



BULLETIN

No. 4 (Part 2)
(October 15, 1982)

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QUESTIONNAIRE/ORDER FORM

SPECIAL NOTE --

On October 12, 1982 the Supreme Court denied certiorari in Miskovsky v. Oklahoma Publishing Co., 7 Med.L.Rptr. 2607 (Okla. 1982) (see LDRC Bulletin No. 4 (Part 1) at 15; Bulletin No. 3 at 29-30). However, Justice Rehnquist dissented from the denial of cert. (joined by Justice White). Rehnquist's brief opinion questioned the Oklahoma Supreme Court's reliance on Gertz v. Robert Welch, Inc. for the proposition that statements of opinion cannot be actionable under the First Amendment. Rehnquist contended that Gertz has not "pre-empted" state common law regarding the issue of opinion:

"I am confident that this Court did not intend to wipe out this 'rich and complex history' [of the common law's efforts to deal with the question of opinion] with the two sentences of dicta in Gertz quoted above [418 U.S. 323, 340 (1974)]."

A complete report of Supreme Court actions on libel cases pending at the beginning of its 1983 Term will appear in LDRC Bulletin No. 5.

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LDRC Bulletin No. 4
(Part 2)

EDITOR'S NOTE

This is Part 2 of LDRC Bulletin No. 4. Part 1 featured LDRC's study of the results of fifty-four libel (or privacy) trials. The generally unfavorable results of those trials, from the media point of view, reconfirmed the fundamental importance of pretrial motion practice in libel litigation. LDRC has now completed its major study of pretrial motions for summary judgment in recent libel (and privacy) cases. Part 2 reports on the results of that study, documenting the fact that summary judgment remains the rule rather than the exception in libel cases.

We hope that readers of the LDRC Bulletin will find this study, and the earlier study on trials, damages and appeals, informative and useful. As to both studies, we urge our readers to advise us of any errors in our reporting of the many cases we have collected and studied, and also to advise us of any pertinent cases we may have overlooked. As always, our request for information also extends to future developments that might affect or update our data and analysis, on these or other issues of relevance to the LDRC constituency. Significant updates and studies will be published periodically by LDRC.

Henry R. Kaufman
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LDRC Study

MOTIONS FOR SUMMARY JUDGMENT -- DESPITE
HUTCHINSON, SUMMARY JUDGMENT CONTINUES
TO BE THE RULE RATHER THAN THE EXCEPTION
IN LIBEL LITIGATION

SUMMARY OF FINDINGS. LDRC studied 110 summary judgment motions (almost all involving media defendants) made and decided after Hutchinson v. Proxmire, during the period 1980-1982. (See detailed note on LDRC data sample, infra.) The results of the LDRC study confirm that summary judgment continues to be the rule rather than the exception in libel litigation. This is so despite fears that Hutchinson might significantly reduce defendants' success in securing summary relief. The LDRC findings take on even greater significance when considered against the background of a prior LDRC study which revealed disturbingly low media defendant success rates when summary judgment is denied and cases must go to trial.

- . Overall, the LDRC data reveals that defendants' summary judgment motions prevailed in 3 out of every 4 cases in the two years since Hutchinson.
- . This 75% success rate is down, but only a few percentage points, from the 78-80% shown in an earlier study covering the four-year period prior to Hutchinson.
- . The success rate of summary judgment motions after appeal is also down somewhat, in contrast to the 78% success rate from the prior period, but still remains at 7 out of 10 cases.
- . Most courts that considered the effect of Hutchinson tended to adopt a "neutral" standard for deciding summary judgment motions, neither favoring nor disfavoring such motions in libel cases.
- . Nonetheless, despite Hutchinson and despite this adoption of "neutral" summary judgment standards, in the LDRC study more than 8 out of 10 defendants' summary judgment motions prevailed when the dispositive issue was actual malice, the very issue commented upon by Hutchinson.
- . Overall, motions for summary judgment in the LDRC study prevailed in 74% of cases involving public figure or public official plaintiffs and in 75% of cases involving private figure plaintiffs.

- . Motions for summary judgment prevailed somewhat more frequently in federal cases (81%) than in state (73%), despite the fact that federal judges cite Hutchinson v. Proxmire almost three times as often (30%) as do state judges (12%).
- . In the cases studied by LDRC issues other than actual malice found dispositive on successful defense motions for summary judgment included: opinion privilege (79% success rate); substantial truth (100%); group libel (100%); statute of limitations (100%); absolute privilege (100%).
- . Dispositive issues with lower success rates included: truth (67%); gross irresponsibility (50%); negligence (33%); and fiction (0%).

BACKGROUND. Under Rule 56(c) of the Federal Rules of Civil Procedure summary judgment is available to a party, but only when the submissions "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Many state summary judgment standards are couched in similar or identical language. Other state rules are even more grudging in their approach. As a result, in most areas of the law summary judgment is difficult to obtain. In defamation cases, however, at least since New York Times v. Sullivan and until quite recently, summary judgment was far easier to obtain. As one judge put it in a memorable and influential passage: "[B]ecause of the importance of free speech, summary judgment is the 'rule', and not the exception, in defamation cases." Guitar v. Westinghouse Elec. Corp., 396 F. Supp. 1042 (S.D.N.Y. 1975), aff'd, 538 F.2d 309 (2d Cir. 1976). And, at least until Justice Burger's fateful footnote in Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9. (1979), Judge Carter's description probably accurately reflected both the developing legal standards and the empirical results of summary judgment motions in defamation actions, at least those defamation actions governed by constitutionally-defined standards. In fact, a special constitutionally-based rule was developing and being adopted by more and more courts, state and federal, to the effect that summary judgment should be a preferred remedy, at least in constitutional libel cases, because the very pendency of defamation litigation can have a chilling effect on free expression. This special First Amendment summary judgment rule seemed to some extent to be called into question, however, in Hutchinson footnote 9. As a result, some feared that summary judgment might no longer be preferred if available at all, or at least that it would not be available as frequently, as it had been in such defamation actions in the past.

THE LDRC SUMMARY JUDGMENT STUDY. It was in this context that LDRC undertook to study the results of summary judgment motions in defamation actions since Hutchinson v. Proxmire. All summary judgment decisions reported in the Media Law Reporter from October 1, 1980 through August 24, 1982 were included, along with the results of any unreported decisions during the same period available in LDRC's case files. The period between June 26, 1979 when Hutchinson was decided and October 1, 1980 was excluded because cases from that prior period had already been included in the earlier Franklin study. (See below). The results of the LDRC study, which included 110 cases, almost all media libel actions, are reflected in the tables and summary judgment case list at the end of this report. The key findings have been summarized above. What follows are brief additional comments on certain of the findings.

STATE OF MIND/ACTUAL MALICE AND HUTCHINSON FOOTNOTE 9. The availability of summary judgment regarding state of mind issues has always been a contentious matter, not simply in defamation actions but in civil litigation generally. Prior to Hutchinson other courts occasionally adopted the view that summary judgment is inappropriate in public figure or public official defamation actions because the constitutional actual malice standard presents a state of mind issue that should be left to the jury to decide. See, e.g., Gleichenhaus v. Carlyle, 5 Med.L.Rptr. 1602 (Kan.1979); Goldwater v. Ginzburg, 261 F.Supp.784,788 (S.D.N.Y.1966), aff'd, 414 F.2d 324 (2d Cir. 1969), cert. denied, 396 U.S. 1049 (1970). However, this view was rarely articulated and would probably have continued to be of little consequence had it not been for Justice Burger's unnecessary dictum in footnote 9 of Hutchinson alluding to that minority view. Expressing "some doubt" as to the "so-called 'rule'" that defendants' motions for summary judgment are generally granted in constitutional defamation cases, Justice Burger restated the view disfavoring summary judgment in such cases: "The proof of 'actual malice' calls a defendant's state of mind into question...and does not readily lend itself to summary disposition...."

