

Suing the News Media in the Age of Tabloid Journalism: L. Lin Wood and the Battle for Accountability

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INTRODUCTION

On March 14, 2005, Gary A. Condit settled a high-profile, \$11 million defamation¹ lawsuit² against celebrity author Dominick Dunne based upon accusations by Dunne that the former U.S. Congressman from California was responsible for the death of

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¹ See generally DON R. PEMBER & CLAY CALVERT, MASS MEDIA LAW 133–64 (2005-2006 ed.) (providing an overview of defamation law).

² See *Condit v. Dunne*, 225 F.R.D. 113, 114 (S.D.N.Y. 2004) (rejecting Dunne's "motion for a protective order barring public dissemination of the videotape transcript of defendant Dunne's September 29-30, 2004 deposition" in which Dunne made statements that he claimed would embarrass him, "deprive him of a fair trial and taint the potential jury pool."), *Condit v. Dunne*, 225 F.R.D. 100, 113 (S.D.N.Y. 2004) (granting Dunne's motion to compel Condit "to answer questions regarding his sexual relationships insofar as they are relevant to a defense of substantial truth, mitigation of damages, or impeachment of plaintiff."), *Condit v. Dunne*, 317 F. Supp. 2d 344 (S.D.N.Y. 2004) (denying defendant Dunne's motion to dismiss defamation claims based on statements that he made on *The Laura Ingraham Show*, *ET Online*, *Larry King Live* and at certain dinner parties, but granting his motion to dismiss causes of action based on statements made in the *Boston Herald* and *USA Today*).

intern Chandra Levy in Washington, D.C.³ Dunne, a *Vanity Fair* correspondent who is, as Professor Jonathan Turley of George Washington Law School once put it, “famous for combining breathless gossip with breast-beating condemnations of anyone suspected of a crime,”⁴ had concocted a bizarre story about Condit, Levy, an Arab procurer and a horse whisperer that he relayed on several media outlets and that suggested Condit had Levy killed.⁵

Less than two weeks before the Dunne settlement for an undisclosed amount of cash and an apology from the “chronicler of fame and misfortune”⁶ that he “did not say or intend to imply that Mr. Condit was complicit in her disappearance, and to the extent my comments may have been misinterpreted, I apologize for them,”⁷ Los Angeles Lakers basketball superstar Kobe Bryant was reaching a confidential settlement for a similarly undisclosed amount of cash to end a civil suit for sexual assault and rape filed against him by Katelyn Faber,⁸ the woman who accused Bryant of sexual assault at the Lodge & Spa at Cordillera in Eagle County, Colorado, back in 2003.⁹

While the two cases seem unrelated at first blush, they are united by the attorney that helped bring those settlements to fruition for both plaintiffs—L. Lin Wood. But the Atlanta-based litigator is no stranger to representing plaintiffs caught up in cases that are media spectacles. As a reporter for the *Rocky Mountain News* wrote in September 2004, Wood is a “big-time attorney of notorious clients” who, in the Bryant situation, “turned a tawdry

³ See Michael Doyle, *Condit Settles Suit Against Writer Dunne*, SACRAMENTO BEE, Mar. 15, 2005, at A3.

⁴ Jonathan Turley, *A Peddler of Court Gossip May Pay the Piper*, L.A. TIMES, May 3, 2004, at B13.

⁵ See Felicity Barringer, *Journalism Or Gossip?*, N.Y. TIMES, Jan. 28, 2003, at E1 (describing the story that Dunne told about Condit’s alleged involvement in Levy’s death).

⁶ Diane Cardwell, *In New York, Power Breakfast Is Served at the Regency*, N.Y. TIMES, June 5, 2005, at 37.

⁷ Doyle, *supra* note 3, at A3.

⁸ Complaint for Sexual Assault and Rape, *Doe v. Bryant*, No. 04-M-1638 (D. Colo. Aug. 10, 2004). TheSmokingGun.com, *Kobe Bryant Sued by Rape Accuser*, <http://www.thesmokinggun.com/archive/0810042kobe1.html> (last visited Nov. 10, 2005).

⁹ See Howard Pankratz & Mike McPhee, *Bryant Settles Civil Lawsuit*, DENVER POST, Mar. 3, 2005 at B-01.

rape case into a wronged woman's cause for justice. He turned her parents into victims' advocates and he even got an apology out of one of the NBA's top players."¹⁰

When Wood originally was brought onto the legal team representing Faber in July 2004, Faber's local counsel released a statement that Wood was called in to "address growing concerns regarding media coverage of our client."¹¹ Some pundits even speculated that Wood's retention in the case might have been "an attempt to intimidate the media."¹²

Why would the media be intimidated by Wood? The answer is found in two names that are forever etched in memory with the sordid and sensational media coverage of tragic events in the mid-to-late 1990s: Richard Jewell and JonBenét Ramsey.

It was Wood's representation of Jewell, the former security guard now cleared but originally linked to the bombing of Atlanta's Centennial Olympic Park in 1996,¹³ that "rocketed him into national prominence."¹⁴ On Jewell's behalf, "Wood negotiated a \$500,000 settlement from NBC and undisclosed amounts from CNN and other media outlets"¹⁵ that allegedly defamed the once-portly man who, in fact, saved many lives through his heroic actions in the park. As Wood put it in a statement to the news media after the long-sought Eric Rudolph eventually confessed to the bombing in April 2005, "I would like to think that government and Olympic officials might see this as an opportunity to give Richard Jewell some well-deserved and long-overdue recognition for his heroism that night."¹⁶

¹⁰ Peggy Lowe, *Man Who Sealed the Deal*, ROCKY MTN. NEWS (Denver, Colo.), Sept. 3, 2004, at 6A.

¹¹ Charlie Brennan, *Ramsey Lawyer Joins Bryant Accuser's Team*, ROCKY MTN. NEWS (Denver, Colo.), July 9, 2004, at 30A.

¹² Howard Pankratz, *Kobe Bryant's Accuser Hires High-Profile Atlanta Lawyer*, DENVER POST, July 9, 2004, at B-03.

¹³ In April 2005, Eric Rudolph "pleaded guilty to setting off the bomb at Centennial Olympic Park, which killed Alice Hawthorne and injured 111 people." Jeffrey Scott & Don Plummer, *Bomber Brags He Beat Death*, ATLANTA J.CONST., Apr. 14, 2005, at 1A.

¹⁴ Mike McPhee, *Accuser's Civil Suit, Lawyer Move to Fore*, DENVER POST, Sept. 2, 2004, at A-07.

¹⁵ *Id.*

¹⁶ Don Plummer & Cameron McWhirter, *Rudolph Cuts Deal*, ATLANTA J.-CONST., Apr. 9, 2005, at 1A.

Wood was the man responsible, Jim Moscou wrote in *Editor & Publisher Magazine* in November 2000, for “taking Jewell’s reputation from ‘the 1996 Olympic bomber’ to ‘the man who didn’t do it.’”¹⁷ Moscou added:

[T]here’s arguably no media-plaintiff attorney in America quite like Wood. In the short four years he has tangled with the press, Wood has carved out a national reputation as a lawyer who represents those so seemingly guilty and evil that no other attorney would accept them as clients. Where the world sees a lone bomber, Wood sees a victim of an overzealous, unprofessional media—then uses that media to “win” his case.¹⁸

Like Richard Jewell, John and Patsy Ramsey, along with their son Burke, were wrongly accused by many in the news media of committing a terrible crime. In the Ramseys’ case, however, it was the still-unsolved murder of John and Patsy’s pageant-participating daughter, JonBenét,¹⁹ in their Boulder, Colorado home on December 26, 1996, that cast them under a pall of suspicion. As one federal court judge wrote in a defamation action filed against the couple by a man they named as a possible suspect, John and Patsy Ramsey “have never been charged, arrested, or indicted for any offense in connection with the murder of JonBenét, and they deny any involvement in her death, although they have been under an ‘umbrella of suspicion’ from almost the beginning of the murder investigation.”²⁰ While a federal judge in April 2003

¹⁷ Jim Moscou, *The Rebel Yell*, EDITOR AND PUBLISHER MAG., Nov. 27, 2000, at 20.

¹⁸ *Id.*

¹⁹ The media presented many images of JonBenét Ramsey during her competition in pageants that were highly sexualized, especially for some deviants. See Karen DeWitt, *All Dolled Up*, N.Y. TIMES, Jan. 12, 1997, at Week in Review 4 (writing that many photographs of JonBenét Ramsey “show her posed coquettishly in showgirl costume and lipstick, her hair a highlighted blonde”). In fact, in February 2004, police near Boston, Mass., arrested a man on child pornography charges. At his home, “in addition to machetes and swords, police found videos and photos of nude female children, as well as newspaper clippings of JonBenét Ramsey, a child beauty queen from Colorado whose 1996 murder case received national media attention.” Jack Encarnacao Jr., *Cape Man Denies Child Pornography Allegations*, BOSTON GLOBE, Feb. 18, 2004, at B3.

²⁰ *Wolf v. Ramsey*, 253 F. Supp. 2d 1323, 1327 (N.D. Ga. 2003).

ultimately cleared John and Patsy Ramsey of any wrongdoing,²¹ that ruling would come far too late for the tabloid press looking for a sensational story.

The Ramseys' story, indeed, made for the ultimate in tabloid journalism²² has led, in turn, to a slew of lawsuits filed by Wood on their behalf. For instance, in January 2003, Wood settled a defamation action against the *New York Post* based on an article that allegedly portrayed Burke Ramsey, the older brother of JonBenét, as the murderer of his sister.²³ In 2002, the Ramseys reached another confidential settlement in their \$80 million defamation suit against a Boulder police detective who allegedly defamed them during television interviews and in a book called *JonBenét: Inside the Ramsey Murder Investigation*.²⁴

Beyond those cases, Wood sued a major tabloid, the *Globe*, for \$35 million for false headlines that suggested Burke killed his sister.²⁵ By September 2004, the *Denver Post* reported that "[r]epresenting the Ramseys, Wood successfully sued three supermarket tabloid newspapers, publications known not only for writing on the edge of libel laws but also for their deep pockets. The settlement amounts were sealed."²⁶ When the Ramseys were sued for defamation by their former housekeeper, who claimed she was libeled in a book the Ramseys wrote called *The Death of*

²¹ See Marcos Mocine-McQueen & Paula Woodward, *Judge Says JonBenét Case Points to Intruder*, DENVER POST, Apr. 6, 2003, B-01 (describing how U.S. District Court Judge Julie E. Carnes "who reviewed much of the evidence in the JonBenét Ramsey slaying has said the evidence points to an intruder, not JonBenét's parents, as the girl's killer").

²² See generally Darcie Lunsford, *Taming the Tabloids*, AM. JOURNALISM REV., Sept. 2000, at 52 (discussing tabloid journalism in the United States, including coverage of the murder of JonBenét Ramsey, and quoting Lin Wood for the proposition that "I think that John and Patsy find the tabloids revolting and disgusting").

²³ *Briefing: New York; Ramseys Settle Suit Against Newspaper*, ROCKY MTN. NEWS (Denver, Colo.), Jan. 9, 2003, at 27A (writing that "defamation lawsuit filed against the New York Post by the parents of JonBenét Ramsey has been settled").

²⁴ Kieran Nicholson, *Ramsey Libel Suit is Brought to an End*, DENVER POST, Aug. 9, 2002, at B-02.

²⁵ Lisa Levitt Ryckman, *Libel Suits Filed For Brother Of JonBenét*, ROCKY MTN. NEWS (Denver, Colo.), May 11, 2000, at 5A.

²⁶ McPhee, *supra* note 14, at A-07.

Innocence,²⁷ Wood was successful in getting the action dismissed.²⁸ He dubbed it “a resounding victory.”²⁹

Wood, however, does not win or successfully settle all of the lawsuits that he brings against the media on behalf of his high-profile cadre of clients. For instance, in January 2005, U.S. District Court Judge Phillip S. Figa dismissed a defamation action by the Ramsey family that Wood had brought against the Fox News Network.³⁰ In that particular case, Wood argued that “a December 2002 segment by Fox News reporter Carol McKinley defamed the Ramsey couple and their son Burke by implying they may have been involved in the 1996 slaying of JonBenét.”³¹ It is a case that Wood discusses later in Part II of this law journal article.

