for jury instructions and other litigation forms. Selected jury instructions are now filed at LDRC according to state and indexed according to key legal issues as organized in the LDRC Jury Instructions Manual (available to defense counsel only). During 1986 LDRC also continued to expand its files on expert witnesses who have testified, or who are willing to testify, for the defendant or the plaintiff in libel actions. In 1984 LDRC had contacted expert witnesses in 40 states by means of a detailed questionnaire. In 1986, LDRC maintained and expanded its listing now of more than 125 expert witnesses in its files. This list, and the background materials available in the individual expert witness files, are available to defense counsel only. The list is organized alphabetically and includes the following information, when available: name; affiliation; residence; plaintiff or defense witness; cases in which the expert has appeared; issues on which the expert has testified or is qualified to testify; and available documents regarding the expert or the expert's prior testimony.

(v) Responding to Inquiries

In addition to providing general information through mass publication to LDRC's entire constituency, or providing general access to LDRC's collections of materials and files, in 1986 LDRC counsel, law student interns and staff continued to be available to answer specific inquiries from libel defendants or their counsel and other interested organizations or individuals who contacted LDRC, by telephone or by mail, for special assistance. Such assistance, which is provided either without fee or with the imposition of a modest administrative fee ($7.50 per request in 1986), ranged from simply alerting the caller to recent developments or legal opinions and providing available briefs or materials pertinent to the particular inquiry, to more extensive legal research or investigations initiated by LDRC counsel or staff, at times utilizing LDRC's network of knowledgeable organizations, attorneys and other individuals. Such inquiries -- more than 200 in 1986 -- covered the gamut of issues and problems that can be presented in libel counselling or libel litigation. Inquiries not involving specific litigations or legal issues, primarily from scholars or researchers interested in general developments in the libel field, also demanded the time and attention of LDRC staff. Finally, a number of callers have sought assistance in securing knowledgeable libel counsel or in alerting potential amici curiae to issues and appeals of interest to them.

Press Coverage

In 1986 LDRC again enjoyed wide coverage in the general and trade press. Of particular significance was an Associated Press wire service story, which was picked up widely throughout the country, whose lead sentence reported LDRC's finding that "libel awards are often larger and are growing faster than judgments in medical malpractice and product liability cases," and quoting LDRC's conclusion that the media "have an equal claim, if not a more compelling claim for [tort reform] relief" than doctors and manufacturers. In addition to the major AP story, requests for information from several dozen other news organizations were responded to in 1986. LDRC was mentioned, or LDRC data was specifically cited, in the following general interest publications, among many others: The New York Times; The Los Angeles Times; The Journal of Commerce; the Chicago Daily News Bulletin; Time Magazine; People Magazine and the Casper Wyoming Star-Tribune. In addition, LDRC continued to receive in 1986 significant coverage in the trade press. All of LDRC's press

releases, studies and publications were covered in the Media Law Reporter, the key publication reaching LDRC's legal constituency. LDRC activities were also frequently noted in 1986 in most of the major media trade publications, including Editor & Publisher, Presstime, Publishers Weekly, Knowledge Industries Publications, Broadcasting and Folio. Other specialized coverage was secured in The New York Law Journal; the National Law Journal; The American Bar Association Journal; The Student Lawyer (American Bar Association); Business Insurance; Nelson and Teeter, Law of Mass Communications (The Foundation Press 1986); and Smolla, Suing the Press.

Annual Steering Committee Dinner

LDRC's annual Steering Committee dinner, traditionally scheduled to coincide with the PLI Communications Law Seminar, was held again this year on November 12. The theme for this year's dinner program was "The Tort Reform Movement and its Potential Impact on Libel and the Media." Speakers at the dinner, attended by more than 200 media attorneys and executives, were former Chief Judge of the New York Court of Appeals, Lawrence H. Cooke and Newton N. Minow, former Chairman of the Federal Communications Commission, partner in the Sidley & Austin lawfirm (Chicago) and outside general counsel to the American Medical Association. Judge Cooke, in his opening and introductory remarks, addressed the media's as well as his own concerns over the dramatic rise in libel damage awards and defense costs, and the dramatic increase in the cost of libel insurance over the past several years. Because punitive damage awards in libel actions have skyrocketed at "a far higher percentage than in product liability and medical malpractice cases" with "juries ... awarding a growing succession of million and multi-million dollar damage awards," Judge Cooke charged that "punitive damages ... have no place in the law of libel," and called the present climate of libel law "dispiriting." Newton Minow, who has long been a leader in the tort reform movement, spoke in his keynote speech of the need for media involvement in tort reform. "[I]t is most unlikely that First Amendment litigation in general, or the now and future Supreme Court in particular, can or will provide the limits on libel suits which ... are necessary." Mr. Minow outlined elements necessary for solving the liability crisis, including use of the legislative process, establishment of broad based coalitions to help develop and support legislative reforms, and development of alternative methods for dispute resolution. The full texts of Judge Cooke's and Newton Minow's remarks are published in LDRC Bulletin No. 18.