No one can deny that footnote 9 has had an impact. But the adverse effect has not been nearly as great as was initially feared. As the LDRC Study demonstrates, many courts have not even cited Hutchinson footnote 9 in considering defendants' motions for summary judgment. The footnote was cited in less than 20 of the 110 cases studied, even though the disposition of as many as 66 of the 110 cases turned in whole or in part upon the issue of actual malice. (Compare Table 4(1) with Table 6n.(1), infra.) Of course, several significant cases have taken footnote 9 seriously and a number of leading courts have responded to Hutchinson by adopting a "neutral" standard, neither favoring nor disfavoring summary judgment in constitutional defamation actions. To this extent at least, Hutchinson has had an adverse, although by no means universally-accepted impact, on the further development of the doctrine of "preferred" summary judgment treatment for defamation cases in deference to First Amendment principles. This trend can be expected to continue. Nonetheless, the empirical

bottom line is that, despite Hutchinson, summary judgment is still being granted in the great majority of cases raising the issue of actual malice -- precisely the issue that footnote 9 suggested might be inappropriate for summary disposition. Thus, as demonstrated in Table 4, in 55/66 (83%) of the motions studied in which the issue of actual malice appeared dispositive, summary judgment was granted in favor of the defendant. Similarly, as is noted in Table 5-A, in 46/62 (74%) of the motions studied in cases involving public figure or public official plaintiffs, summary judgment was granted. In many of these cases, after discovery, there was simply no evidence, or insufficient evidence, to establish the existence of actual malice. In many other cases, the additional constitutionally-based requirement that actual malice must be established with "convincing clarity," or by "clear and convincing" evidence appeared to play a significant role in the favorable outcome of the motion.* But regardless of the analytical route taken the fact remains, as documented by the LDRC data, that summary judgment is still very widely granted in defamation cases presenting state of mind issues for disposition.

PUBLIC FIGURE VS. PRIVATE FIGURE ACTIONS. Another phenomenon documented by the LDRC Study is that defense success rates on summary judgment in private figure libel actions is just as high as in public figure cases directly implicating constitutional standards. Thus, while it is true that the LDRC data on motions where mere negligence is the dispositive issue perhaps expectably shows a low success rate (33% -- see Table 4(4)), overall summary judgments were granted in 75% of the private actions studied (36/48 -- see Table 5-B). Indeed, this is fractionally higher than the public figure success rates. This data demonstrates that there is a range of available preliminary legal defenses, primarily common law issues and privileges but also constitutional, that are found to support the grant of defense motions for summary judgment. Others include most prominently opinion (79% success rate); substantial truth (100%); group libel (100%); statute of limitations (100%) and absolute privilege (100%)**. Dispositive issues with lower success rates included truth (67%); gross irresponsibility (50%); negligence (33%) and fiction (0%).**.

*As many as 31 of the LDRC cases in which actual malice was the dispositive issue adverted to, or specifically relied upon, the requirement that actual malice be proved with "convincing clarity," or by "clear and convincing" evidence, in granting the motion for summary judgment. Indeed, more courts mentioned this requirement than cited or discussed Hutchinson footnote 9. See Table 6 n.(1), infra.

**It should be noted that as to many of these additional issues the number of cases studied is quite small. Accordingly, small differences in these success rates are perhaps less significant than for the larger samplings.

FEDERAL VS. STATE MOTIONS. Another indication that Hutchinson has not had as significant an impact as might have been feared is the LDRC data documenting high success rates in federal cases -- higher in fact (81%) than in state cases (73%). As might be expected, federal courts did cite and consider the effects of Hutchinson more often than state judges -- almost three times more often. (See Table 6, n.(1).) Nonetheless, federal judges continued to grant summary judgments in more than 8 out of 10 cases. State courts granted summary judgment at a lower rate, but still just fractionally less than the overall rate of 3 out of 4 cases. In any event, this lower state court rate is probably far more significantly influenced by traditional rules in some states strongly disfavoring the summary judgment mechanism in any civil action rather than by any new approach based upon footnoted dictum in Hutchinson.

THE FRANKLIN DATA. Assessing the relative significance of the LDRC data is made possible because a generally comparable body of data exists regarding the period prior to that studied by LDRC. Thus, in Franklin, "Suing the Media for Libel: A Litigation Study," 1981 ABF Research J.795(1981), there is data for the period 1976-80 regarding the results of summary judgment motions. These data are presented in Tables 1-A, 1-B, 3-A and 3-B, infra. In general, the LDRC findings are consistent with the findings of the Franklin study, although they document slightly lower success rates. Also the Franklin trial data appears to include success on motions to dismiss which LDRC did not take into consideration. (See Table 2 n.(1), infra.) The cases studied by LDRC pick up almost precisely where Franklin left off, in October, 1980. Accordingly, it should be understood that the LDRC case list does not include a small number of cases decided after Hutchinson but already reported in the Franklin study.

LDRC 50-STATE SURVEY 1982. As noted, it was not the purpose of the LDRC Summary Judgment Study systematically to canvas the current law of summary judgment in defamation cases in every state. Nor, in fact, was the study particularly concerned with an analysis of how summary judgment standards were analyzed or defined in specific cases. The essence of the LDRC Summary Judgment Study was empirical and descriptive rather than case-oriented and analytical. However, the forthcoming LDRC 50-State Survey report does provide additional case-oriented information on summary judgment, among many other legal issues. A preliminary review of the 50-State data generally confirms the minimal impact of Hutchinson on state law (at least thus far) as well as the continued vitality of special rules favoring summary judgment in defamation actions. Thus, a count of responses to the LDRC 50-State Survey records the following general approaches to summary judgment, as characterized by the preparers of the 50-State reports and as summarized therein*: 18 states** continue to favor

*These state totals do not include 4 states in which no summary judgment cases are reported, 1 state in which the summary judgment approach is unclear because of divided authority, and 1 state in which the LDRC report provided no information regarding summary judgment.

**In one of these states there is divided authority, with at least one court favoring a neutral approach.

summary disposition; in 14 states a neutral standard is applied, but in only 3 of those states was the neutral standard clearly adopted as a direct result of Hutchinson; in 7 states summary judgments are granted in appropriate cases, but it is not clear (at least from the LDRC 50-State Survey reports in those states) what standard is being applied; finally, in only 9 states is summary judgment specifically disfavored and of these only two states appear to have adopted a disfavoring approach based specifically on Hutchinson. 5 of the states clearly disfavor based on state law and in a sixth state a Supreme Court that had already disfavored summary judgment based on state law recently cited Hutchinson with approval. In the final disfavoring state it was unclear from the LDRC report upon what basis the state disfavored summary judgment.

CONCLUSION. If there is any one thing that the LDRC Summary Judgment Study most clearly demonstrates, it is that the results of summary judgment motions cannot necessarily be predicted based upon the choice of a legal standard, or even more particularly upon the descriptive label applied to that standard. At least statistically, summary judgment far more significantly depends -- and this is as it should be -- upon the court's intelligent application of any standard to a particular set of facts and circumstances. When those facts and circumstances are effectively presented to a court willing to give summary judgment meaningful consideration the type or name of standard applied is not necessarily determinative of the outcome. Certainly, it is useful and reassuring to have a court wax eloquent on chilling effects and freedom of the press. And it is disturbing to find that courts which once did so now feel constrained, under Hutchinson, to adopt a so-called "neutral" standard. But the bottom line remains whether the motions are being granted. What the LDRC study forcefully documents is that summary judgment is still being granted, in upwards of three out of four media libel actions where such motions are made. It is to be hoped that this data will give defense counsel the incentive they may need, and judges the reassurance they may feel they require, to continue to make and grant such motions in appropriate cases. Finally, of course, the continued availability of summary judgment takes on even greater significance when viewed in light of the troubling findings of LDRC's earlier Trial and Damages Study -- see LDRC Bulletin No. 4 (Part 1).