With Wood’s representation of clients who were falsely accused or suspected of crimes sweeping up the likes of Gary Condit, Richard Jewell and John and Patsy Ramsey, it is easy to see why former CBS news anchorman Dan Rather once dubbed Wood the “attorney for the damned.”³² Wood showcases his high-profile client list on his firm’s Web site,³³ where he also trumpets his myriad appearances on television programs ranging from *60 Minutes* to the *Oprah Winfrey Show*.³⁴

This article, for the first time in an academic setting, takes an up-close look at Wood’s work as one of the very few attorneys in the United States who has earned a national reputation for suing media organizations. The only other litigator who has fashioned a similar reputation for taking on the news media is Los Angeles-

²⁷ JOHN RAMSEY & PATSY RAMSEY, *THE DEATH OF INNOCENCE* (2000).

²⁸ Owen S. Good, *Case Against Ramseys Dismissed*, ROCKY MTN. NEWS (Denver, Colo.), Apr. 12, 2002, at 33A.

²⁹ *Id.*

³⁰ See generally *Ramsey v. Fox News Network, L.L.C.*, 351 F. Supp. 2d 1145 (D. Colo. 2005). See Karen Abbott, *Ramsey Suit Against Fox Dismissed*, ROCKY MTN. NEWS (Denver, Colo.), Jan. 8, 2005, at 17A (describing the decision to dismiss the case).

³¹ Alicia Caldwell, *Defamation Suit Heard*, DENVER POST, Dec. 21, 2004, at B-02.

³² Peggy Lowe, *Key Players in Court*, ROCKY MTN. NEWS (Denver, Colo.), Aug. 26, 2004, at 6K.

³³ In January 2006 Wood joined the law firm of Powell Goldstein, LLP., <http://www.pogolaw.com/people-attorneys-profile-1008.html> (last visited Feb. 21, 2006).

³⁴ *Id.*

based Neville Johnson.³⁵ Johnson's work, however, concentrates more on invasion of privacy litigation,³⁶ while Wood's suits for Jewell, the Ramseys and Condit focused on defamation.

In this article, centered on an exclusive interview conducted in August 2005 by the authors with Wood in his Atlanta, Ga., offices, Wood articulates his views on a number of different issues, including:

- the purpose of the First Amendment³⁷ protection of a free press;
- libel law and the need for libel reform;
- strategies and tactics, including the use of the court of public opinion, when suing the news media for libel;
- news media accountability and the efficacy of journalism ethics codes in an era of corporate conglomeration, infotainment and sensationalism;
- the impact of news media coverage on individuals' lives, families and reputations;
- the relationship between media ethics and media law; and
- the use of the news media on behalf of his clients' cases.

The remainder of this article is divided into three parts. Part I describes the setting for the interview, as well as the methodology used in both the interview process and in the writing of the article. Part II sets forth the interview, including four separate sections,

³⁵ See generally Robert D. Richards & Clay Calvert, *Suing the Media, Supporting the First Amendment: The Paradox of Neville Johnson and the Battle for Privacy*, 67 ALB. L. REV. 1097 (2004) (profiling Neville Johnson and his litigation against the news media).

³⁶ *Id.*

³⁷ The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. CONST. amend. I. The Free Speech and Free Press Clauses have been incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. See *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

each on a different topic or general theme and each prefaced with introductory material before providing a question-and-response format for Wood's remarks. Finally, the Conclusion analyzes Wood's comments and provides the authors' conclusions.

I. THE SETTING AND METHODOLOGY

The interview took place on the hot, hazy and humid morning of August 3, 2005, in downtown Atlanta, Ga., at the Law Offices of L. Lin Wood, P.C., located on the twenty-first floor of the Equitable Building on Peachtree Street. The corner-office conference room that was the location for the interview overlooks Centennial Olympic Park where Wood's first high-profile client, Richard Jewell, first gained fame and media misfortune.

The interview lasted approximately 100 minutes. It was recorded on two audiotapes that were later transcribed by a professional secretary and then reviewed by the authors. The authors made minor changes in syntax, but did not alter the substantive content or meaning of Wood's comments. Some of the questions and responses were reordered to reflect the themes and sections in the Conclusion of this article. Other portions of the interview were deleted as extraneous or redundant.

In a few instances, questions were asked that Wood could not directly discuss due to the confidential settlement agreements that he has reached in some cases. For instance, as becomes clear during the interview, Wood is severely limited in what he can say about the settlement between Katelyn Faber and Kobe Bryant.

A copy of the revised transcript was forwarded to Wood in early September 2005. Wood returned to the authors later that month the revised transcript, with minor syntactical revisions—the authors input all of these changes—and a signed separate statement verifying that the transcript, with those changes, accurately reflected his remarks. A copy of the signed verification form is on file with this law journal, and the original is possessed by the authors of this article.

Importantly, Wood exercised absolutely no editorial control over either the conduct of the interview or the content of this

article. He did not, in fact, review the article itself before it was submitted to this journal. Wood only reviewed the raw interview transcript. For purposes of full disclosure and preservation of objectivity, it should be emphasized that neither of the authors of this article has ever worked for or on behalf of Lin Wood.

II. THE INTERVIEW

This part of the article is divided into four sections, each of which includes a brief introduction to the section's theme, followed by a question-and-response format. Section A discusses Wood's views on the purpose of a free press under the First Amendment. Section B looks at the special problems associated with litigating libel cases from a plaintiff's perspective. Section C examines media accountability in a 24/7 news environment. Finally, Section D reveals the difficulties encountered by lawyers who sue the news media. The authors have added footnotes, where relevant, to both the questions and responses to enhance details and provide citations to cases mentioned during the interview.

A. The First Amendment and a Free Press

Lin Wood's perspective on a free press embraces the time-honored notion that the First Amendment was designed to protect political expression and the role of the press in serving as a watchdog over government.³⁸ This function places the media in a position where reporters develop "a state of mind, accepting responsibility as a surrogate for the public, asking penetrating questions at every level, from the town council to the state house to the White House, in corporate offices, in union halls and in professional offices and all points in between."³⁹

³⁸ Timothy E. Cook, *The Functions of the Press in a Democracy*, in *THE PRESS* 117-118 (Geneva Overholser & Kathleen Hall Jamieson eds., 2005) (noting accepted definitions of this function as when the press "independently scrutinizes the workings of powerful institutions and provides an incentive for them to work for the public good").

³⁹ Murray Marder, *This is Watchdog Journalism*, 53 *NIEMAN REPORTS* (Winter 1999), available at http://www.nieman.harvard.edu/reports/99-4_00NR/Marder_ThisIs.html (last visited Nov. 19, 2005).

Ironically, the general framework for the watchdog function requires the media to hold government accountable for its actions, but as Wood is quick to point out—and as later discussed fully in Section C—no mechanism exists to hold the media accountable for the consequences of their actions.

A secondary operation for the press, according to Wood, is to convey information that the public needs to function in day-to-day life. In this section, he discusses how the media fare in these roles and how the development of First Amendment law over the years has forced a shift away from those underlying functions.

QUESTION: In your view, what is the primary purpose of a free press under the First Amendment?

WOOD: To review, investigate, analyze and comment on the actions of government and government officials. That's the primary goal of a free press. Secondly, it is to convey information to the public about matters of public interest.

QUESTION: Many of the media defendants you face rely upon the First Amendment as protection for their activities. In a sense, that forces you to launch a counterattack against the First Amendment or else find some way around it. As a result, do you feel your work is weakening First Amendment protections in any way?

WOOD: No. Unfortunately, I find that some of the cases that I've been involved in are thrown back at me because the judges were just absolutely wrong in their interpretation of First Amendment law. Take the case the Ramseys filed against Fox News out in Colorado that was recently dismissed by the district court judge.⁴⁰ It was just a horrible decision.

The trial court confused the standards governing motions to dismiss with those controlling motions for summary judgment, and he dismissed the case. The judge literally went out of his way to say that the burden at that time was on the Ramseys. But this was a motion to dismiss. For reasons unrelated to the merits of the case and more directly related to their personal situation and, in

⁴⁰ See *supra* note 30 and accompanying text.

particular, Patsy's health, the Ramseys made a decision not to appeal that ruling.

So that case sits out there, and it's horrible law. I've already seen it thrown back at me at least once, and I've seen it quoted in decisions here in Georgia. It's just bad law.

As for weakening the First Amendment, I think that a First Amendment without accountability for wrongdoing weakens the system as a whole. It fosters bad reporting and poor journalism. It literally puts a stamp of approval on negligent reporting. It allows reporters to be wrong, sloppy and careless—maybe even personally malicious—as long as they don't hit that top button where they've published a false and defamatory statement with actual knowledge of falsity or reckless disregard for truth or falsity,⁴¹ which is akin to probable knowledge of falsity.

That weakens the standards of journalists. Whenever you increase the potential for false information to be disseminated, that hurts the First Amendment. A number of cases have made it clear that false speech is really not worthy of First Amendment protection,⁴² yet we seem to give it more and more protection with each passing day and decision. I can make a strong case that when I seek accountability for genuine wrongdoing, that ultimately strengthens the First Amendment.

B. Litigating Libel Cases & the Need for Libel Reform

Lin Wood's primary concern about libel law stems from the more than forty years' worth of First Amendment-related protections that have evolved for media defendants litigating defamation cases. Without question, all libel plaintiffs should recognize the behemoth they must stare down when suing a news organization, but those who fall into the category of public

⁴¹ See *PEMBER & CALVERT*, *supra* note 1 at 193 (providing a similar definition of actual malice).

⁴² See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340–41 (finding that “[a]lthough the erroneous statement of fact is not worthy of constitutional protection, it is nevertheless inevitable in free debate” and “[t]he First Amendment requires that we protect some falsehood in order to protect speech that matters”).

plaintiffs—public officials,⁴³ general-purpose public figures,⁴⁴ limited-purpose public figures⁴⁵ and the controversial involuntary public figure⁴⁶—face even greater odds against them because of the constitutional safeguards that allow the media to report on public matters.

Wood believes the media flaunt those protections and, too often, the courts have adopted their view—all to the detriment and sacrifice of reputation in modern society. Part of the problem, as Wood defines it, is that judges typically are unfamiliar with defamation law, as it rarely comes up in the ordinary course of day-to-day jurisprudence. Consequently, those judges are likely to apply the various legal tests in the fashion prescribed by a defense bar that routinely litigates such matters. According to Wood, they have been preconditioned to believe that ruling against the media will result in a chilling effect⁴⁷ on expression.

In this section, he outlines the problems faced by libel plaintiffs in court and some of his thoughts for redressing the issues he perceives as unfair to the types of clients he represents.

QUESTION: Have courts gone too far in protecting the press from civil liability and lawsuits based on libel claims and, if so, can you describe some of the ways in which you believe this happens?

⁴³ See *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (observing “that the ‘public official’ designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs”).

⁴⁴ *Gertz*, 418 U.S. at 351 (suggesting that “[i]n some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts”).

⁴⁵ *Id.* (describing the classification of plaintiff that is created when “an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues”).

⁴⁶ *Id.* at 345 (noting that “[h]ypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare”).

⁴⁷ See ROBERT D. RICHARDS, *FREEDOM’S VOICE* 5 (1998) (describing how even subtle government pressure can result in a chilling of expression).

WOOD: Yes. I believe that courts, since the 1964 decision in *New York Times v. Sullivan*,⁴⁸ have steadily eroded the ability of individuals and entities to redress false attacks on reputation by overemphasizing the need to safeguard First Amendment rights. In short, the courts are sacrificing reputation under the guise of protecting First Amendment rights. I don't think that is necessary and I don't think, ultimately, it is healthy for our society.

QUESTION: This is a follow-up: If you could reform one aspect of the tort of libel, what would it be and why would you reform it?

WOOD: I would dramatically reduce the number of individuals who are subject to being deemed limited-purpose public figures. If I had the power to do so, I would make it clear that there is no such classification as an involuntary public figure. I would limit the actual malice standard to public officials and public figures in the classic sense—individuals who have obtained pervasive and general notoriety—and to those fairly limited number of individuals who are private figures but who voluntarily thrust themselves into the forefront of a public controversy in a genuine, intentional effort to influence the result of the public decision and to influence the outcome of the debate.

Unfortunately, the way the lower courts have applied the *Gertz v. Robert Welch, Inc.*⁴⁹ test clearly shows the majority has assumed that there is a classification of involuntary public figure. I don't believe that is the case under *Gertz*. I think that they have applied the limited-purpose public figure test in a way that basically finds that any individual who receives publicity is a limited-purpose public figure. In my view, that's not a correct interpretation of *Gertz*.

QUESTION: So, in your view, the *Gertz* test itself is not the problem, but the application of the test is troublesome.