LDRC Tort Reform Project

In November, 1986, LDRC's Steering Committee authorized LDRC staff to work actively on the tort reform issue in 1987, in particular pursuing the key reforms identified in its September, 1986 tort reform memorandum -- see above. LDRC's tort reform efforts would seek to assure that any tort reform legislation that is passed be drafted so as to apply to libel as well as all other torts; or, to put it in the negative, to assure that any reform legislation not exclude libel from its coverage. LDRC's efforts would not be intended to advocate special media-only interests and would not distinguish between media and non-media libel defendants for these purposes. In its tort reform activities LDRC will work primarily through existing organizations. At the state and local levels, no actions will be taken without prior consultation with the relevant press or broadcaster associations or related organizations. At the national level LDRC will work closely with groups such as the American Tort Reform Association. LDRC will develop written materials and data supportive of local reform efforts and will make this information available to all interested parties.

1987 Programs and Projects

In 1987, in addition to continuing its many current activities as outlined above, LDRC hopes to embark upon the following major projects among others: continuing work on the LDRC Jury Attitudes Research Project; reporting on international libel issues (in connection with the 50-State Survey); disseminating the Symposium videotapes to media defense counsel not present at the Libel Trial Symposium and to law schools for educational purposes; developing an educational conference in 1987 featuring in-depth training sessions for media defense counsel; continuing the LDRC Tort Reform project; a possible federal "Congressional Briefing" in conjunction with the American Newspaper Publishers Association; law review publication of a justification paper for libel tort reform; updating LDRC's previous summary judgment studies to bring them up to Liberty Lobby v. Anderson for later comparison with summary judgment rulings post-Liberty Lobby; and a followup survey on libel insurance costs and availability. Other projects in 1987 may include updates of LDRC's previous motions to dismiss and independent appellate review studies as well as a new two-year update of LDRC's previous trials, damages and appeals studies.

1987 Budget

As LDRC entered its seventh full year of operations, the Steering Committee approved a budget for 1987 at its annual meeting on November 12. In 1986 LDRC experienced a modest budget surplus for the second year in a row and in 1987 the budget has been set conservatively at the level of 1986 revenues. During 1987, funding of LDRC's budget will continue to be based upon a combination of voluntary contributions from supporting organizations and self-generated revenues. LDRC's self-reliance approached 50% in 1986 based upon sales of LDRC publications and information, special grants and proceeds from the Annual Steering Committee dinner. In 1987, LDRC's self-sufficiency should remain at approximately the same level. Despite this continued partial self-reliance, voluntary contributions will remain a vitally-important source of LDRC's revenues in 1987. In 1986, for the first time, voluntary contributions did not increase substantially over such contributions during the prior year. As a result, during 1987 LDRC will be seeking to expand its base of financial support, and will be asking current supporters -- particularly those whose contributions have been lower than the LDRC average (more than $2750 in 1986) or whose contributions have not increased in recent years -- to consider increasing their level of support. Several of LDRC's supporters have already renewed their contributions for 1987, with the average of these early donations at an impressive $7500 per contribution. In addition to the basic and 50-State Survey budgets, separate budgets will continue to be established for any special LDRC projects. Each of these separate budgets would either be self-funding or specially-funded. Each special project will be subject to specific review and approval by the Executive Comittee under the policy guidelines approved by the Steering Committee in November 1983. Specially-funded projects in 1987 are expected to include publication of one or two additional Jury Attitudes Studies (already funded from grants generated by the 1985 *Symposium* co-sponsored by ANPA and NAB) and the distribution of LDRC's Symposium videotapes for sale or rental to defense counsel only. In addition, while LDRC's tort reform project has been funded up to $15,000 within the general budget, additional special funding may be required in order effectively to pursue this effort throughout the year. Finally, funding for any educational conference in 1987 will be generated out of fees or other revenues from such conference.