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NOTE ON THE LDRC
SUMMARY JUDGMENT DATA AND CASE LIST

The following Summary Judgment Case List of 110 libel cases is comprised of data which were culled from case files maintained at the Libel Defense Resource Center and also includes all summary judgment cases reported in Volumes 6, 7 and 8 of the Media Law Reporter, October 1, 1980 through August 24, 1982. The list also includes unreported cases decided during the same approximate period which were obtained by LDRC from media counsel as well as soon-to-be-reported cases for which advance opinions were obtained from BNA. All of the summary judgment cases on the LDRC list were decided subsequent to Hutchinson v. Proxmire, 443 U.S. 111 (1979). Accordingly the LDRC data, in effect, updates data included in Professor Marc A. Franklin's earlier study of media libel cases decided through September 30, 1980, which was also based upon opinions reported in the Media Law Reporter. Where available the case list provides information on the post-ruling status of cases. This information was obtained from reports filed with the Libel Defense Resource Center and prepared by respective defendant counsel. LDRC also maintains files on cases where summary judgment motions are pending, or where counsel have indicated that summary judgment motions are expected to be made at a later stage of the litigation. These cases may be noted in the preceding discussion but are not included on the case list that follows. Finally, some of the preceding discussion is based on a preliminary review of data in the LDRC 50-State Survey 1982 to be published later this month. Once again, however, the case list does not necessarily reflect all cases referred to in the 50-State Survey.

In reading the Summary Judgment Case List the following should be noted. The cases are arranged alphabetically except for a brief addendum reflecting certain cases not included in the basic listing. Citations are to the Media Law Reporter and where available to other reporters. Unreported cases are identified by docket number, jurisdiction and filing date. In almost all of the listed cases the defendants alone moved for summary judgment and the rulings column is accordingly named. However, in those few cases where plaintiffs also moved, or in the one case where plaintiff alone moved, an appropriate notation is made. Notation is also made where partial summary judgment motions were filed or where partial rulings were made. Various levels of jurisdiction are represented among the cases and the second column reflects whether the rulings were issued by the original jurisdiction or by appellate courts affirming or reversing previous rulings of lower courts. While many of the cases presented more than one issue for determination by the court, for each case the central issue on which the summary judgment ruling appears to have turned is identified as the decisive, or "dispositive"

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issue. This characterization was judgmental but we believe it to be generally accurate and useful for these purposes. Those cases where actual malice was the dispositive issue and which were commenced by public figure/official plaintiffs are specifically so labeled in order to highlight the large number of cases presenting the precise summary judgment posture referred to in Hutchinson. The impact of Hutchinson on any particular case may be gleaned by reference to the fifth column. Where Hutchinson was discussed by the court, a determination was made as to whether footnote 9 was cited, distinguished or followed. Column five does not include citations to other portions of the Hutchinson decision but only to the aspect of Hutchinson (in footnote 9) commenting on summary judgment. Classification of summary judgment standards varies. For these purposes the classification developed in Yiamouyiannis v. Consumers Union, 619 F.2d 932, 6 Med.L.Rptr. 1065, (2d Cir. 1981) has been utilized. In Yiamouyiannis the Second Circuit termed those standards modelled after Federal Rule 56 "neutral". Those cases which departed from the "neutral" guidelines of Rule 56 Fed. R.Civ.P. in order to advance the resolution of the summary judgment motion in favor of the media defendant are identified in the LDRC case list as "non-neutral". In certain instances, a clear delineation of the standard being applied is simply not provided in the court's opinion. The next to the last column of the case list includes information, where available, on the scope of discovery, particularly in cases involving defendant's "state of mind". This information is provided in light of the potential significance of adequate discovery on the issue of "state of mind" under Herbert v. Lando, 441 U.S. 153 (1979) and in a court's determination as to whether a particular case is ripe for summary judgment. This penultimate column also includes an indication of the evidentiary burden placed on the plaintiff regarding proof of actual malice in those cases where the motion for summary judgment was ultimately granted.

TABLE 1

OVERALL RESULTS OF SUMMARY JUDGMENT MOTIONS
(TRIAL OR APPELLATE LEVEL)

TABLE 1-A - TOTAL DEFENDANT WINS ⁽¹⁾

LDRC OVERALL DATA
(1980-82)

82/110 (75%)

FRANKLIN TRIAL AND
APPELLATE DATA
(1976-80)

Trial - 81/101 (80%) ⁽²⁾
Appellate - 73/94 (78%) ⁽³⁾

TABLE 1-B - TOTAL PLAINTIFF WINS

LDRC DATA

28/110 (25%)

FRANKLIN DATA

Trial - 20/101 (20%)
Appellate - 21/94 (22%)

(1) Note that LDRC overall data includes the latest disposition of the summary judgment motions studied, either at the trial or at the appellate level. Note that in those cases where summary judgment was granted as to the media defendants but denied as to non-media defendants, or where granted as to publisher but denied as to author, the case is considered a defendant win. On the other hand, where the summary judgment motion was granted as to some media defendants but not the publisher, or as to some but not all issues, these cases were considered plaintiff's wins. Such characterizations, one way or the other, affected only a small number of cases and tended to balance each other off. They do not, it is believed, affect the validity of the overall figures presented.

(2) (See footnote 1, Table 2, infra)

(3) Note that this Franklin data includes only cases taken through appeal.

TABLE 2
LDRC DATA
TRIAL COURT
DISPOSITION OF MOTIONS (1)
FOR SUMMARY JUDGMENT

DEFENDANT'S
SUMMARY JUDGMENT
MOTION

Granted (2)
42/53 (79%)

DEFENDANT'S
SUMMARY JUDGMENT
MOTION

Denied
11/53 (21%)

-
- (1) Includes only those 53 LDRC motions which were not appealed or in which appeals, if taken, have not been decided. See Tables 3-A and 3-B for disposition of the 57 LDRC motions that have been decided on appeal. Note that no exactly comparable data to this table is provided by Franklin. However, Franklin data does reveal that defendants "succeeded" prior to trial in 80% (81/101 of the cases studied) at the trial court level. This figure apparently includes both "successful" motions for summary judgment as well as "successful" motions to dismiss. The LDRC data, except in one instance (see note (2) below), does not include defendant's motions to dismiss, either granted or denied.
- (2) The total number of "grants" includes one case involving a plaintiff's motion for summary judgment, in which the plaintiff's motion was denied and defendant's cross-motion to dismiss was granted. Hentel v. Knopf & Gross, 8 Med.L.Rptr. 1908 (N.Y.Sup.1982).

TABLE 3-A

APPELLATE DISPOSITION OF TRIAL COURT RULINGS ON DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT*Ruling by Trial Court on Summary Judgment Motion

<u>LDRC DATA</u>			<u>FRANKLIN DATA</u>		
<u>APPELLATE DISPOSITION</u>	<u>OF 45 SUMMARY JUDGMENT MOTIONS GRANTED BY TRIAL COURT</u>	<u>OF 12 SUMMARY JUDGMENT MOTIONS DENIED BY TRIAL COURT</u>	<u>APPELLATE DISPOSITION</u>	<u>OF 79 SUMMARY JUDGMENT MOTIONS GRANTED BY TRIAL COURT</u>	<u>OF 15 SUMMARY JUDGMENT MOTIONS DENIED BY TRIAL COURT</u>
Affirmed	36	8	Affirmed	63	5
Reversed and remanded	8	0	Reversed and remanded	16	1
Reversed and dismissed	1	4	Reversed and dismissed	0	9

* Includes only those LDRC cases (57/110) in which appellate rulings have been issued regarding grant or denial of a defendant's motion for summary judgment.