WOOD: Right, it's the application. In fact, the application of the limited-purpose public figure test by the United States Supreme Court has been consistent with my view of *Gertz*. I believe there

⁴⁸ See, 376 U.S. 254, 279–80 (1964) (establishing that public officials who sue for defamation arising out of statements about their performance or suitability to hold office would be required to demonstrate actual malice on the part of the publisher).

⁴⁹ *Supra* note 42.

have been only three Supreme Court cases since *Gertz* involving the question of private figures: *Time, Inc. v. Firestone*,⁵⁰ *Hutchinson v. Proxmire*,⁵¹ and *Wolston v. Reader's Digest Ass'n*.⁵² None of those decisions mentioned the classification of an involuntary public figure. We raised that issue in the Richard Jewell appeal. Obviously, review of that case was denied by the Supreme Court,⁵³ but when Richard's case gets to a final disposition in Georgia, we'll take one more shot at it.

QUESTION: Where does that case stand now?

WOOD: We're waiting for the trial judge to set a hearing on the *Atlanta Journal-Constitution's* motion for summary judgment. It's taken us about nine years to get to that point.

QUESTION: What's the most important thing you've learned about litigating libel cases over the years?

WOOD: When I started with Richard Jewell's case, I knew very little about libel or defamation law. I know a heck of a lot more about it now. The one overriding lesson that I have learned is that trial judges, in the main, are very unfamiliar with defamation law.

I spoke last week to Georgia state superior court judges at their annual summer convention. Out of two groups of judges—maybe 60 to 80 superior court judges in all—I asked how many of them had handled a defamation case. Only four hands went up and, of those four, it was one case only.

In litigating the cases, I go in believing that the trial judge—like Judge Mather in Richard Jewell's case—is familiar with the law. But that is not always the case. Unfortunately, because of the low number of defamation cases handled by trial judges, coupled with the fact that there is no organized plaintiffs' bar group with respect to First Amendment or defamation, judges often apply the media defendant's interpretation of First Amendment law. The media defense bar is well organized.

⁵⁰ 424 U.S. 448 (1976).

⁵¹ 443 U.S. 111 (1979).

⁵² 443 U.S. 157 (1979).

⁵³ *Atlanta Journal-Constitution v. Jewell*, 555 S.E.2d 175 (Ga. Ct. App. 2001), cert. denied, 537 U.S. 814 (2002).

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Judges get a skewed interpretation of the law in favor of the First Amendment and media defendants. For example, I recently decided it wasn't worth keeping the *Media Law Reporter*⁵⁴ in my library. Here's why—a decision is handed down, on a motion for summary judgment or a motion to dismiss, from a state court judge who probably has never before handled a defamation case. That order will then be published in the *Media Law Reporter*, which is decidedly and admittedly pro-media. Once published, this minor decision carries with it a much greater weight of authority. It will be cited not as *Doe v. Smith* in the Superior Court of South Georgia; rather, it will carry a *Media Law Reporter* citation and thus a lot more authority in subsequent cases than it ever should be given.

QUESTION: So, just by getting a case reported in *Media Law Reporter*, credibility and authority are attached to it?

WOOD: Here's a good example—I defeated a motion for summary judgment here in federal court in front of Judge Charles Moye. I represented AirTran Airlines against the *Cleveland Plain Dealer*. In fact, we defeated two motions for summary judgment.⁵⁵ Judge Moye wrote a lengthy opinion on both motions published in the Federal Supplement. The first decision was more legal, the second more factual. You will not find the first decision in *Media Law Reporter*.

QUESTION: Do you have to submit them? How do they decide what to publish?

WOOD: They pick them up. I'm sure that the media attorneys know to send them in for publication. Even in the index you have to be very careful because you will see that the keynote descriptions of cases, while they appear to be neutral, are usually couched in terms favorable to the defense—the First Amendment side of the equation.

⁵⁴ *But see*, BNA, MEDIA LAW REPORTER, <http://www.bna.com/products/ip/med.htm> (claiming that the “company enjoys an editorial independence unmatched in an industry which has been swept by a wave of consolidation in the past decade”) (last visited Feb. 5, 2006).

⁵⁵ *Compare* *Airtran Airlines, Inc. v. Plain Dealer Publ'g Co.*, 66 F. Supp. 2d 1355, 1368-69 (N.D. Ga. 1999), *with* *Airtran Airlines, Inc. v. Plain Dealer Publ'g Co.*, 314 F. Supp. 2d 1266, 1272, 32 Media L. Rep. 1561 (N.D. Ga. 2002).

That really has been the lesson that I've learned from litigating these cases. We're dealing with generally uninformed courts and, unfortunately, they get most of their information from sources that are biased from the First Amendment, media-defense perspective.

QUESTION: Is there a pro-First Amendment bias among judges themselves that harms your efforts in litigating cases against the media? You noted before that they sometimes get the information from the defense bar. But do you think the judges themselves have a pro-First Amendment bias?

WOOD: Yes. They have a pro-First Amendment bias. That is probably because most of them have grown up, legally speaking, in the post-*New York Times v. Sullivan*⁵⁶ era. They have been subjected to this massive legal and publicity campaign by the media and media defense lawyers that has led to almost an irrefutable presumption that any case that is decided adversely to a media defendant will "chill" the exercise of First Amendment rights and, as a result, society, as we know it, will cease to exist.

QUESTION: It is "the sky is falling" mentality, correct?

WOOD: It really is. When we're trying to get a case to a jury, I have heard media defense counsel stand up and tell the judge, "If you sanction this lawsuit by this plaintiff and allow this case to survive a motion dismiss or a motion for summary judgment, we're not going to be able to do our business. Society, as we know it, will cease to exist. The public will not be informed."

It is such a gross overstatement of reality. Yet, I think, the judges, in the main, buy the argument because they come to the table with a bias in favor of the First Amendment.

QUESTION: You have defended libel cases on occasion—perhaps most notably the defamation lawsuit against John and Patsy Ramsey arising out of their book, *The Death of Innocence*.⁵⁷ This year you were involved in a case in which your client was alleged to have defamed his opponent in a judicial election by publishing misleading information in a campaign flier.⁵⁸ Given the

⁵⁶ 376 U.S. 254 (1964).

⁵⁷ See *supra* note 20 and accompanying text.

⁵⁸ Steven H. Pollak, *Election Rivals Still Battling Over Libel*, 2 FULTON COUNTY DAILY REP., Feb. 22, 2005, at 36 (describing Wood's attempt to secure legal fees resulting from

reputational harm some of your clients have suffered through the years, do you find it difficult to be on the other side, suggesting that the *plaintiff* should have engaged in self-help remedies like counter speech⁵⁹ rather than file a lawsuit?⁶⁰

WOOD: The thrust of what I do is represent plaintiffs. I believe my legacy would be that I represent the underdog or victims. I thought, for example, in the *Wolf v. Ramsey*⁶¹ case, that John and Patsy Ramsey were victims. They were victims of a lawyer in New York, Darnay Hoffman. He was utilizing Chris Wolf for his own publicity purposes and to further his own agenda to keep himself, Darnay Hoffman, in the spotlight of the Ramsey case and to highlight and emphasize Darnay Hoffman's opinions that John and Patsy Ramsey were somehow involved in the murder.

I thought the Ramseys were victims of what I believed to be unprofessional conduct on the part of Darnay Hoffman. So if we stop there, I have no problem telling you that the defense in that case was consistent with what I try to do in civil litigation—even if I'm technically representing a defendant, I still believe that, in fact, my client is a victim.

In the more recent case, a sitting judge had her campaign manager file a libel case against my client, who was her opponent in the election, a full five days before the election.⁶² She basically used the judicial system as a method for getting free campaign advertising. She tried to use a libel lawsuit to refute campaign charges made by my client. If you use the complaint to make

a defamation action Fulton Superior Court Judge Bensonetta Tipton Lane filed against his client and her opponent in a judicial election, attorney Mark V. Spix. Lane filed the lawsuit after Spix released a campaign flier suggesting that she had "let a child abuser off," which she contended included false and misleading information).

⁵⁹ See generally Robert D. Richards & Clay Calvert, *Counterspeech 2000: A New Look at the Old Remedy for "Bad" Speech*, 2000 BYU L. REV. 553 (2000) (analyzing the time-honored, self-help remedy of combating "falsehoods and fallacies" by more intelligent discourse).

⁶⁰ Pollak, *supra* note 58 (reporting that Wood argued that "Lane used the courts to generate publicity for her campaign when a more appropriate response would have been for her to issue her own flier").

⁶¹ 253 F. Supp. 2d 1323, 1327 (N.D. Ga. 2003).

⁶² See Pollak, *supra* note 58

accusations against my client, and then the day after the election dismiss the lawsuit, it's an absolute abuse of the judicial system.

We could argue that there are no victims in the heat of campaign charges. We are beginning to turn judicial races into political campaigns of charge and countercharge, accusation and counter accusation, so maybe we have a little more difficulty tying the word "victim" to my client because he obviously made his own charges along the way. Yet, I believe that anyone that uses the legal system as a means to frivolously attack another individual and defame them ought to be held accountable for that type of conduct. We were successful in establishing it was frivolous litigation and abuse of the civil process.

QUESTION: In terms of the election, the harm's already done.

WOOD: No one knows for sure if it would have changed the election.

Certainly, my client feels like it had a significant impact. It was interesting because most members of the mainstream media did not publicize that lawsuit. I suspect, if asked, they would say they were not going to be used as a publicity vehicle by having a lawsuit filed. The *Fulton Daily Report*,⁶³ the local legal newspaper in the state of Georgia, gave it a tremendous amount of play. It did get a lot of play in the legal community, but I can't sit here and tell you whether that changed the election or not. Most people would probably say it did not, but that's not to say it didn't have a significant impact on the election and certainly a significant impact on my client.

QUESTION: There have been several high-profile cases in the news in the past year or so—Scott Peterson,⁶⁴ Robert Blake⁶⁵ and

⁶³ See Pollack, *supra* note 57 and accompanying text.

⁶⁴ See John Ritter, *Judge Sentences Peterson to Die*, USA TODAY, Mar. 17, 2005, at 3A (observing how, "with the hiring of celebrity defense attorney Mark Geragos, the case generated so much publicity that the trial was moved here [Redwood City, Cal.], 60 miles from Modesto. Peterson was convicted and sentenced to death for the murders of his wife, Laci, and their unborn son).

⁶⁵ See Kimberly Edds, *Blake is Acquitted in Wife's Slaying*, WASH. POST, Mar. 17, 2005, at A01 (reporting the acquittal of the 71-year-old actor, "who found fame playing a detective on television and a psychotic killer in the movies," in the shooting death of his wife, Bonny Lee Bakley).

Michael Jackson,⁶⁶ to name a few. Lawyers in celebrity trials become celebrities themselves.⁶⁷ You have experienced some of that notoriety in your own practice with Richard Jewell,⁶⁸ the Ramseys,⁶⁹ Gary Condit⁷⁰ and, most recently, with Katelyn Faber.⁷¹ How does that notoriety change a legal practice? Is your practice different today than it was before Richard Jewell walked into your office?

WOOD: We get a lot of phone calls from a lot of people around the country who feel that they are the next Richard Jewell. Unfortunately, most, if not a great majority of them, are not. We get a lot of phone calls from the media asking for comments on other cases. With one or two exceptions, I generally will not do that. I will do it only if I feel like my comments would be helpful to a cause that I am advocating for my clients. I have no desire to be a talking head.

QUESTION: Did you get calls about the Steven Hatfill⁷² situation because it seems rather analogous?

⁶⁶ See Shawn Hubler, *Spectacle Supplants Law as Focus of Jackson Trial*, L.A. TIMES, June 13, 2005, at A1 (quoting a past president of the Los Angeles Criminal Bar Association who described the pop star's trial as "pure celebrity" and compared it "to those paintings of dogs playing poker").

⁶⁷ See generally Martin Lasden, *On Being Famous*, CAL. LAW., Sept. 2005, at 26.

⁶⁸ See *supra* notes 13–18 and accompanying text.

⁶⁹ See *supra* notes 19–31 and accompanying text.

⁷⁰ See *supra* notes 2–7 and accompanying text.

⁷¹ See *supra* notes 8–11 and accompanying text.

