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## **Newspapers' Liability in False Light Action for an Injurious Falsehood about a Private Persons Which Is Not a Matter of Public Concern, 20 J. Marshall L. Rev. 847 (1987)**

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# FIFTH ANNUAL BENTON NATIONAL MOOT COURT COMPETITION\*

## NEWSPAPER'S LIABILITY IN FALSE LIGHT ACTION FOR AN INJURIOUS FALSEHOOD ABOUT A PRIVATE PERSON WHICH IS NOT A MATTER OF PUBLIC CONCERN

The John Marshall Law School is especially proud that Associate Justice William J. Brennan, Jr., presided at the final arguments of the Fifth Annual Benton National Moot Court Competition. Justice Brennan's participation, together with that of the other excellent judges who volunteered their time and skills, has helped the 1986 Benton Competition to be one of the finest in the country.

Published here are the best petitioner and respondent briefs from, respectively, Florida State University College of Law and Boston University School of Law. The Competition was won by Florida State, represented by Sandra B. Ross and Paul J. Ullom. Second place was captured by St. John's University School of Law, represented by Laura A. Endrizzi, Kellyann Fields, and Amiel J. Rossabi. The participating schools can be justifiably proud of the performance of their students. The difficult and unsettled questions of law arising from recent United States Supreme Court opinions concerning the interplay of communications technology, the first amendment, and personal privacy, presented a timely and critical challenge to their skills.

This year's problem presented a "false light" privacy action arising from a news item that appeared in defendant's newspaper. The item falsely stated that the plaintiff, an attorney, had filed for personal bankruptcy relief. The facts indicated that some unknown person had tampered with the defendant's computer to insert this false news item. Participants focused on three issues:

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\* The Benton materials which follow are printed here as they were submitted. Except for a few, obvious typographical errors, no changes have been made and no editing has been done.

1. Does the Constitution require that a private person prove *Sullivan* malice to recover in a false light action where the injurious falsehood is not a matter of public concern?
2. If a private person in a false light action, not involving a matter of public concern, need not prove deliberate falsity or reckless disregard of the truth, do constitutional constraints require that the plaintiff prove fault?
3. If the plaintiff in a false light action by a private person, not involving a matter of public concern, must prove negligence, does the application of the doctrine of *res ipsa loquitur* satisfy constitutional requirements of proof?

The Supreme Court has yet to resolve these issues flowing from its recognition and development of the constitutional restrictions enunciated in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) and its progeny.

As in prior competitions, each participating school submitted a brief on behalf of either the petitioner or the respondent. Three reviewers, each of whom was either a faculty member or an experienced practitioner, independently graded each brief. A brief's total score was the average of the grades given by the three reviewers. Because our competition emphasizes research and writing, the brief represented 50% of the score awarded to teams in each round; the remaining 50% was awarded for performance in the oral argument. The oral argument score was the average of the total points awarded by each of the judges of the argument.

The oral competition, in which representatives of 42 schools participated, consisted of two preliminary rounds, an octo-final, quarter, semi-final, and final round. Participants argued both sides of the case and competed against different schools in each preliminary round of the argument. Sixteen teams with the highest aggregate oral and brief scores argued in the octo-final rounds; eight teams with the highest aggregate scores advanced to the quarter final rounds; four teams with the highest aggregate scores went to the semi-final rounds; and the two top teams competed in the final argument.

Once again, our outstanding judiciary enhanced the quality of the Competition. Judges for the 1986 Competition were:

#### FINAL ROUND

Honorable William J. Brennan, Jr.  
Associate Justice of the United States Supreme Court  
Honorable William G. Clark  
Chief Justice of the Illinois Supreme Court  
Honorable Shirley S. Abrahamson  
Justice of the Wisconsin Supreme Court

Honorable William J. Bauer  
Chief Judge of the United States Court of Appeals for the  
Seventh Circuit  
Honorable Walter J. Cummings  
Judge of the United States Court of Appeals for the  
Seventh Circuit  
Honorable Richard A. Posner  
Judge of the United States Court of Appeals for the Seventh  
Circuit  
Honorable George N. Leighton  
Judge of the United States District Court for the Northern  
District of Illinois

#### SEMI-FINAL ROUND

Honorable M. Jeanne Coyne  
Justice of the Minnesota Supreme Court  
Honorable Brent Dickson  
Justice of the Indiana Supreme Court  
Honorable Ben Miller  
Justice of the Illinois Supreme Court  
Honorable Edward D. Robertson, Jr.  
Justice of the Missouri Supreme Court  
Honorable Charles R. Wolle  
Justice of the Iowa Supreme Court  
Honorable William Eich  
Judge of the Wisconsin Court of Appeals

#### QUARTER-FINAL ROUND

Honorable William Moser  
Judge of the Wisconsin Court of Appeals  
Honorable Paul W. Schnake  
Justice of the Appellate Court of Illinois  
Honorable Allan Stouder  
Justice of the Appellate Court of Illinois  
Honorable Joan H. Lefkow  
Magistrate of the United States District Court for the Northern  
District of Illinois  
Honorable John W. Gustafson  
Judge of the Circuit Court of Cook County  
Honorable Sophia H. Hall  
Judge of the Circuit Court of Cook County  
Honorable Willard J. Lassers  
Judge of the Circuit Court of Cook County

Honorable Earl E. Strayhorn  
Judge of the Circuit Court of Cook County  
Dean Robert Bennett  
Northwestern University School of Law  
Professor Donald L. Beschle  
The John Marshall Law School  
Professor Robert G. Johnston  
The John Marshall Law School  
Professor Timothy P. O'Neill  
The John Marshall Law School

To all of our judges, we give our heartfelt thanks.

The enormous success of our Benton competitions could not be realized without the Benton Committee's able administration: Professor Ardath A. Hamann, Competition Coordinator; Associate Dean Helen M. Thatcher; Professor Michael L. Closen; Professor Robert G. Johnston; Professor Ralph Ruebner; and Mr. Eugene Richards, Chief Justice, Moot Court Executive Board. As the Committee Chairman, I thank each of them for their unrewarded sacrifices. Also, special thanks to Center for Information Technology and Privacy Law research assistants, Moot Court Executive Board associate justices, and a host of John Marshall Law School students who contributed to the Competition's success.

George B. Trubow\*

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