TABLE 3-B

OVERALL RESULTS OF APPELLATE REVIEW⁽¹⁾
OF SUMMARY JUDGMENT MOTIONS

LDRC DATA

Defendant's motion prevails after appeal⁽²⁾ - - - - 40/57 (70%)

Defendant's motion rejected after appeal⁽²⁾ - - - - 17/57 (30%)

FRANKLIN DATA

Defendant's motion prevails after appeal⁽²⁾ - - - - 73/94 (78%)

Defendant's motion rejected after appeal⁽²⁾ - - - - 21/94 (22%)

(1) Includes only those LDRC cases (57/110) in which appellate rulings have been issued regarding grant or denial of a defendant's motion for summary judgment. In effect, this data represents final disposition of motions that have been appealed unless subject to further appeals.

(2) Defendant "prevails" on appeal in all 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

LDRC DATA
ISSUES FOUND DISPOSITIVE ON MOTIONS
FOR SUMMARY JUDGMENT

<u>ISSUES</u>	<u>DEFENDANT'S MOTION PREVAILS</u>	<u>DEFENDANT'S MOTION REJECTED</u>
1. Actual Malice ⁽²⁾	55 (83%) ⁽¹⁾	11 (17%)
2. Opinion	11 (79%)	3 (21%)
3. Privacy	3 (75%)	1 (25%)
4. Negligence	2 (33%)	4 (67%)
5. Group Libel	2 (100%)	0 (0%)
6. Substantial Truth	2 (100%)	0 (0%)
7. Statute of Limitations	1 (100%)	0 (0%)
8. Gross Irresponsibility	2 (50%)	2 (50%)
9. Truth	2 (67%)	1 (33%)
10. Fiction ⁽³⁾	0 (0%)	1 (100%)
11. Absolute Privilege	1 (100%)	0 (0%)
12. Determination of Public Figure Status ⁽⁴⁾	0 (0%)	5 (100%)
13. Common Law Malice	<u>1 (100%)</u>	<u>0 (0%)</u>
	82	28

(1) These percentages are computed as between defendant wins and defendant losses on each particularly dispositive issue. For example, actual malice was considered the dispositive issue in 66 of the cases studied. In 55/66 or 83% of these actual malice cases, defendant's motion prevailed.

(2) Includes constitutional "actual malice" as well as common law actual malice in cases involving defeasance of a common law privilege such as fair comment or fair report.

(3) This is Pring v. Penthouse, 7 Med. L. Rptr. 1101 (D.C. Wyo. 1981).

(4) Refers to four cases in which a motion for partial summary judgment was made solely for the purpose of determining whether the plaintiff was to be considered a public figure. Another matter on which partial summary judgment is at times sought is the availability of punitive damages, but as to that matter the dispositive issue is generally actual malice. Partial motions regarding punitive damages are noted on the Summary Judgment Case List under "other matters."

TABLE 5-A

LDRC DATA

RESULTS OF SUMMARY JUDGMENT MOTIONS
INVOLVING PUBLIC OFFICIAL/FIGURE PLAINTIFFS

<u>DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PREVAILS</u>		<u>DEFENDANT'S MOTION FOR SUMMARY JUDGMENT REJECTED</u>	
Granted - - - - -	26 ⁽¹⁾	Denied - - - - -	4 ⁽²⁾
Affirmed Grant- - - - -	18	Affirmed Denial- - - - -	8 ⁽²⁾
Reversed Denial - - - - -	1	Reversed Grant - - - - -	4
Plaintiff's Motion Denied -	<u>1</u>		
	46 (74%)		16 (26%)
TOTAL CASES: 62/110			

TABLE 5-B

LDRC DATA

RESULTS OF SUMMARY JUDGMENT MOTIONS
INVOLVING NON-PUBLIC FIGURE/OFFICIAL PLAINTIFFS

<u>DEFENDANT'S MOTION PREVAILS</u>		<u>DEFENDANT'S MOTION REJECTED</u>	
Granted - - - - -	17	Denied - - - - -	6
Affirmed grant- - - - -	16	Affirmed denial- - - - -	2
Reversed denial - - - - -	<u>3</u>	Reversed grant - - - - -	<u>4</u>
	36 (75%)		12 (25%)
TOTAL CASES 48/110			

- (1) Includes 3 Michigan cases and one New Mexico case which did not involve public figure plaintiffs but in which the issue of common law actual malice was dispositive and was defined by the courts in terms of the constitutional actual malice standard.
- (2) These two categories include 4 cases where partial summary judgment motions were filed to resolve the public figure status of plaintiff; actual malice standard not employed. A fifth case where status of public figure was denied but other issues were then resolved based on private figure standards is included in Table 5-B.

TABLE 6

LDRC DATA
COMPARISON OF RESULTS OF
SUMMARY JUDGMENT MOTIONS IN FEDERAL vs. STATE CASES

Federal - 33 cases total

DEFENDANT'S
MOTION PREVAILS

26/32 (81%) (1)

DEFENDANT'S
MOTION REJECTED

7/32 (19%)

State - 77 cases total

DEFENDANT'S
MOTION PREVAILS

56/77 (73%)

DEFENDANT'S
MOTION REJECTED

21/77 (27%)

-
- (1) It is interesting to note that Hutchinson v. Proxmire is cited significantly more frequently by federal courts (10/33 -- 30%) than by state courts (9/77 -- 12%). Despite this, as noted in this table defendant's summary judgment motions still prevail somewhat more frequently in federal than in state court.

SUMMARY JUDGMENT
CASE LIST

NAME OF CASE (and Citation)	RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	BASIS FOR DENIAL	DISPOSITIVE ISSUE/DEFENSE	HUTCHINSON	SUMMARY JUDGMENT STANDARD EMPLOYED	DISCOVERY OR OTHER MATTERS	CASE STATUS
				v. PROXMIRE, 443 U.S. 111,120n.9 (1979)			
Adams v. Maas, 7 Med.L. Rptr.1188(S.D.Tex.1981)	Granted	--	Actual malice (Public figure)	Not cited	Neutral	Sufficient discovery under <u>Herbert</u> ; no "clear and convincing" evidence	
Alfego v. CBS, 7 Med.L. Rptr.1075(D.C.Mass.1981)	Granted	--	Opinion	Not cited	Not clear	--	
Ali v. Daily News Pub- lishing Co., 8Med.L.Rptr. 1844(D.V.I.1982)	Granted	--	Actual Malice (Public figure)	Cited but distinguished.	Neutral	Sufficient discovery	
Bair v. Palm Beach News- papers, Inc., No. 76-4394 CA(2)01A(Fla.Cir.Palm Beach Co., filed 6/1/82)	Granted	--	Actual malice	Not cited	Neutral.	Fair report; substantial truth; neutral reportage; statute of limitations; "no proof exists" of actual malice.	
Barbarita v. Gannett, 8 Med.L.Rptr.1050(N.Y.Sup. Putnam Co.1981)	Granted	--	Actual malice (Public offi- cial)	Not cited	Neutral	Sufficient discovery; opinion; no "convincing evidence presented"	
Bay State Homes Realty Corp. v. Affiliated Pub- lications, Inc., 7 Med.L. Rptr.1683, (Mass.Super.Ct. 1981)	Granted	--	Actual malice	Not cited	Not clear	Sufficient discovery; Appeal fair report	
Bellamy v. Arno Press, Inc., 8Med.L.Rptr.1420, (E.D.N.C.1982)	Granted	--	Actual malice (Public Offi- cial)	Not cited	Not clear; Sufficient discovery; not neut- ral	Sufficient discovery; failure to offer "convincing proof"	
Biermann v. Pulitzer Pub- lishing, 7Med.L.Rptr. 2601, (Mo.Ct.App. 1981)	Affirmed grant	--	Actual malice	Not cited	Neutral	Sufficient discovery; fair report	