⁷² *FBI Anthrax Team Searches Scientist's Apartment*, ST. PETERSBURG TIMES, Aug. 2, 2002, at 8A (reporting that Steven Hatfill is "considered 'a person of interest' in the anthrax attacks that killed five people"); *The Anthrax Investigation*, N.Y. TIMES, Aug. 14, 2002, at A22 (editorializing that Hatfill "unquestionably merits close examination, but the F.B.I. must be careful to protect his rights as it looks into his background and should not abandon other leads until it has cracked the case"); Sumana Chatterjee, *Expert in Anthrax Case Goes on the Offensive*, MILWAUKEE J. SENTINEL, Aug. 26, 2002, at 4A (quoting Hatfill as saying, "I want to look my fellow Americans directly in the eye and declare to them, 'I am not the anthrax killer. I know nothing about the anthrax attacks. I had absolutely nothing to do with this horrible crime'"); Toni Locy, *Anthrax Investigators Tail Scientist '24/7'* USA TODAY, May 29, 2003, at 4A (noting that FBI agents "routinely follow Hatfill in several cars and trucks, and they take pictures of him wherever he goes"); Randy Ludlow, *'Person of Interest' Has Fans, Critics*, THE COLUMBUS DISPATCH, May 30, 2005, at 1C (reporting that "Jewell and Hatfill contend their lives have been ruined by what they call the unwarranted label affixed by both police and the news media").

WOOD: I did. I have commented in print on that case because I felt like it did advance the cause of Richard Jewell in large part. I felt like it was part of my duty to advocate in the court of public opinion for my clients. I try to make sure that when I do media appearances that I'm doing it as part of that role of advocacy and not to do it because Lin Wood gets to go to New York City and sit across from Katie Couric for the 27th time. That's flattering, but it's just not how I want to be remembered in terms of my legacy as a lawyer. I don't want to be the guy that's on every panel about every subject matter every night with Greta Van Susteren. Some people want to do that—I don't see how they maintain a professional life.

I also would admit that the notoriety does bring a level of respect. When I'm involved in a case, I don't think it works against me. I think that the judges have treated me with what I perceive to be as some greater level of respect for what I've done because it's been publicly discussed.

I would like to think that respect comes not just because of the clients I've represented, but also from the way that I have advocated publicly for my clients.

I've had many tell me that they respected the way that I handled media interviews in a professional fashion where it was not slash and burn the other side.

C. Media Accountability: Law, Ethics and the Court of Public Opinion

"I think the media should be treated like any other corporation that is, in effect, putting out a product to make tons of money,"⁷³ Lin Wood told the *Atlanta Business Chronicle* in 2004. "They ought to be accountable for their negligence."⁷⁴ It is a familiar mantra from the Atlanta litigator who believes the First Amendment offers too much protection to the media in defamation lawsuits.

⁷³ Megan Woolhouse, *Every Lawsuit Is a War*, ATLANTA BUS. CHRON., Jan. 23, 2004, at <http://www.bizjournals.com/atlanta/stories/2004/01/26/story6.html> (last visited Sept. 20, 2005).

⁷⁴ *Id.*

It is not surprising that Wood feels this way. After all, his long-time client Richard Jewell, to date, has been unable to collect any damages from the *Atlanta Journal-Constitution*—the newspaper that repeatedly ravaged the security guard’s reputation after the Olympic Park bombing in 1996⁷⁵—primarily because the Georgia courts have labeled Jewell a limited-purpose public figure,⁷⁶ thus requiring him to prove the high-threshold standard of actual malice to recover.⁷⁷

Similarly, John and Patsy Ramsey were not immune from media speculation that they murdered their daughter.⁷⁸ The Ramseys lost their latest battle over a Fox News report that once again raised the specter of their involvement in the little girl’s death. As for the media’s accountability, the judge found that the parents should seek “meaningful vindication in the court of public opinion”⁷⁹ rather than in a court of law. For personal reasons, the Ramseys decided not to appeal that ruling.⁸⁰

In this section, Wood talks about the harsh reality he often faces when trying to hold the media accountable for harming someone’s reputation.

QUESTION: We’ve seen recent instances of journalists fabricating information and making up quotes and facts—outright plagiarism, in some instances.⁸¹ Should there be legal cause of

⁷⁵ See *Atlanta J. Const. v. Jewell*, 555 S.E.2d 175, 178 (Ga. Ct. App. 2002) (describing how “[t]he resulting media coverage of the criminal investigation caused Jewell and his family considerable anguish, while converting Jewell’s status from hero to suspect”).

⁷⁶ *Id.* at 186 (observing that, “[e]ven if the trial court erred in finding that Jewell was a voluntary limited-purpose public figure, the record contains clear and convincing evidence that, at the very least, Jewell was an involuntary limited-purpose public figure”).

⁷⁷ See *PEMBER & CALVERT*, *supra* note 1, at 193 (quoting Justice Brennan’s definition of actual malice as requiring proof of “knowledge of falsity or reckless disregard of whether the material was false or not”).

⁷⁸ See, e.g., Jere Hester, *Police Ready to Grill Slain Miss’ Parents*, DAILY NEWS (N.Y.), Jan. 6, 1997, at 26 (noting that while “Patsy Ramsey declared ‘there’s a killer on the loose,’” Boulder “officials said there was no cause for alarm but declined to elaborate”).

⁷⁹ *Ramsey v. Fox News Network, L.L.C.*, 351 F. Supp. 2d 1145, 1153 (D. Colo. 2005).

⁸⁰ See *supra* Part III.A.

⁸¹ See, e.g., James Rainey, *Newspaper Columnist Resigns After Inquiry*, L.A. TIMES, May 13, 2005, at A12 (reporting the resignation of Sacramento Bee columnist after an internal investigation revealed that sources mentioned in her column could not be shown to exist); David Shaw, *Columnist Kept Despite Making It Up*, L.A. TIMES, Apr. 24, 2005,

action for readers against newspapers in these situations? Doesn't it seem like news media or journalism ethics codes are insufficient here, in terms of accountability?

WOOD: Well, I don't think that the news media can be trusted to govern themselves effectively. There are some organizations like the Society of Professional Journalists⁸² that do a pretty good job of trying to establish, maintain and practice solid ethical standards. But that's the exception.

The media are driven now by the 24/7 news channels, the Internet and the cottage industry of talking heads that grew out of the O. J. Simpson trial.⁸³ Quite frankly, I don't see that constellation of media outlets governing itself effectively.

Nonetheless, I don't believe that a member of the reading or viewing public should be entitled to bring a lawsuit for false reporting unless it has a direct adverse impact on that individual. From a legal standpoint, obviously, there could be a legitimate cause of action only if there were harm to the individual. So I wouldn't go that far.

But I certainly think that there ought to be significant legal penalties for any false and manufactured reporting by journalists that directly impacts someone.

QUESTION: Do you see that attitude changing at any point, as journalistic credibility declines⁸⁴ and the public seems to turn against the news media in a number of these instances? Do you

at A29 (discussing bestselling author and Detroit Free Press columnist Mitch Albom's ethical lapses in writing a story in advance about two former Michigan State basketball players' attendance at a game when, in fact, "the two players wound up not going"); and Angela Tuck, *Errors, Ethical Lapses Challenge Newspaper Industry*, ATLANTA J.-CONST., Apr. 30, 2005, at 13A (discussing the difficulty newspapers have maintaining credibility in light of ethical problems).

⁸² "The Society of Professional Journalists is dedicated to the perpetuation of a free press as the cornerstone of our nation and our liberty," Society of Professional Journalists—SPJ Missions, http://www.spj.org/spj_missions.asp (last visited Nov. 17, 2005).

⁸³ See RICHARDS, *supra* note 47, at 52–58 (discussing the media spectacle of the O.J. Simpson murder trial).

⁸⁴ See generally, AMERICAN SOCIETY OF NEWSPAPER EDITORS, EXAMINING OUR CREDIBILITY, <http://www.asne.org/kiosk/reports/99reports/1999examiningourcredibility/index.htm> (last visited Nov. 14, 2005).

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think that the negative attitude toward the news media by the public will later on be reflected in the courts?

WOOD: I don't know what the impetus will be. I'm convinced, though, that at some point in time—hopefully in the near future—there will be a shift back toward reputation and a much more level playing field for plaintiffs in defamation litigation.

I think that will happen because the media defense lawyers will ask for too much. They will take it to such an extreme that someone is going to look over and say, "Wait a minute. This can't be the law."

The Supreme Court did that in *Gertz* when it realized that *Rosenbloom v. Metromedia, Inc.*⁸⁵ had basically wiped out state defamation law. The safe harbor of state laws against defamation was totally lost. The Court tried to step back. I think there is going to be another "step back" at some point in time, but it's not ever going to be shifted totally back in favor of reputation. The First Amendment is going to continue to always have the better end of the stick. Right now, though, its end of the stick is too large.

QUESTION: In terms of accountability, then, it seems that obtaining legal accountability is very difficult for plaintiffs. As you suggested, ethical accountability by itself is probably not going to work, with few exceptions like the SPJ ethics code.⁸⁶ If that's the case, how are the media, if at all, held accountable today?

WOOD: Probably the best way to go after the media is to use the media. As an advocate for your client, you've got to go out and litigate in the court of public opinion. You've got to take advantage of the willingness of the media to let you come on their air or use their column inches to discuss your client's position in a high-profile case. It's only going to be of any significant impact in a high-profile case.

QUESTION: Now, you've been pretty successful at that.

⁸⁵ 403 U.S. 29 (1971).

⁸⁶ Society of Professional Journalists—Code of Ethics, http://www.spj.org/ethics_code.asp (last visited Nov. 14, 2005).

WOOD: I think so. Undoubtedly, to overcome the initial press against Richard Jewell, we jumped on it quickly, to the extent possible, to minimize the long-term damage to Richard's reputation. Still, we could never totally undo the damage done to him and people's perception of him.

I was successful, in part, with John and Patsy Ramsey. But I got into that case late, in the fall of 1999, just before the grand jury refused to issue any indictments. They basically had sat silent for years while it was just a one-sided onslaught. Even then, coming back and suing the media effectively educated the public and mitigated some of the damage done to them and the public's perception of them.

QUESTION: Specifically, would that be the "Today Show" piece?

WOOD: Well, the Lou Smit presentation over five mornings on the "Today Show"⁸⁷ and an hour-long special on NBC, along with some limited appearances that I've done and limited appearances by John and Patsy Ramsey, helped to shift public opinion.

We made periodic efforts to convey information to the public: the 911 tape of Patsy's call, some of the civil deposition testimony and some of the police interrogation video.

We didn't go out and do it all at once. We tried, over time, to keep the case in the forefront or bring it back to the forefront of public attention in a way that was designed to truthfully portray what happened to this family.

To some extent, I think that we had success with Gary Condit, in part because of the success he had in litigation. Remember, Gary comes in as a public official. You can argue that Richard Jewell is not a limited-purpose public figure. You can even argue

⁸⁷ *The Today Show* (NBC television broadcast, Apr. 30, 2001) (describing how retired detective Lou Smit was brought in to investigate the Ramseys); *The Today Show* (NBC television broadcast, May 1, 2001) (supporting the "theory that an intruder, not the parents, committed this horrific crime"); *The Today Show* (NBC television broadcast, May 2, 2001) (noting that whoever killed JonBenet Ramsey built "a specialized garrote to kill her"); *The Today Show* (NBC television broadcast, May 3, 2001) (discussing the ransom note that was left at the crime scene); and *The Today Show* (NBC television broadcast, May 4, 2001) (describing how Smit became frustrated with the Boulder Police Department when officials there refused to listen to the intruder theory).

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that John and Patsy Ramsey had the right of reasonable response and shouldn't be deemed public figures. You could even argue that John and Patsy Ramsey, at some point in time, reverted back—if they were public figures—to private figures. But, with Gary, he was a public official.

No one was going to waste time arguing law or trying to make law about the standard of proof that he had to meet. He had to meet *New York Times v. Sullivan*.

To have success against the tabloids and a member of the mainstream media, Dominick Dunne, was a significant accomplishment. Now, it may not have changed the perception of the public with respect to accusations against Gary as a womanizer or as someone who was accused of being guilty of sexual misconduct. I think it did, however, drive home the fact that even a public official can redress the false accusations of being involved in a crime.

QUESTION: How difficult is it to make the public see the difference between an alleged sexual affair, on the one hand, and a crime, on the other?

WOOD: It's tough to get the media to concentrate on the latter. They love the former. When I went on the "*Today Show*" with Katie Couric with the lawyer for Dominick Dunne, I was the guest who got the tough questions. When Katie asked me about Gary, she described him as being "cagey."⁸⁸ She clearly conveyed in her question that Gary had not been forthright in his dealings about the Chandra Levy case. That's just simply a fiction that evolved out of the fact that Gary did not go out and publicly explain himself for almost the first three months. He didn't explain himself at all.