SUMMARY JUDGMENT
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NAME OF CASE (and Citation)	RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	BASIS FOR DENIAL	DISPOSITIVE ISSUE/DEFENSE	HUTCHINSON V. PROXMIRE, 443 U.S. 111,120n.9 (1979)	SUMMARY JUDGMENT STANDARD EMPLOYED	DISCOVERY OR OTHER MATTERS	CASE STATUS
<u>Braig v. Field Communica-</u> <u>tions, No. 3446 (Pa.C.P.</u> <u>Philadelphia Co., filed</u> <u>2/23/81)</u>	Granted	--	Actual malice (Public Offi- cial)	Not cited	Non- neutral	Sufficient discovery; plaintiff "cannot prove ac- tual malice"; also, "no clear and convincing evidence" of actual malice	
<u>Brown v. Nat'l Distillers</u> <u>& Chemical Corp., No. 81-4234</u> <u>(9th Cir., filed 4/30/82)</u>	Affirmed grant	--	Opinion	Not cited	Not clear	--	
<u>Brown v. Sisson, No. 79</u> <u>1629CZ (Mich. Cir. Ct.</u> <u>Allegan Co., filed 5/26/81)</u>	1-Granted for Broadcaster 2-Denied to non-media def.	Genuine issues of material fact	Actual mal- ice (stand- ard for defeas- ance of common law privilege)	Not cited	Neutral	Fair report; special damages issue; proceed to trial	No appeal of grant
<u>Buhalino v. Associated</u> <u>Press, 8 Med.L.Rptr.1952</u> <u>(S.D.N.Y., 1982)</u>	Granted	--	Actual malice (Public Offi- cial)	Not cited	Neutral	Sufficient discovery; fair report; "devoid" of evi- dence of actual malice much less "convincing clarity"	
<u>Bukky v. Painesville Tele-</u> <u>graph, 68 Ohio St.2d 45,328</u> <u>N.E.2d 405, 7 Med.L.Rptr.</u> <u>2309 (Ohio 1981)</u>	Reinstated grant of trial court	--	Actual malice (Public Offi- cial)	Cited in dissenting opinion	Neutral	No "convincing clarity"; dissenting opinion cites in- sufficiency of evidence under <u>Herbert</u>	
<u>Burns v. The Times Argus,</u> <u>430 A.2d 773, 7Med.L.Rptr.</u> <u>1212 (Vt. 1981)</u>	Affirmed grant	--	Actual malice (Public Offi- cial)	Not cited	Not clear;	No evidence of actual malice much may be less "clear and convincing non-neutral clarity"	
<u>Byers v. Southeastern</u> <u>Newspaper Corp., 8Med.L.Rptr.</u> <u>1597 (Ga.Ct.App. 1982)</u>	Affirmed grant	--	Actual malice (Public figure)	Not cited	Neutral		

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<u>Community Medical Services</u> <u>v. Local 2665, 292 Pa. Super.</u> 238,437 A.2d 23 (1981)	Affirmed grant (Non-media action)	--	Actual malice	Not cited	Neutral	Non-media action involving labor dispute; insufficient "evidence and reasonable in- ference" much less "clear and convincing evidence" of actual malice	
<u>Curran v. Philadelphia</u> <u>Newspapers, 7 Med. L. Rptr. 2513</u> <u>(Pa. Sup. Ct. 1981) rev'g in</u> <u>part, 4 Med. L. Rptr. 2201</u>	Affirmed grant in part (case 1) and vacated in part (case 2) (2 consolida- ted cases)	Where vacated, genuine issue	Actual malice (Public official)	Cited	Neutral	Discovery into "state of mind" per <u>Herbert</u> not ap- plicable; plaintiff failed to observe proper proced- ures for extension. Testi- monial affidavits of moving party insufficient basis for entry of summary judg- ment.	
<u>Curtis v. Southwestern</u> <u>Newspaper Corp., No. 81-1322</u> <u>(5th Cir., filed 5/12/82)</u>	Affirmed grant	--	Actual malice (Public Offi- cial)	Not cited	Neutral	"No evidence that would raise a factual dispute" regarding ac- tual malice	Pending on motion for rehearing
<u>Dawson v. Wright, 8 Med. L.</u> <u>Rptr. 2001 (Mich. Cir. Oak</u> <u>Co. 1982)</u>	Granted		Actual malice (Public Int- erest)	Not cited	Neutral	Actual malice generally treated as jury question; but no "evidence" or "inference" of "malice" established	No appeal
<u>Delan v. CBS, Inc., 7 Med.</u> <u>L. Rptr. 2453 (N.Y. Sup. Ct.</u> <u>Queens Co. 1982)</u>	Denied (cross- motion)	Unprivileged invasion - lack of con- sent	Privacy	Not cited		Plaintiff's motion for summary judgment granted on privacy; denied on false im- prisonment claim	Appeal pending App. Div. 2nd Dept.
<u>Denny v. Mertz, 8 Med. L.</u> <u>Rptr. 1369 (Wisc. 1982)</u>	Reversed grant	Genuine is- sues as to negligence. Plaintiff not a public figure	Negligence	Not cited	Neutral	Non-media defendant strictly liable. Defendant private fig- ure under <u>Gertz</u> .	Remanded for trial

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<u>DiLorenzo v. New York News, Inc.</u> , 7 Med.L.Rptr.1452 (N.Y.2d Dept.1981)	Reversed grant	Genuine issues of fact	Actual malice (Public figure)	Not cited	Neutral	Retraction alone not sufficient to show lack of actual malice	Remanded
<u>Dresbach v. Doubleday</u> , 518 F.Supp.1285, 7Med.L.Rptr.2105 (D.D.C.1981)	Granted for publisher; denied to author	Genuine issues of fact	Negligence - False light	Not cited	Neutral	Insufficiency of plaintiff's evidence in false light and defamation claims	Grant not appealed; Denial to author upheld.
<u>Edgartown Police Patrolmen's Ass'n v. Johnson</u> , 522 F.Supp.1149, 7 Med.L.Rptr.2166 (D.C.Mass.1981)	Granted	--	Group libel	not cited	Neutral	Gov't body may not sue for libel	No appeal
<u>Fairley v. Peekskill Star Corp.</u> , 8 Med.L.Rptr.1427 (N.Y.App.Div.1981)	Reversed denial	--	Substantial truth	Not cited	Neutral	Gross irresponsibility standard	
<u>Fendler v. Phoenix Newspapers, Inc.</u> , 636 P.2d 1257, 7 Med.L.Rptr.2569 (Ariz.Ct.App.1981)	Affirmed grant	--	Substantial truth	Not cited	Neutral	Determination of substantial truth is matter for the court	Case closed
<u>Ferguson v. Dayton Newspapers</u> , 7Med.L.Rptr.2502 (Ohio Ct.App.1981), <u>Aff'd</u> , 7Med.L.Rptr.1396 (Ohio C.P.)	Affirmed grant	--	Actual malice (Public Official)	Not cited	Neutral	Appellate Court cannot expand consideration of facts not in record; no evidence of actual malice much less "clear and convincing" evidence	

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<u>Fitzgerald v. Penthouse</u> , 525 F.Supp.585, 7 Med.L. Rptr.2385(D.C.Md.1981), on remand from 6 Med.L.Rptr. 2447(4thCir.1981) (rvs'g prior grant)	Reinstated grant	--	Actual malice (Public Fig- ure)	Cited but distinguished	Neutral	Discovery into "state of mind" of defendant complete; no "inference" of actual malice, much less proof with "con- vincing clarity"	Scheduled for argu- ment, 4th Cir. on 2nd appeal
<u>Fleury v. Harper & Row</u> , 7 Med.L.Rptr.1795(S.D.Cal. 1981)	Granted	--	Statute of limitations	Not cited	Neutral		Appeal pending 9th Cir.
<u>Fulton v. Advertiser</u> , 388 So. 2d 533, 7 Med.L.Rptr. 1351(Ala.Sup.Ct.1980)	Reversed grant and remanded	Genuine issue of material fact	Actual malice (Public Fig- ure)	Not cited	Disfav- ored	"state of mind" issue inappropriate for summary judgment dis- position	
<u>Gaeta v. New York News, Inc.</u> , No.10180/78(N.Y.Sup. Ct., filed 6/1/82)	Denied	Genuine issue of fact	Negligence	Not cited	Not clear	Editor and publish- ers' motions granted	Appeal planned
<u>General Products Co. v. Meredith Corp.</u> , 526 F.Supp. 546, 7 Med.L.Rptr.2257 (E.D.Va.1981)	Granted on product dis- paragement; denied on gen- eral liability	Genuine issue of fact	Negligence	Not cited	Neutral	Motion granted as to punitive damages	
<u>Gilbert v. Medical Econo- mics Co.</u> , 7 Med.L.Rptr.2372 (10th Cir.1981)	Affirmed grant	--	Privacy/news- worthiness	Not cited	Neutral	False light theory can- not be added at appel- late stage	

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Gray v. Udevitz, 656 F. 2d 588, 7Med.L.Rptr.1872 (10th Cir.1981)	Grant affirmed	--	Actual malice (Public official)	Not cited	Neutral	Trial judge did not abuse discretion by refusing to permit plaintiff add'l time for discovery; no response to motion	
Griffith v. Rancocas Valley Hospital, 8Med.L. Rptr.1760 (N.J.Super.1982)	1-Granted for media 2-Denied to non-media	Genuine issues of fact	Privacy/news-worthiness	Not cited	Not clear		
Guccione v. Bergen Evening Record, No.79 Civ.5420 (JMC) (S.D.N.Y., filed 1/19/82)	Denied	Genuine issues of fact	Actual malice (Public figure)	Cited	Neutral		
Harris v. Tomczak, No. Civil S-80-206 LKK (E.D. Cal., filed 6/12/82)	Denied	Genuine issues of fact	Public figure	Cited	Neutral	Partial summary judgment motion regarding public figure status of plaintiff	
Haynes v. McConnell, No. 81-CA-996-MR (Ky.Ct.App., filed 5/25/82)	Affirmed grant	--	Opinion	Not cited	Neutral		
Hentel v. Knopf & Gross, 8 Med.L.Rptr.1908 (N.Y. Sup., 1982)	Plaintiff's motion denied	Did not sustain burden of proof under Herbert v. Lando	Actual malice (Public official)	Not cited	Neutral	Fair report; opinion defendant's motion to dismiss granted	
Hines v. Florida Publishing Co., 8Med.L.Rptr.1592 (Fla.Cir.Ct.1982)	Granted	--	Actual malice (Public official)	Cited	Neutral	Sufficient discovery under Herbert; no "clear and convincing proof" of actual malice	

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Hogan v. The Herald Company, 8 Med.L.Rptr.1137 (N.Y.App.Div.1982)	Affirmed denial	Genuine issues of fact	Gross irresponsibility	Not cited	Neutral	Punitive damages claim dismissed	
Janov v. Ziff-Davis Publishing Co., No. C 185858 (Cal.Super.Ct. Los Angeles Co., filed 10/9/81)	Granted	--	Opinion	Not cited	Neutral		No appeal; case closed
Jenoff v. Hearst Corp., 644 F.2d 1004, 7 Med.L.Rptr.1081(4th Cir.1981)	Affirmed grant in part and denial in part	Plaintiff not public figure	Public figure determination	Not cited	Neutral		\$50,000 jury verdict upheld
Jones v. Himstead, 7 Med.L.Rptr.2433 (Mass.Super.Ct. 1981)	Denied	Genuine issues of fact	Public official status	Not cited	Neutral	"State of mind" evidence better tried by jury	
Jurkowski v. Crawley, 637 P.2d 56, 7 Med.L.Rptr.2113 (Okla.1981)	Affirmed grant		Actual malice (Public official)	Not cited	Neutral	Sufficient discovery under Herbert; record "barren of evidentiary material" demonstrating that defendant in fact entertained serious doubts as to truth	
Kerwick v. Orange County Publications, 7 Med.L.Rptr. 1152(N.Y.Ct.App.1981), rev'g. 5 Med.L.Rptr.2502	Reinstated denial	Genuine issues of fact	Actual malice (Public official)	Not cited	Not clear	Retraction not sufficient to show lack of actual malice	
Kotlikoff v. The Community News, 8 Med.L.Rptr.1549 (N.J. 1982)	Reinstated grant	--	Opinion	Not cited	Not clear		

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				v. PROXMIRE, 443 U.S. 111,120n.9 (1979)			
<u>Kuhn v. Tribune-Republican Publishing Co.</u> , 637 P.2d 315, 7Med.L.Rptr. 2137 (Colo. 1981), <u>rev'g</u> 4Med.L.Rptr. 2439	Denial rein-stated by Supreme Court	Genuine issues of fact	Actual malice (Public official)	Not cited	Neutral	Jury verdict reinstated \$69,000.00	Denial had previously been reversed by Court of Appeals
<u>Kutz v. Independent Publishing Co.</u> , 8Med.L.Rptr. 1125 (N.Mex.Ct.App.1981)	Reversed grant	Genuine issue of fact	Opinion	Not cited	Not clear		
<u>Lampkin-Asam v. Miami Daily News</u> , 7Med.L.Rptr. 2487 (Fla.Dist.Ct.App.1981), <u>aff'g</u> 6Med.L.Rptr. 2009, 2086	Affirmed grant	--	Actual malice (Public figure)	Not cited	Neutral	No "clear and convincing evidence" of actual malice	Appeal pending
<u>Lane v. Arkansas Valley Publishing Co.</u> , 7 Med.L.Rptr. 2131 (Colo.Dist.Ct.1981)	Granted	--	Actual malice (Public figure)	Not cited	Neutral	Failed to meet "clear and convincing" standard	
<u>Lane v. N.Y.Times</u> , 8 Med.L.Rptr. 1623 (W.D.Tenn.1982)	Granted	--	Actual malice (Public figure)	Not cited	Neutral	Totally insufficient allegations much less "clear and convincing proof" of actual malice	
<u>Lins v. Evening News Association</u> , No.77-709-268CZ (Mich.Cir.Ct.Wayne Co., filed 7/13/81)	Granted	--	Actual malice (Public interest)	Not cited	Neutral	Sufficient discovery for "state of mind" determination	
<u>McCusker v. Valley News</u> , 428 A.2d 93, 7Med.L.Rptr. 1343 (N.H.Sup.Ct.1981)	Affirmed denial	Genuine issues of fact	Public official status	Cited and followed	Neutral		

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MacDonald v. Time Inc., 7 Med.L.Rptr.1981(D.N.J.1981)	Denied	Genuine issues of fact	Truth	Not cited	Neutral	Summary judgment granted as to Statute of Limitations, invasion of privacy, emotional distress	May appeal denial upon further discovery
McManus v. Doubleday, 513 F.Supp.1383, 7Med.L.Rptr. 1475(S.D.N.Y.1981)	Granted for co-author/pub- lisher; denied to author	Genuine issues of fact	Actual malice (Public figure)	Cited but distinguished	Neutral	No proof with "convincing clarity" of publisher's or co-author's actual malice	No appeal of grant
Manuel v. Ft. Collins News- papers, Inc., 631 P.2d 1114, 7Med.L.Rptr.1793, (Colo. Sup.Ct.1981)	Reinstated de- nial and re- manded to Ct. Appeals	Interlocu- tory ruling may not be appealed	Actual malice (Public official)	Not cited	Neutral		On remand reverses \$100,000 jury ver- dict and remand with directions to dismiss
Maressa v. New Jersey Monthly, 8Med.L.Rptr.1473 (N.J.Sup.Ct.1982)	--	--	Opinion	Cited	Not clear	Shield law prohibits discovery into editorial process; trial courts should not hesitate to use summary judgment procedures where appropriate	Remanded
Mark v. Seattle Times, 635 P.2d 1081, 7Med.L.Rptr.2209 (Wash.1981), aff'g, 6Med.L. Rptr.2224	Affirmed grant -- (5 consoli- dated cases)	--	Negligence	Cited but distinguished	Not neutral		