Then, when he finally did speak out publicly, it was in what I consider the wrong interview, with the wrong interviewer and the wrong interview format. So there's this lingering perception that Gary did not cooperate with the authorities and this absolutely

⁸⁸ *The Today Show* (NBC television broadcast, Jan. 12, 2005) (quoting host Katie Couric's question to Lin Wood about Gary Condit's willingness to discuss his sexual conduct: "Why hasn't he been more forthcoming about this relationship? He's been quite cagey about it in interviews and in that deposition.").

false idea that Gary lied to the authorities. And it just won't go away.

In fact, we're presently dealing with an article that just came out in the last few days in an Arizona newspaper. The article is primarily about Gary's brother. It made reference to the fact that he was the brother of Gary Condit, who became the focus of the Chandra Levy investigation after he "lied to investigators."

If I went to that journalist today and said, "Tell me the lie that Gary Condit made or uttered to investigators," he couldn't do it because there is none. If he had lied to investigators, they would have charged him with a crime. The bottom line is that although he did not lie to the investigators, it has become part of the myth of the Chandra Levy case and Gary Condit—a myth that, unfortunately, won't go away.

This reporter would probably tell me, "I read it in another article." It just builds and builds until it becomes fact.

QUESTION: Have the media changed their conduct, in terms of reporting information or gathering information, since you've been litigating cases against them, going back to the Richard Jewell and the Ramsey cases? Has there been any improvement?

WOOD: There's been some semantic improvement. Instead of saying "suspect," they now use the phrase "person of interest." I'm not sure that changes anything as a practical matter. I've always said that when the Attorney General of the United States stands on the lawn of the White House and says that an individual is a "person of interest" to the FBI in connection with a major act of terrorism, life as that person knows it has basically ceased to exist. If the Attorney General had said "suspect" instead, it would have had the same impact.

There are a fair number of responsible journalists now who are less quick to characterize individuals as "suspects" or "persons of interest" when law enforcement will not go on the record and characterize the individual as such. I think there are a larger number of responsible journalists now who think twice before they label someone a suspect because of what happened to Richard Jewell. Richard and I were there the day that Eric Rudolph pled

guilty and in his statement admitted the details of how and why he bombed Centennial Olympic Park.

QUESTION: So some journalists changed a bit?

WOOD: I've heard people say, "Hey, let's not 'Richard Jewell' this person." So I think Richard stands for caution. I think his case has created that yellow light that says slow down, exercise caution before you go through the intersection of accusation.

I would like to think that the Ramsey case, one day, will be studied. It will be a great example of how the uninformed were allowed to shout guilty while the informed individuals were treated as whispers of innocence. What I mean by that is you have the 93-page opinion from a federal judge in the *Wolf v. Ramsey* libel case granting the Ramsey's motion for summary judgment.⁸⁹ It was an excellent discussion and analysis of the evidence in the criminal case. Federal Judge Julie Carnes said the weight of the evidence was that an intruder killed the child⁹⁰ and that the only evidence that the parents were in any way linked to the murder was the fact that they, unfortunately, happened to be in the house the night their daughter was murdered.⁹¹

Then you have the Boulder district attorney coming out shortly thereafter saying the public should read Judge Carnes' opinion. And that she agrees with its conclusion. Those were informed, responsible public officials—a federal district court judge and a sitting district attorney in Boulder, Colorado. Yet those informed statements of innocence got very little media play because the media frenzy had died and nobody really wanted to stir it up by making it a frenzy over innocence.

I'd like to think that, one day, when that case is analyzed, it will be a good example of how informed opinion got lost in the shuffle because it wasn't part of the media frenzy. With the Condit case, I would like to think, and it may take another case or two, but I would think that it ought to be the same type of yellow light of caution for the media.

⁸⁹ *Wolf v. Ramsey*, 253 F. Supp. 2d 1323 (N.D. Ga. 2003).

⁹⁰ *Id.* at 1363.

⁹¹ *Id.* at 1360.

The talking heads right now think they can go on Greta Van Susteren, Nancy Grace and Larry King and have *carte blanche* to say anything they wish, make startling, sensational accusations and get away with it. If they study what happened in the *Gary Condit v. Dominick Dunne* case, they might think twice about that.⁹² But the Gary Condit case ought to be the starting point for saying to the talking heads, “You’ve got to watch out because uninformed, factually unsupported accusations of criminal involvement against individuals, even if they are public officials, will get you into trouble.”

QUESTION: In April of 2005, Eric Robert Rudolph pleaded guilty to the July 1996 bombing attack at Centennial Olympic Park in Atlanta⁹³—the incident that originally put your client Richard Jewell under a cloud of suspicion and egregiously injured his reputation.⁹⁴ The news media reported that Mr. Jewell attended Rudolph’s court appearance.⁹⁵ A two-part question: Did Eric Rudolph’s guilty plea bring closure to this unpleasant chapter in Richard Jewell’s life? Also, have any Atlanta officials or Olympic Committee representatives contacted Mr. Jewell since Rudolph’s plea to *thank* him for helping to secure the park that night?

WOOD: The answer, with respect to the first question about whether Rudolph’s guilty plea has brought closure to that part of Richard’s life, is that it has brought closure to the specific part of Richard’s life where he was afraid that no one would ever be accused of the crime of bombing Centennial Olympic Park. Richard was afraid that Rudolph might plead down in Alabama and then not be prosecuted in Georgia. So the fact that Rudolph openly and publicly admitted that he bombed Centennial Olympic Park did bring closure to Richard in that one narrow aspect of his life.

⁹² See *supra* note 2 and accompanying text.

⁹³ See Scott & Plummer, *supra* note 13, at 1A (discussing how Eric Rudolph’s plea to four bombings, including the one at Centennial Olympic Park in July 1996, spared him a possible death sentence).

⁹⁴ See *generally* *60 Minutes II: Falsely Accused* (CBS television broadcast, June 26, 2002) (describing how life has changed for Richard Jewell since the day of the bombing).

⁹⁵ See Scott & Plummer, *supra* note 13, at 1A.

Closure was not brought by the fact that he was eventually cleared as the focus of the investigation back in 1996, when the authorities gave him the letter saying he was not a target of the investigation. That's when Janet Reno issued him a half-hearted apology and former FBI director Louis Freeh went on "Meet the Press" and told Tim Russert that Richard Jewell was innocent.

Then Rudolph was charged and later captured. Each step along the way everybody would ask the question, "Has this brought closure for Richard?" The answer was, "No, the only closure Richard will ever have is when someone is convicted or pleads guilty to the crime." That occurred with Rudolph's plea of guilty. He openly admitted that he bombed Centennial Olympic Park.

The answer to the second part of the question is, sadly, no. Richard Jewell, even after the admission of guilt by Eric Rudolph, has been treated no differently by Atlanta public officials, Olympic officials or members of the media, than he was when he was thought of as being involved in the bombing. Not a big difference. No one has said thank you to Richard. I think there was one small city that honored him a few years ago.

QUESTION: In Indiana, I believe.

WOOD: There was an effort by a local state legislator to get a proclamation passed down here in the Georgia state legislature about Richard being a hero. That was several years ago. It was clearly done for political purposes. But even then they mailed it to him when usually they invite people down and shake their hand in front of everybody and give them a round of applause. Richard Jewell, despite his now undisputed innocence and his now undisputed acts of heroism, is still tainted goods, either because of the mass negative publicity about him and accusations against him or because he's going after the newspaper that "covers Dixie like the dew" and no one wants to be on the wrong side of the *Atlanta-Journal-Constitution*.

Richard Jewell is forever going to be remembered as the man that everybody thought bombed the park, but maybe now with slightly greater emphasis on the fact that he was falsely accused. He is never going to be remembered for the actual truth of his legacy of what he did. Richard Jewell was the hero of the 1996

Centennial Olympic Games. He saved more than 100 lives. I would bet you that twenty-plus years from now, if there's a trivia question that asks, "Which of the following names do you associate with the 1996 Centennial Olympic Games in Atlanta: Bob Richards, Clay Calvert, Eric Rudolph, Lin Wood or Richard Jewell. It's going to be Richard Jewell, not Eric Rudolph.

QUESTION: Guaranteed

WOOD: I'm sure more people tie Richard to the bombing than tie Eric Rudolph to the bombing, even today. Now, some people will say that Richard has been compensated. He's been successful in litigation with NBC,⁹⁶ CNN,⁹⁷ Piedmont College,⁹⁸ and the *New York Post*, etc.⁹⁹ And now that Rudolph has pleaded guilty, Richard came out okay. That's the argument you will hear.

Richard didn't come out okay. Richard Jewell had taken away from him his reputation that he didn't ask for but he earned, and that is the reputation of a hero. He is a legitimate hero, a man who was faced, as few of us ever are, with that moment of truth where you've got to decide to cut and run or whether you're going to put your life at risk to save the lives of other people. Richard Jewell didn't cut and run, but nobody remembers him for that.

QUESTION: In December of 2004, you appeared, along with your client John Ramsey, on NBC's "*Today Show*."¹⁰⁰ Mr. Ramsey told host Katie Couric that "[i]t's very difficult to recover your good name, regardless of what happens after it's taken."¹⁰¹ Do you believe that your clients who have been stained by defamatory statements in such large-scale fashion can ever fully restore honor to their names via libel suits or legal remedies?

⁹⁶ See *NBC, Lawyers for Jewell Settle Libel Allegations*, WASH. POST, Dec. 10, 1996 at A3.

⁹⁷ See *Richard Jewell Settles with CNN, Then Sues Atlanta Newspaper*, ST. LOUIS POST-DISPATCH, Jan. 29, 1997 at 5A.

⁹⁸ See *Jewell, College Settle Libel Lawsuit*, MILWAUKEE JOURNAL SENTINEL, Aug. 27, 1997 at 10.

⁹⁹ *Jewell v. NYP Holdings, Inc.*, 23 F. Supp. 2d 348 (S.D.N.Y. 1998)

¹⁰⁰ *The Today Show* (NBC television broadcast, Dec. 20, 2004) (discussing the eighth anniversary of the death of JonBenét Ramsey with John Ramsey and Lin Wood).

¹⁰¹ *Id.*

WOOD: You can minimize and you can mitigate, but you can never fully restore one's reputation, even in successful litigation. You can educate the public. This is done both in the litigation and by advocating for your clients in the court of public opinion. You can educate and, by virtue of that education, you can minimize some of the damage. But I do not believe that the legal system will ever be a place where you can fully restore reputation. Ray Donovan, secretary of labor under former President Ronald Reagan, after he had the criminal charges dropped against him, came out of the court and asked the question, "Where do I go to get back my good name?"¹⁰² If you asked me that question, I would say, "Well, you don't go to a court of law because that's not what you're going to get there."

A person may be able to help restore his or her good name, in part, in a court of law and, in part, in the court of public opinion. That's why it ought to be less difficult to find some measure of success in a court of law. Someone who has been so impugned, so falsely accused cannot actually ever get that back. The law should make it a little less difficult for that person to receive some fair compensation for wrongdoing and for the harm suffered.

You've got to remember that it's not just Richard Jewell who was damaged—it's his family. It's not just John and Patsy and Burke—it's their family. And it's their family's families. It will haunt the families of these people for generations to come. It will impact Burke Ramsey's children and his children's children.

QUESTION: How old is he now?

WOOD: Burke starts college in about two weeks.

QUESTION: We know that you cannot speak to the specifics of any settlements but, generally speaking, how important is it, in terms of a remedy, to obtain a letter of apology from the defendant,

¹⁰² See George Lardner, Jr., *Bronx Jury Acquits Donovan*, WASH. POST, May 26, 1987, at A1 (describing the scene in the courtroom this way: "As soon as the session was over, Donovan turned to chief Bronx prosecutor Stephen Bookin and asked angrily: 'Which office do I go to, to get my reputation back?'").

as you did from Dominick Dunne in the lawsuit involving former Congressman Gary Condit?¹⁰³

WOOD: I think it's helpful, but the fact of settlement conveys, in and of itself, a message that your client's case had merit, even though all the releases in every settlement ever undertaken in any litigation state that settlement is not admission of liability. I think the public's perception is that it is an admission of liability, and I don't think that's an unfair perception.

QUESTION: What do you think about the public's perception of the settlement in the Kobe Bryant case? Some people will think she copped out of the criminal case and it was a quick settlement.