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Marquez v. Journal Publishing Co., No. CV-80-07086 (N.M. Dist. Ct. Bernalillo Co., filed 5/27/81)	Granted	--	Actual malice (common law privilege)	Not cited	Neutral		
Mechner v. Dow Jones, 7 Med.L.Rptr.1483 (N.Y.Ct. App.1981) den'g leave to appeal 6Med.L.Rptr.1787	Grant Affirmed	--	Privacy	Not cited	Not clear		Plaintiff's motion for leave to appeal denied
Mentall v. Gannett Broadcasting, 8Med.L.Rptr.1683 (Me.1982)	Vacated denial on public official issue only	--	Public official determination	Not cited	Not clear	Affirmed denial of summary judgment for remainder of motion	
Michigan United Conservation Clubs v. CBS, 7Med.L.Rptr.2331 (6th Cir.1981) aff'g 5Med.L.Rptr.2566	Affirmed grant	--	Group libel	Not cited	Neutral	Not "of and concerning"	
Miss America Pageant v. Penthouse Int'l, 524F.Supp. 1280, 7Med.L.Rptr.2177 (D.N.J. 1981)	Granted	--	Actual malice (Public figure)	Not cited	Neutral	Court rejects fiction and satire grounds of motion; plaintiff's cross-motion denied; evidence insufficient to meet "clear and convincing" standard	No appeal; case closed

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<u>Mitchell v. Pittsburgh Press</u> , 7Med.L.Rptr.2152 (Pa.Ct.C.P.1981)	Granted	--	Actual malice (standard for defeasance of common law privilege)	Not cited	Neutral	Fair report; summary judgment should be preferred procedure in First Amendment cases; mere speculation of potential evidence cannot delay grant in First Amendment cases	
<u>Osborn Hill Grocery v. Poughkeepsie Newspapers, Inc.</u> , No.655E(N.Y.App.Div., filed 5/10/82)	Reversed denial	--	Gross irresponsibility	Not cited	Neutral	Corporation as private figure under <u>Gertz</u>	
<u>Pasculli v. The Jersey Journal</u> , 7Med.L.Rptr.2574 (N.J.App.Div.1981)	Affirmed grant (Consolidation of 2 cases)	--	Actual malice (Public official)	Not cited	Neutral	<u>N.Y.Times</u> privilege extended to non-media defendant; allegations insufficient to establish actual malice with "convincing clarity"	
<u>Plough v. Schneider</u> , 8Med.L.Rptr.1620(Ohio Ct.App. 1982)	Affirmed grant	--	Opinion	Not cited	Neutral		
<u>Prease v. Poorman</u> , 7Med.L.Rptr.2378 (Ohio Ct. C.P. 1981)	Granted	--	Actual malice (Public official)	Not cited	Neutral	No evidence of actual malice much less evidence with "convincing clarity"	

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Pring v. Penthouse, 7 Med. L. Rptr. 1101 (D.C. Wyo. 1981)	Denied for Author/pub- lisher	Genuine issue of fact	Fiction	Not cited	Not clear	Granted for distributor - actual malice not shown	
Pritsker v. Brudnoy, 8 Med. L. Rptr. 1754 (Mass. Ct. App. 1981)	Denied	--	Opinion	Not cited	Not clear		Leave for interlocu- tory appeal granted.
Rebozo v. Washington Post, 6 Med. L. Rptr. 2505 (5th Cir. 1981)	Reversed grant	Genuine issues of fact	Actual malice (Public fig- ure)	Cited	Neutral		Renewed motion de- nied; trial upcoming

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Rinaldi v. Viking Penguin, 7 Med.L.Rptr.1202 (N.Y. 1981), <u>aff'g</u> , 5 Med.L.Rptr. 2506	Affirmed grant for authors; affirmed de- nial for pub- lisher.	Genuine issue of fact	Actual malice/ statute of lim- itations (Public offi- cial)	Cited	Neutral	Discovery not complete; authors not affected by republication rule	
Roberts v. Dover, 7 Med.L. Rptr.2296 (M.D.Tenn.1981)	Granted	--	Actual malice (Public offi- cial)	Not cited	Neutral	"State of mind" is not always a jury question; no evidence of actual malice much less proof "with convincing clarity"	
Roche v. Hearst Corpora- tion, 53 N.Y.2d 767, 439 N.Y.S.2d 352, 7Med.L.Rptr. 1208, <u>aff'g</u> , 5Med.L.Rptr.2434	Affirmed grant	--	Actual malice (Public offi- cial)	Not cited	Neutral		
Rood v. Finney, 8 Med.L. Rptr.2047 (La.Ct.App.4th Cir.1982)	Affirmed grant	--	Actual malice (Public fig- ure)	Not cited	Neutral	Summary judgment as ef- fective screening device for First Amendment cases; no proof of actual malice with "convincing certainty"	
Rose v. The Enterprise Co., No.8641 (Tex.Ct.Civ. App., filed 5/14/81)	Grant reversed	Genuine issues of fact	Opinion	Not cited	Not clear	Fair report of judicial proceedings; substantial truth	Remanded for trial
Rudesyle v. Coll, 8 Med. L.Rptr. 1751 (Fla.Cir.Ct. Broward Co.1982)	Granted (non- media action)	--	Opinion	Not cited	Neutral	Attorney's privilege	
Russell v. McMillen, 8Med. L.Rptr.1646 (Colo.Dist.Ct. Larimer Co.1982)	Granted	--	Actual malice (Public offi- cial)	Not cited	Neutral	Sufficient discovery; no "clear and convincing evidence" of actual malice	

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<u>Ruzzin v. Stromberg</u> , 8Med. L.Rptr.1628(Mich.Cir.1982)	Granted	--	Actual malice (Public official)	Not cited	Neutral	"no inference of actual malice"	
<u>Rye v. Seattle Times Co.</u> , 7 Med.L.Rptr.2267(Wash.Ct. App.1981)	Denied	Genuine issue of fact	Actual malice (Public figure)	Not cited	Neutral	Public official	Appeal pending after grant of discre- tionary re- view
<u>Schultz v. Newsweek</u> , 7Med. L.Rptr.2552(6th Cir.1982) aff'g.5 Med.L.Rptr.2296	Affirmed grant	--	Actual malice (standard for defeasance of common law privi- lege)	Cited	Neutral	Fair comment; public figure; issue of malice is a jury question where there is a genuine issue	
<u>Searer v. Wometco West Michigan TV, Inc.</u> , 7Med.L. Rptr.1639(Mich.Cir.Ct. Muskegon Co.1981)	Granted	--	Actual malice (Public fig- ure)	Not cited	Neutral	Public figure; opinion; record does not "raise even an inference" of actual malice	Case closed; no appeal
<u>Shifflet v. Thomson News- papers</u> , 69 Ohio St.2d 179, 8Med.L.Rptr.1199(Ohio 1982)	Affirmed grant (consolidation of 3 actions)	--	Truth	Not cited	Neutral	Fair report; invasion of privacy; malice	
<u>Shiver v. Apalachee Pub- lishing Co.</u> , 7 Med.L.Rptr. 2160(Fla.Cir.Ct.Franklin Co. 1981)	Granted	--	Actual malice (Public fig- ure)	Not cited	Neutral	Opinion; "clear and con- vincing evidence of ac- tual damage" must also be offered	Appeal pending
<u>Shutt v. Harte-Hanks</u> , 7 Med.L.Rptr.2559 (E.D.Mich. 1981)	Granted	--	Actual malice (Public offi- cial)	Not cited	Neutral	Truth; insufficient ev- idence, much less evi- dence "with convincing clarity" of actual malice	No appeal; case closed