WOOD: Well, I can't comment on that. If you ask me to pick out, in my twenty-eight-year career, the most difficult case where I think I accomplished the greatest good for an individual, I probably would put that young girl at the top of the list. I just think that the result there was my finest legal accomplishment to date. In terms of how the public perceives the result, I can't comment on it. I can't control it.

QUESTION: In January of 2005, U.S. District Judge Phillip Figa dismissed John and Patsy Ramsey's defamation lawsuit against Fox News Network¹⁰⁴ reasoning—according to published reports—“that the totality of the broadcast by the news outlet did not defame the parents or brother of the slain child beauty queen from Boulder.”¹⁰⁵ The judge remarked that the Ramseys “have a better chance for meaningful vindication in the court of public opinion through vigorous debate about the background and details of this heinous crime than by suing those whose reporting may arguably include some less than favorable references about them.”¹⁰⁶ Will that order be appealed? And what are your

¹⁰³ Michael Doyle, *Condit Settles Suit Against Writer Dunne*, SACRAMENTO BEE, Mar. 15, 2005, at A3 (explaining how “Condit secured an apology, the payment of an undisclosed sum and, not least, the freedom from further intimate questions about his friendship with the late Chandra Levy, a federal intern”).

¹⁰⁴ *Ramsey v. Fox News Network*, L.L.C., 351 F. Supp. 2d 1145 (D. Colo. 2005).

¹⁰⁵ Alicia Caldwell, *Judge Dimisses Ramsey Libel Lawsuit*, DENV. POST, Jan. 9, 2005, at C-02 (quoting Lin Wood as saying, “While we're disappointed, we're not surprised”).

¹⁰⁶ *Ramsey*, 351 F. Supp.2d at 1153.

thoughts about obtaining vindication in the court of public opinion rather than a court of law?

WOOD: Kind of interesting, isn't it? Most judges, you would think, live by the old adage about trying the case in the courtroom. I can't quote the beginning of that opinion exactly, but I really didn't like it. It started out by saying long after the issue is resolved, the lawyers linger on.¹⁰⁷ Somehow the lawyers were at fault for litigating a defamation case simply because it arose out of events that occurred years ago and might have dimmed in the public's mind.

I disagree with the judge. I respectfully disagree with his comments. Not that he is wrong about the idea they should advocate in the court of public opinion, but I think he's wrong about saying that's where the Ramseys should go exclusively—that, somehow, they shouldn't be in the district court of Colorado. They should have been in the district court of Colorado, and here's why.

I agree that any statement has to be viewed in the context of the entire broadcast, but the impact of that statement is absolutely a jury issue. This judge ruled, as a jury of one and on a motion to dismiss, where there was actually no evidence presented. There had been no discovery allowed. The Fox News broadcast stated, as a matter of fact, that in six years of investigation there had never been any evidence linking an intruder to the murder.¹⁰⁸ What does that say? What does that convey? If, after this massive investigation there's no evidence linking an intruder to the murder, somebody in the house had to do it.

QUESTION: That sounds like the implication.

¹⁰⁷ *Id.* at 1147 (providing in the case background section that “[a]s was stated in another defamation lawsuit based on an underlying situation of intense national interest, albeit one of less tragic dimensions: “Long after the public spotlight has moved on in search of fresh intrigue, the lawyers remain”) (citation omitted).

¹⁰⁸ *The Big Story with John Gibson* (Fox television broadcast, Dec. 26, 2002) (quoting reporter Carol McKinley's narration: “The couple and JonBenét's 9-year-old brother, Burke, were the only known people in the house the night she was killed. . . Whomever [sic] killed her spent a long time in the family home, yet there has never been any evidence to link an intruder to her brutal murder”).

WOOD: It conveys it strongly. Fox News and its reporter knew, as a matter of undisputed fact, through Boulder detective Lou Smit, through their own investigation, through the filings in the *Wolf v. Ramsey* case here in Atlanta, that there was a massive amount of evidence that linked an intruder to the crime. So I've always felt like that was a classic example of publication of a false and defamatory statement with actual knowledge of falsity.

They didn't say, "While there's evidence that arguably links an intruder to the crime and other officials dispute it." It wasn't a fair statement of the truth at all. It was a biased statement that emanated from a news organization and an individual reporter, Carol McKinley, that had a multi-year history of biased reporting against the Ramsey family.

D. Suing the Media and Battling the Media Defense Bar

For nearly thirty-five years, lawyers who defend the media have gathered annually to share strategies and review court decisions as part of the Practising Law Institute's Communication Law program in New York City.¹⁰⁹ Those attorneys who represent plaintiffs that sue the media have no such organization and thus no formalized way to swap ideas on how to mount what often turns out to be a Herculean effort against the well-heeled defense bar and the resource-rich clients it represents.

The profiles of the attorneys themselves also illustrate the stark contrast between the plaintiffs and defendants in lawsuits against the media. The lawyers who represent libel plaintiffs often have little or no experience in defamation law, while attorneys for media defendants typically specialize in that and related areas. Plaintiffs' lawyers often come from small firms and are forced to absorb alone the decades' worth of First Amendment pronouncements that guide the field. Media defense lawyers, on the other hand, ordinarily come from large law firms where scores of junior associates stand ready to assist the effort.

The sharp juxtaposition is not lost on Wood, who finds that the method for litigating libel cases is firmly ensconced in intimidation

⁹⁹ See, e.g., *The PLI Revival Meeting*, MEDIA & THE LAW, Nov. 28, 1997, LEXIS, News Library, MEDIAR File.

that sends an unspoken message to plaintiffs that not only do they stand to lose financially by suing but also they will lose what is left of their reputation as they move into the discovery process and, ultimately, in court.

In this section, Wood discusses how he handles the media defense bar and addresses some of the imbalances that are endemic to this type of litigation.

QUESTION: What's the single biggest legal hurdle or challenge you face when suing the media for libel?

WOOD: You probably think I am going to say actual malice.

QUESTION: Yes.

WOOD: I'm not sure if I'd make these two things equal, but the problem is a combination of the actual malice standard and the realities of financing litigation against media defendants.

As a practical matter, we're usually dealing with corporations that have insurance, so defense costs are paid by insurance companies. We're also talking about corporations that have an almost unlimited amount of money to defend these cases—and usually under the guise that they're trying to protect the First Amendment.

I think, more realistically, they're defending these cases in an effort to make sure that they keep a lid on the number of cases they have to defend. Obviously, they are also attempting to cover themselves financially because most of the media defendants are corporate conglomerates making millions, if not hundreds of millions, of dollars in profits, with little or no legal accountability for wrongdoing that damages reputation.

As a legal matter, it's actual malice. Some studies have shown that up to 95 percent of cases filed against major media defendants are dismissed on motions and never see a jury trial.¹¹⁰ If we accept that figure as correct, then five percent actually get to a jury trial. I suspect that if you follow those jury trial results, you'll find that most of those cases are verdicts for the plaintiffs because plaintiffs

¹¹⁰ Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Legal Stud. 459 (2004); Marc A. Franklin, *Suing Media for Libel: A Litigation Study*, 1981 Am. Bar Found. Res. J 797

that can survive the motion stage must have one heck of a good case, factually and legally.

Nonetheless, if you track them further, I would bet that 75 percent of those verdicts, if not more, are reversed by the appellate courts—with most reversed as a matter of law. Where's real accountability under the actual malice standard?

When I said I would reform the tort of libel primarily by limiting the application of the actual malice standard, I'm not advocating that we make it easy for individuals to successfully sue the media. I'm advocating that we make it less difficult because, under the current state of the law, unless you have an extremely high-profile case, it is difficult to justify the expense of litigation when weighed against the chances of success.

The average person off the street who feels like the newspaper or local television station has lied about him or her may write a letter and try to get a correction or retraction. But people ordinarily do not want to embroil themselves—financially, emotionally or otherwise—into litigation where their chances of success are slim to none.

The bottom line is that we've devalued reputation. Eventually, that affects society as a whole; all of society's reputation, ultimately, is no more than the collective reputation of its individual citizens.

QUESTION: Given the lack of a plaintiffs' bar in media law, are there other plaintiffs' attorneys suing the media today whom you particularly admire or work with or consult on these matters?

WOOD: I have a tremendous amount of respect, both for his legal skills and intellect as well as for his passion for taking on legitimate plaintiff's defamation cases, for Professor Rod Smolla.¹¹¹ I have worked with him on some matters and consult with him periodically. I have also worked with Neville Johnson¹¹²

¹¹¹ See generally, University of Richmond Law School, Rodney A. Smolla, <http://law.richmond.edu/faculty/smolla.htm> (last visited Nov. 14, 2005).

¹¹² See *supra* note 35 and accompanying text.

and consulted with him on some matters. Neville is out in Los Angeles and represented Carolyn Condit, Gary Condit's wife.¹¹³

Beyond that, however, I really have not had any major contact or significant contact with any lawyer that I would consider a major player in plaintiffs' defamation cases. Not that there aren't some others out there; there are just not a lot.

Consequently, it's a rarity when you have an opportunity to discuss media issues or cases with them. You're really on your own. A few years ago, I was asked to speak as part of a panel for the Communications Law Forum of the American Bar Association at its annual meeting. The forum was held in Boca Raton, Florida, and the panel consisted of the nation's most prominent plaintiffs' libel lawyers.

There were four of us invited. I spent weeks thinking about how important I was and how famous I'd become because of the Richard Jewell case—that I had become one of the nation's most prominent plaintiffs' libel lawyers.

I got down there and realized that I was talking to an audience of the enemy. I was sitting on a panel not of the most prominent plaintiffs' libel lawyers, but of four lawyers who were crazy enough to represent plaintiffs in libel cases.

Of that panel, one lawyer had represented Kato Kaelin in the famous case out in California with the tabloid headline, "Kato Did It."¹¹⁴ He already had switched sides and was doing defense law representing CBS.

The other lawyer was from Houston and had obtained a \$300 million-plus verdict against Dow Jones. It was on appeal at the

¹¹³ See Robert Salladay, *Condit's Wife Sues Enquirer*, S.F. CHRON., Feb. 22, 2002, at A2 (discussing the \$10 million lawsuit Carolyn Condit filed against the National Enquirer for a story it published that said "she 'attacked' Chandra Levy and 'had something to do with her disappearance'").

¹¹⁴ See Bill Wallace, *O.J. Simpson Pal Wins in U.S. Court*, S.F. CHRON., Dec. 31, 1998, at A18 (reporting Brian "Kato" Kaelin's victory in a federal appellate court allowing him to "sue a supermarket tabloid newspaper for suggesting that he was a suspect in the case" in a headline that read: "Kato Kaelin . . . Cops Think He Did It!").

time, so he was in a great mood and quick to buy drinks. Unfortunately, that case was basically reversed and later lost.¹¹⁵

The other lawyer was really not a plaintiffs' media lawyer, but a civil litigator from Miami with a fairly large firm. He had recently obtained a \$10 million verdict against "20/20" and John Stossel for a businessman client. It later was written off with a stroke of the pen by the Eleventh Circuit.¹¹⁶

That gives you a glimpse into the nation's most prominent plaintiffs' libel lawyers and our real successes!

QUESTION: The bottom line is there is no organized plaintiffs' bar in this area.

WOOD: Correct. There is none.

QUESTION: In the civil case involving the accuser of Los Angeles Lakers basketball star Kobe Bryant, there was much media attention made about her alleged sexual history and conduct in the past. How much of your effort in that civil case was to try to undo that focus? What was your role in terms of the negative media coverage about her that quickly rose up after the accusations were made attacking her?

WOOD: I have to be very careful in commenting on the Kobe Bryant case because the settlement agreement in that case prohibits me from discussing the case itself in any type of public fashion.

QUESTION: About the legal case against Bryant itself?

¹¹⁵ See Howard Kurtz, *Record \$227.7 Million Awarded in Libel Case*, WASH. POST, Mar. 21, 1997, at A03 (discussing the "largest libel award in American history" handed down by a Houston jury against the Wall Street Journal); Edwin McDowell, *Award is Cut in Dow Jones Libel Case*, N.Y. TIMES, May 24, 1997, at 33 (describing how a federal judge reduced the award won by a Houston brokerage firm to \$22.7 million); Felicity Barringer, *Judge Says Record Libel Case Should be Retried*, N.Y. TIMES, Apr. 9, 1999, at C1 (reporting that a federal judge in Houston has thrown out the judgment because it was "tainted by the deception of the plaintiffs"); *Local Firm Withdraws Libel Claim*, HOUS. CHRON., Dec. 22, 1999, at A37 (quoting plaintiffs' representatives who said "they could not afford to continue the legal battle").