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CASE LIST

NAME OF CASE (and Citation)	RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	BASIS FOR DENIAL	DISPOSITIVE ISSUE/DEFENSE	HUTCHINSON v. PROXMIRE, 443 U.S. 111,120n.9 (1979)	SUMMARY JUDGMENT STANDARD EMPLOYED	DISCOVERY OR OTHER MATTERS	CASE STATUS
Simmons Ford, Inc. v. Consumers Union, 516 F.Supp. 742, 7Med.L.Rptr.1776 (S.D.N.Y.1981)	Granted	--	Actual malice	Not cited	Neutral	Product disparagement; no reasonable jury could find actual malice "with convincing clarity"	Case closed; no appeal
Slawik v. News Journal Co., 428A.2d 15, 7Med.L.Rptr.1112 (Del.Sup.Ct.1981)	Affirmed grant	--	Opinion	Not cited	Not clear	--	--
Stuart v. Gambling Times, 8 Med.L.Rptr.1034 (D.N.J. 1982)	Granted	--	Opinion	Cited	Neutral	Summary judgment preferable means of dealing with First Amendment cases	
Taylor v. Greensboro News Co., 8Med.L.Rptr.2023 (N.C. Ct.App.Guilford Co.1982)	Grant affirmed	--	Actual malice (Public figure)	Not cited	Neutral	Affirmed denial of plaintiff's cross-motion; evidence of actual malice "nonexistent" much less proof "clear and convincing evidence"	Plaintiff's motion for discretionary review is pending
Toker v. Pollak, No. 19419/74 N.Y.Sup.Ct., filed 8/3/81	Granted (non-media action)	--	Actual malice	Not cited	Neutral	Discovery complete; attorney-client absolute privilege; no "clear and convincing evidence" of actual malice	Plaintiff served notice of appeal; appeal not perfected yet

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Torres v. Playboy Enterprises, 7Med.L.Rptr.1182 (S.D.Tex.1980)	Granted	--	Actual Malice (Public official)	Not cited	Neutral	Plaintiff failed to meet "heavy burden" of proving actual malice "by clear and convincing evidence"	
Underwood v. First Nat'l Bank, 8Med.L.Rptr.1278 (Dist.Ct.Minn.Steele Co. 1982)	Granted	--	Actual malice (Public figure)	Not cited	Neutral	Denied plaintiff's cross motion; plaintiff fail(ed) to come forward with some evidence of actual malice	
Vasquez v. O'Brien, 7 Med. L.Rptr.2431 (N.Y.App.Div. 1981)	Affirmed denial	Genuine issues of fact	Actual malice (public official)	Not cited	Neutral	Truth	
Velle v. Sanders, 518 F. Supp.512, 7 Med.L.Rptr.1878 (C.D.Cal.1981)	Granted	--	Actual malice (public figure)	Not cited	Neutral	Discovery complete as to defendant's "state of mind"; no evidence of actual malice much less "clear and convincing evidence" ("difficult burden")	
Wade v. Stocks, 7 Med.L. Rptr.2200 (Fla.Cir.Ct. 1981)	Granted	--	Actual malice	Not cited	Neutral	Fair comment; fair report of judicial proceedings; no evidence of actual malice, much less evidence with "clear and convincing clarity"	
Watkins v. Campbell, 8Med. L.Rptr.1039 (Mich.Cir.Ct. Oakland Co.1982)	Granted	--	Truth	Not cited	Not clear	Motion granted on false light/intentional infliction of emotional distress. No motion made on libel and slander claims	

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				v. PROXMIRE, 443 U.S. 111,120n.9 (1979)			
Wefler v. Indianapolis Newspapers, Inc., 7Med.L. Rptr.1876 (Ind.Cir.Ct.Marion Co.1981)	Granted	--	Actual malice (Public official)	Not cited	Not clear	Truth; opinion; "no facts which show or tend to show" actual malice	
Weymouth Twp. Board of Education v. Wolf, 7Med. L.Rptr.1538 (N.J.Super. Atlantic Co.1981)	Granted (non- media action)	--	Absolute privilege	Not cited	Not clear	Gov't. bodies may not be defamed; actual malice	
Wortham v. Little Rock Newspapers, Inc., 273 Ark. 179,618 S.W.2d 156, 7 Med. L.Rptr.1643 (Ark.1981)	Affirmed grant	--	Malice (common law)	Not cited	Neutral	Defamatory meaning	

ADDENDUM

Brophy v. Philadelphia Newspapers, 6Med.L.Rptr. 2419 (Pa.Super.1980)	Affirmed grant	--	Actual malice (Public official)	Cited	Neutral	Opinion; hyperbole; record "devoid of evidence" of actual malice	
Catalano v. Pechous, 6Med. L.Rptr.2511 (Ill.1980), aff'g, 4Med.L.Rptr.2094 (Ill.App.1978)	1-Affirmed grant -- (media defend- and) 2-Reversed grant (non-media defendant)	--	Actual malice (Public officials)	Not cited	Not clear (probably neutral)	Plaintiff's evidence "falls far short" of proof of actual malice "with convincing clarity"	

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(Addendum - Cont.)

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<u>Dupler v. Mansfield Journal</u> 64 Ohio St.2d 115,413N.E. 2d 1187,6Med.L.Rptr.2362 (Ohio 1980)	Reversed denial	--	Actual malice (Public official)	Not cited	Non- neutral	Jury "acting reasonably could not find actual malice with convincing clarity"	Dismissed
<u>Henderson v. Kaulitz</u> , 6Med. L.Rptr.2409(6thCir.1981)	Affirmed grant to media de- fendants	--	Actual malice (Public figure)	Not cited	Not clear (probably neutral)	"absolutely no indication" of actual malice	
<u>Ihle v. Florida Publishing</u> , 6Med.L.Rptr.2081(Dist.Ct. App.), pet. for review denied, 6Med.L.Rptr.2298(Fla.1980), aff'g, 5Med.L.Rptr.2005 (Cir. Ct.1979)	Affirmed grant	--	Opinion	Not cited	Neutral	Absolute constitutional protection under <u>Gertz</u>	
<u>Kuan Sing v. Wang</u> , 8Med.L. Rptr.1087(N.Y.App.Div.1982), rvs'g 6Med.L.Rptr.2375(Sup. Ct.1980)	Reversed denial	--	Opinion	Not cited	Not clear	Absolute constitutional protection under <u>Gertz</u>	Dismissed
<u>Karaduman v. Newsday</u> , 51 N.Y.2d531,416N.E.2d557, 6Med.L.Rptr.2345(N.Y.1980), modf'g, 5Med.L.Rptr.2466 (N.Y.App.Div.1979)	1-Reinstated grant as to book publi- sher, editor & reporters 2-Affirmed de- nial as to newspaper publisher	Genuine is- sues of fact (as to news- paper pub- lisher)	Gross irre- sponsibility under special N.Y. standard for private figures	Cited	Non- neutral	Republisher may rely on <u>bona fides</u> of original publisher absent "sub- stantial reasons to ques- tion" the original publi- cation	

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Marcone v. Penthouse, 8 Med.L.Rptr.1445 (E.D.Pa. 1982)	Denied	Genuine is- sues of fact; unavailability of certain privileges	Public figure status	Not cited	Neutral	Other issues of equal importance: defamatory meaning; fair report; special damages	Trial re- sulted in verdict and substantial damages ag- ainst media defendant (see Bullet- in No.4 (Pt. 1) at 14).
Newell v. Field Enter- prises, 415 N.E.2d434, 6Med. L.Rptr.2450 (Ill.App.Ct. 1st Dist.1980)	Reversed grant	Genuine is- sues of fact	Negligence	Not cited	Neutral	Other issues -- fair report privilege; actual malice regard- ing partial summary judgment on claim for punitive damages; neutral reportage	
Robard v. Post-Standard, 6Med.L.Rptr.2375 (N.Y.1981), aff'g, 6 Med.L.Rptr.1058 (N.Y.App.Div.1980).	Affirmed grant	--	Gross irres- ponsibility	Not cited	Neutral	Trial court had initially denied; middle level Appellate Court reversed and granted	