¹¹⁶ *Levan v. Capital Cities/ABC, Inc.*, 190 F.3d 1230, 1232 (11th Cir. 1999) (vacating a libel judgment arising from "a segment aired on ABC's television program '20/20' that portrayed BFC and Levan as unfairly taking advantage of investors in real estate related limited partnerships, by inducing them to participate in transactions known as 'rollups'").

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WOOD: I want to make clear that I'm going to draw that fine line, but I think it's clear. I cannot comment, because of the settlement agreement, about what happened in the hotel room that night. But moving to the separate and distinct issue of the media's attacks on this young girl, I would describe the media's handling of this young girl as despicable. That might even be too mild.

I understand the role of defense counsel and what they were trying to accomplish. But for the media to be part of that and to focus on her was despicable. It not only had an impact on her, but it will affect other individuals' willingness to come forward to report what they believe to be criminal conduct.

It's not unlike what happened to Richard Jewell when the media seemed all too quick to jump on information they were being fed about Richard. They never questioned why they had been given this information. They never asked themselves, "Is there an agenda at work here with respect to Richard?"

They didn't ask the hard questions and do the journalistic investigation. They just took what they had been spoon fed and ran with it. It was for a salacious headline, and I think that it was also for a salacious headline as it pertained to this young girl.

QUESTION: During the last couple of minutes, you made a very eloquent argument for the need for lawyers to go to the media in these high-profile cases to help stem some of the reputational damage that's ongoing while the cases are in litigation. Yet courts, in some of these high-profile cases, seem to be more and more willing to put gag orders on the attorneys. How much of a problem is that?

WOOD: It's a major problem if your client is gagged at a time when your client has not really been able to step forward and deal with the onslaught of negative publicity about him or her. I don't think there should be a gag order in a civil lawsuit. I think that the professional standards of conduct are adequate. Those standards prohibit public comment about a case that may clearly impact the jury selection process. In essence, that means that your public comments must be extremely limited as you get close to selecting a jury.

In the Bryant case, we were basically gagged because of the impending criminal case. But we were able, however, to get some information to the public about this young girl before the court put the gag order in place.¹¹⁷ In the civil case, we were dealing with a judge who obviously also frowned on public comment. Then, by the time the settlement was reached, we obviously could not comment on the case.

There probably will always be an ongoing misperception in the public's mind about this young girl that we just couldn't correct. I will say this. I take great pride in being able to bring a resolution to the case where ninety-nine percent of the public really does not know her identity. In a practical sense, we were able to maintain her privacy. Except for a very small area of the country, she can pretty much go anywhere and people do not know who she is.

QUESTION: What are some of the common tactics of media defense attorneys that are designed to, for lack of a better word, harass plaintiffs' attorneys or make their lives more difficult? What do you do to overcome them?

WOOD: Harass them back. Here's the problem you're dealing with and, again, this is part of the system's failure. There used to be a body of law that says if you come into court and repeat the defamation, then you are subject to double damages. So if a lawyer goes into court and defends the case by saying, "We're going to throw the same mud at you," then you better be prepared to prove it or to win because the penalties would increase.

Today, there is a system in which you go into court as a plaintiff seeking redress for a false attack on your reputation and the defense has almost free reign to go into every detail of your life. They can find anything about your life to impugn your reputation, even if it is, at best, tenuously connected to the case or maybe not even connected at all.

QUESTION: Is that because the lower your reputation is, the less reputational damage you would suffer?

¹¹⁷ Tracy Connor, *Kobe's Accuser Files Civil Suit*, DAILY NEWS (N.Y.), Aug. 11, 2004, at 14 (explaining that "[w]ith a sweeping gag order in effect, court papers may be the only way the woman can attack Bryant without getting in hot water with the judge").

WOOD: Their philosophy is to tell the judge, “Look, he claims his reputation has been harmed. We’re entitled to use the discovery process to learn everything we can about this person’s reputation.” If you read the deposition of Richard Jewell, they were talking about things that happened years before—minor incidents when he was a deputy sheriff. It’s as if they are sending the message to the plaintiff or the potential plaintiff, “Not only is the law going to be against you if you choose to sue us, not only are we going to beat you into submission financially if you choose to sue us, but let me tell you something else—you sue us and, if you think we’ve already ripped your reputation to shreds, we’re going to take whatever is left of it, and finish it off when we get you into discovery and get you down in front of a judge or jury.”

QUESTION: So it’s like being a nominee for the Supreme Court or running for public office today? They’re going to look through your entire background of anything you’ve ever done and try to come up with something against you.

WOOD: While I have tried a lot of cases, I have yet to bring a defamation case to the point of a jury trial. When I quote the statistics of what happens in successful jury trials, you would probably say, “Good for you, Lin. You’ve done a good job resolving these cases. You obtained some measure of compensation for your clients and did not run the risk of having some judge or appellate court reverse a good and meritorious result.”

But I’ve always said that when the day comes—and it may come in the Richard Jewell case—I think that type of tactic will backfire in front of a jury. I think a jury will see through it and the defense counsel needs to be very careful about going back in time and talking about minor, tenuously connected or even unrelated issues that could be perceived negatively. A jury can turn on you pretty quickly.

But, again, look at what the client’s been through. We tried to argue in the Gary Condit case against Dominick Dunne that questions about Gary’s sexual history were simply irrelevant. The federal standard is that discovery has to be relevant to a claim or defense in the case. Dunne’s lawyer thought that the way to beat

down Gary was to show him why he should never have sued. He let it be known that he was going to go into every issue, no matter how dirty, no matter how far back in time, no matter how false. They were going to question him about it to try to impugn his reputation and hopefully scare him off.

They also argued that they were going to delve into the evidence to show substantial truth. In other words, that they were arguing to the judge that they needed to go into the area of whether Gary Condit, in fact, was involved in Chandra Levy's disappearance, kidnapping and murder.

Now, Dominick Dunne had already admitted that the story he published about Gary was false. Yet, the judge ruled that these areas were subject to discovery, even though they ultimately might not produce admissible evidence.¹¹⁸

The other problem is that most judges' perception of discovery is that the process is basically wide open. Most judges, when you go to them and try to limit the scope of discovery on relevancy grounds, will rule against you. In effect, they allow discovery to be a fishing expedition when it really is not supposed to be a fishing expedition.

QUESTION: So the plaintiff's reputation is almost on trial?

WOOD: There's no question about it. The main defense tactic is to put the plaintiff's reputation on trial, to put the plaintiff on trial, to take the focus away from what the reporters did or didn't do and what they knew or didn't know. It's a good strategy. The job of the plaintiff's lawyer, then, is to try to let the jury know exactly what's being done.

QUESTION: In the Condit case, it seemed like part of the defense's argument was, and correct me if I'm wrong here, that nobody would believe anything said on *The Laura Ingraham Show*

¹¹⁸ Condit v. Dunne, 225 F.R.D. 100, 111 (S.D.N.Y. 2004) (finding that [t]he allegedly slanderous statements at issue indicate not only that Condit was involved somehow in Ms. Levy's disappearance, but that he was involved due to his sexual relationship with her and his need to end that relationship. In order for defendant to promote a defense of substantial truth, he must be allowed to show the character of the relationship in so far as it may have been a strain on Condit, causing him to complain about it to people who would take matters into their own hands).

and nobody would believe anything in these publications so we couldn't have harmed his reputation. Was that part of the strategy?

WOOD: That was one of the positions taken by Dominick Dunne's lawyer.

QUESTION: What do you think of that argument?

WOOD: In that particular case it was borderline ludicrous to take that position. Dunne makes his living by being someone who claims to have the inside scoop on all these high-profile criminal cases. To sit there and say, "I'm going to be rich and famous for having the inside knowledge" and, at the same time, say "But nobody believes me," is just plain silly.

It was interesting because, at one point in the discourse, Laura Ingraham looks over at Dunne and says, "You know, it all makes beautiful sense." On this show, Dunne bolstered the believability of his story about the horse whisperer, Gary's involvement in Middle Eastern prostitution rings at embassies, and that someone acting on Gary's urging had kidnapped Chandra Levy dropped her over the Atlantic Ocean from an airplane.¹¹⁹

Ordinarily, the story is so unbelievable that no reasonable person would believe it. But when it comes from Dominick Dunne, who has the background of being allegedly a legitimate journalist and crime reporter, on this talk show, that has legitimacy. *The Laura Ingraham Show* is not *Jerry Springer*. Combine that with the fact that Dominick Dunne stated the horse whisperer story was taken to the FBI, which was investigating it, and that the FBI had asked him to check it out. Now it becomes a very credible story.

Here's the real story. Dunne tried to go to the FBI once he got this story from the horse whisperer. He called the FBI and got an answering machine or got treated in the typical administrative fashion and became angry because he wasn't shown any respect. So he abandoned that effort. He then went to *Vanity Fair's* publisher or editor and said, "How can I get to the FBI?" One of

¹¹⁹ Barringer, *supra* note 5, at E1 (describing the "tale of Gary Condit, Chandra Levy, the horse whisperer and the Middle Eastern procurer").

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the lawyers for *Vanity Fair* gave him a number to call and that also was not successful.

Then he called his friend, Sen. Chris Dodd, who instructed him to call somebody on his staff the next day. That staff member treated the story with great skepticism and asked him how he knew this information. So then Dunne, all of a sudden, remembers that he had been told by Chandra Levy's mother that there was an investigator on the case who was FBI. She had given him a name and number.

Chandra Levy's mother had called Dominick Dunne after his appearance on *The Larry King Show* in August of 2001 when he first started talking about Chandra being taken off on the back of a motorcycle. According to Dunne, she had said, "Here's the name of an investigator working with us. Here's his number. He's FBI." So Dunne calls this individual, who may have been a former FBI agent, but who now clearly was a private investigator working for the Levy family's law firm.

Dunne contacts him to present this story. They meet in Washington. I later asked Dunne why he believed the investigator was from the FBI. He said because he remembered commenting on what a nice car he had, and the investigator told him that the company had sold him the car because they usually will sell cars to their agents after they're done with them. So I asked him what kind of car was he driving. He said a Jaguar. I didn't know the FBI was using Jaguars these days!

So this individual supplies Dunne with a list of potential questions to ask and suggests that he might try to make an arrangement to meet the "procurer" who was the initial source of the story about the horse whisperer.

Somehow Dunne elevates this man to the status of being an FBI agent. He admitted in his deposition that he only learned that the man was not an FBI agent when his first attorney in the libel case informed him of that fact.

So, for years, the public has been led to believe that this incredible, almost laughable, story has enough credibility to warrant an FBI investigation. Not only is Dunne telling it, but it's

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being told on *The Laura Ingraham Show* and on *Larry King Live*, and it is being said that the FBI is investigating it.

QUESTION: So people who hear the story believe it must have some truth to it.

WOOD: In fact, there was absolutely no truth to the story. The FBI never investigated it for five seconds.

QUESTION: What would you say is the most rewarding—not in terms of financial aspects—part about your lawsuits against the media to date?

WOOD: I have, personally and professionally, taken great pride in the fact that I have been able to take on difficult cases and achieve a measure of success for my clients against some fairly tough media defendants. I've accepted the challenge and I've handled it successfully.

If you ask me to put aside the professional aspect and look at it more from, shall we say, an emotional perspective, then the most rewarding aspect has been to be a part of an effort for individuals who no one else would take on their cause. Nobody wanted to represent Richard Jewell against the *Atlanta Journal-Constitution* except our team. Nobody thought John and Patsy Ramsey would ever have any success.

The Ramseys' own criminal lawyers told me in a conference call before I sued *Star Magazine* on behalf of Burke Ramsey that filing a defamation lawsuit on behalf of the Ramsey family—any member of the Ramsey family—would be the equivalent of legal malpractice. And, of course, I'm sure no one wanted to take on Gary Condit's case.

Yet, these were all individuals who were innocent and who had been slaughtered, from a public standpoint, with respect to their reputations. They all appreciated that someone would take on their cause and actually fight for them and be their mouthpiece. I've gotten a lot of satisfaction out of doing that. It's not easy. It's not easy, both physically and emotionally, but it's been rewarding for me.

QUESTION: This is a follow-up to that. What would you like to see, thirty years from now, as your legal legacy in terms of media

law? Is it that you've been able to represent people who may not have been able to secure representation elsewhere?

WOOD: Even to this day I do not classify myself as a First Amendment lawyer or even a plaintiffs' libel or defamation lawyer. I've always described myself as being a lawyer who does civil litigation. With few exceptions, I have always represented clients who I believe were victims—usually in a David-versus-Goliath setting. So, in terms of my legal legacy, I would like to think that it would be of someone who championed the cause of the underdog as well as the victim and who was able to do so effectively and successfully.

QUESTION: What attracted you to suing the media?

WOOD: It could be a fatal attraction. I guess it was some unconscious desire to go out and fight the toughest legal battles I could to see if I could survive and maybe even win. One of my better attributes, although one that sometimes works against me in negotiations, is that I'm a very candid person, a straight shooter. I got into this mess of being a recognized plaintiffs' defamation lawyer through the Richard Jewell case. As I admitted earlier, I was not necessarily informed on First Amendment law but my gut told me, as a lawyer with a sense of fairness and what is reasonable, that what had been done to Richard Jewell by the *Atlanta Journal-Constitution* and by Tom Brokaw and by CNN was not right. Well, I didn't know what the law was because I hadn't read it, but I can tell you what the law ought to be.

I felt like Richard Jewell had been the victim of wrongdoing. Without knowing the law and without knowing how difficult it was to prove it, I simply got out front in an effort to save his life and to keep him from being unfairly charged with a crime that he didn't commit. In an effort to try to minimize the damage to his reputation in the court of public opinion, I went out there early on and advocated that I was going to sue the *Atlanta Journal-Constitution*. I was even so brash and bold as to state on *60 Minutes* that I was going to sue Tom Brokaw. I also had the reputation of doing what I say, so I went out and did it. That got me started.

Again, on the one hand, I can tell you how difficult it is to find success and accountability in defamation litigation. On the other hand, it worked out for Richard and we did have successes in courts of law and also for the Ramseys and for Gary Condit. I'm not sure whether those successes brought about real accountability in terms of whether they changed the media's way of doing business. I guess I got into this area of practice without knowing what I was getting into. Once I did, though, all the competitive juices started flowing. The challenge was there and the clients were worthwhile, so it was do what you have to do to litigate and win their cases.

CONCLUSION

Columnist Frank Rich of the *New York Times* observed in May 2005 that "Americans now trust the press less than every other major institution, from government to medicine to banks."¹²⁰ Rich is not alone in this observation. Newspaper publisher Robert M. Williams, Jr., wrote that same month that "[r]eporters, editors and commentators are squandering the only commodity we really have to offer a hungry, demanding public: Trust."¹²¹ Stated more bluntly by Armando Acuna, the public editor of the *Sacramento Bee*, "newspaper credibility continues falling like a rock."¹²² No matter how it is phrased, however, the bottom line is a stark reality of "declining credibility of the news media."¹²³

It is not surprising that in this negative atmosphere there is substantial demand for attorneys to hold the news media legally accountable for the type of slipshod and sensational reporting that has contributed to the news media's decline. As this article has made clear, L. Lin Wood has stepped fully into the fray on behalf

¹²⁰ Frank Rich, *Laura Bush's Mission Accomplished*, N.Y. TIMES, May 8, 2005, at § 4–13.

¹²¹ Robert M. Williams, Jr., *Truth in Journalism: Credibility Too Perishable a Commodity*, ATLANTA J.-CONST., May 18, 2005, at 11A.

¹²² Armando Acuna, *Better Journalism, Less Credibility: Go Figure*, SACRAMENTO BEE, June 5, 2005, at E3.

¹²³ Eric Black, *Retraction; 'Hooked' on Anonymous Sources? Flap Highlights Credibility Hurdles*, STAR TRIB. (Minneapolis, Minn.), May 23, 2005, at 4A.

of clients like Gary Condit and Katelyn Faber who have been tarred and feathered in the media by gossip that passes as news.

Given the very high hurdles of the actual malice standard and the public-figure doctrine that plaintiffs must overcome in defamation law that Wood discussed in Section B of Part II of this article, Wood made it clear that he fights his battles not only in courtrooms but in the media itself. As Wood observed about his use of the press, he views it as “part of [his] duty to advocate in the court of public opinion for [his] clients.”¹²⁴

In light of Wood’s skillful use of the press for effectively conveying messages about his clients, it becomes clear that the victories he achieves cannot be measured only in terms of dollar figures and monetary settlements but also, and perhaps more importantly, in changing public opinions about his clients and securing public apologies on their behalf.¹²⁵ Kobe Bryant, for instance, issued a public statement relating to Katelyn Faber¹²⁶ which said, in relevant part, “I want to apologize to her for my behavior that night and for the consequences she has suffered in the past year.”¹²⁷ It was, as the *Rocky Mountain News* reported, an “apology engineered by Lin Wood.”¹²⁸ By reaching a confidential settlement in the Bryant civil lawsuit, Wood also secured something for Faber that has been impossible for his other high-profile candidates—a return to life out of the public limelight,¹²⁹ made possible largely by the requirement that neither Bryant nor his attorneys can ever talk about the case again. As the two-

¹²⁴ See *supra* Part III.B.

¹²⁵ See *supra* note 7 and accompanying text (setting forth the apology of Dominick Dunne to Gary Condit).

¹²⁶ It has been reported that the apology was made “[i]n exchange for accuser Katelyn Faber’s decision not to testify against Bryant and the criminal charge against him being dismissed.” Charlie Brennan, *Nike, Bryant Just Do It In Ad*, ROCKY MTN. NEWS (Denver, Colo.), July 9, 2005, at 4A.

¹²⁷ See Jose Antonio Vargas & Joel Achenbach, *A Case’s Disagreeable Conclusion*, WASH. POST, Sept. 3, 2004, at C01 (quoting from Bryant’s public statement).

¹²⁸ Karen Abbott, *Report: Bryant to Settle*, ROCKY MTN. NEWS (Denver, Colo.), Mar. 2, 2005, at 4A.

¹²⁹ Faber’s name rarely appears in the mainstream media today, although the *Rocky Mountain News* did mention her in a July 2005 article about a new Nike ad featuring Kobe Bryant. See Brennan, *supra* note 11, at 4A (writing that “Faber since has married and is expecting a baby”).

sentence public statement issued by attorneys for both sides in the civil case stated:

Kobe Bryant and Katelyn Faber jointly state that the matter of Faber vs. Bryant, Civil Action No. 04-M-1638 pending in the United States District Court for the District of Colorado, has been resolved to the satisfaction of both parties. The *parties* and their attorneys have agreed that *no further comments about the matter can or will be made.*¹³⁰

Ultimately, however, legal victories and public apologies can only provide a finite amount of relief to individuals who are tarnished by the news media. As Wood put it during the interview, “You can minimize and you can mitigate, but you can never fully restore one’s reputation, even in successful litigation.”¹³¹

In terms of reforming libel law, Wood makes it clear in Section B of Part II that he believes that courts have stretched the U.S. Supreme Court’s public-figure doctrine articulated in *Gertz v. Robert Welch, Inc.*¹³² too far. Wood’s problem is not with the actual three-part test associated with *Gertz* for determining who is a voluntary limited-purpose public figure, but rather with the expansive interpretation and application of that test to sweep up a wide range of individuals as public figures. On the other hand, Wood would like to see the controversial involuntary public-figure doctrine¹³³ mentioned in *Gertz* scrapped altogether. As Wood put it during the interview, “If I had the power to do so, I would make clear that there is no such classification as an involuntary public figure.”¹³⁴ He noted that the Supreme Court has not mentioned the category since the passing reference in *Gertz*.

Beyond the difficulties with proving actual malice and the public-figure rules of libel law, Wood expressed the sentiment that many judges simply aren’t experienced in handling libel trials and

¹³⁰ *Id.* (emphasis added).

¹³¹ *See supra* Part II, C.

¹³² 418 U.S. 323 (1974).

¹³³ *See generally* W. Wat Hopkins, *The Involuntary Public Figure: Not So Dead After All*, 21 CARDOZO ARTS & ENT. L. J. 1 (2003) (analyzing and discussing the involuntary public-figure doctrine and lower courts’ interpretation of it).

¹³⁴ *See supra* Part II, B.

that they often seem to accept the law as told to them in the motions and arguments of media defense attorneys.

“Unfortunately, because of the low number of defamation cases handled by trial judges, coupled with the fact that there is no organized plaintiffs’ bar group with respect to First Amendment or defamation, judges often apply the media defendant’s interpretation of First Amendment law,” Wood stated during the interview.¹³⁵ But there are other obstacles as well for plaintiffs’ attorneys litigating libel cases. For instance, Wood pointed out that judges typically have a pro-First Amendment bias nurtured by the media. “They have been subjected to this massive legal and publicity campaign by the media and media defense lawyers that has led to almost an irrefutable presumption that any case that is decided adversely to a media defendant will ‘chill’ the exercise of First Amendment rights and, as a result, society as we know it will cease to exist,”¹³⁶ Wood said.

Although the odds may be stacked against Wood in libel cases, he scored at least one important semantic victory in terms of how the news media report on figures such as Richard Jewell, who have never been arrested or charged with a crime yet fall under a cloud of suspicion.

“There are a fair number of responsible journalists now who are less quick to characterize individuals as “suspects” or “persons of interest” when law enforcement will not go on the record and characterize the individual as such. I think there are a larger number of responsible journalists now who think twice before they label someone a suspect because of what happened to Richard Jewell,” Wood stated during the interview.¹³⁷

As he suggested, Jewell’s case serves as a powerful reminder to journalists to think before acting. He noted, “I think his case has created that yellow light that says slow down, exercise caution before you go through the intersection of accusation.”¹³⁸

¹³⁵ See *supra* Part II, B.

¹³⁶ See *supra* Part II.B.

¹³⁷ *Supra* Part II.C.

¹³⁸ See *supra* Part II.C.

While Wood may be best known for suing the news media, he made it clear that he actually is a supporter of the First Amendment right of a free press. As Wood told the authors of this article, “a First Amendment without accountability for wrongdoing weakens the system as a whole. It fosters bad reporting and poor journalism.”¹³⁹ He added that he could make a strong case that holding the media accountable “ultimately strengthens the First Amendment.”¹⁴⁰

While the plaintiffs’ media bar is a small group, the other key litigator—Neville Johnson—shares Wood’s belief that media accountability is healthy for the First Amendment. Johnson believes that those who pursue media organizations that have conducted themselves poorly are, in essence, “graphing the contours of the First Amendment.”¹⁴¹

Wood and the few others that dare to pounce on the leonine news media often find themselves pursued by the very news organizations in their sights. High-profile attorneys are sought after for appearances on myriad network and cable talk programs or on the pages of the nation’s leading newspapers and magazines.¹⁴² But, for Wood, there is no specific quest for fame unrelated to the interests of his clients. During the interview, he noted that he had no desire “to be the guy that’s on every panel about every subject matter every night with Greta Van Susteren. Some people want to do that—I don’t see how they maintain a professional life.”¹⁴³ He added that he accepts media invitations to appear on programs “only if I feel like my comments would be helpful to a cause that I am advocating for my clients.”¹⁴⁴

Without question, Wood has used the media effectively in his practice and could serve as a model for parsimonious and strategic public appearances. He also recognizes that the notoriety he has achieved has enhanced the respect that jurists and other lawyers have for his abilities. During the interview, he observed, “When

¹³⁹ See *supra* Part II.A.

¹⁴⁰ See *supra* Part II.A.

¹⁴¹ See Richards & Calvert, *supra* note 35, at 1107.

¹⁴² See Lasden, *supra* note 65, at 26.

¹⁴³ See *supra* Part III.B.

¹⁴⁴ See *supra* Part III.B.

I'm involved in a case, I don't think it works against me. I think that the judges have treated me with what I perceive to be as some greater level of respect for what I've done because it's been publicly discussed."¹⁴⁵

In short, it is somewhat ironic that a lawyer who has worked tenaciously to ensure that the notoriety thrust upon his clients does not work against them has found a way to make his own celebrity work in his favor—and to the advantage of those very clients who would have preferred to escape the media spotlight.

Finally, given Wood's success as a sole practitioner going up against media conglomerates—often multiple outfits at the same time—it is not surprising that the newspaper industry trade publication *Editor & Publisher* considers him to be among “the most dangerous media-plaintiff lawyers in the United States.”¹⁴⁶

¹⁴⁵ See *supra* Part III.B.

¹⁴⁶ Jim Moscou, *Truth, Justice, and the American Tort*, EDITOR & PUBLISHER, Nov. 27, 2000, at 16.