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to induce payment, is the purpose of the collector's activities. The vital question is not whether the distress is intentionally or negligently inflicted, since intent can be found easily in these cases, but rather the degree of care which is required in such conduct.

In sum, the attempt to measure the reasonableness of the collector's actions is a process of balancing the interests of the creditor against those of the debtor.[68] Examining the vulnerability of the debtor, the validity of the debt, and the state of mind of the collector is a method of weighing the financial interest of the creditor in the collection of his debt against the personality interest of the debtor in freedom from emotional distress.

The imposition of a standard of reasonableness upon the collection process, because of the particular vulnerability of the debtor to mental distress, provides a flexible protection for the interests of both the debtor and the creditor. If the law has required extreme and outrageous conduct as a prerequisite to liability in order to ensure that the claimed mental distress has in fact occurred, the special relationship of the creditor to the debtor and the greater likelihood that any claims of mental distress will be legitimate make this area a favorable one for expansion.

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[68] Pack v. Wise, 155 So. 2d 909 (La. App. 1963), *writ of review refused*, 245 La. 84, 157 So. 2d 231 (1963).

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PUBLISHER'S TREATMENT OF NEWSWORTHY EVENT HELD VIOLATION OF PRIVACY STATUTE: *HILL V. HAYES*

On September 11, 1952, the plaintiffs and their children were held hostage in their home by three escaped convicts. In the spring of 1953, defendant Hayes wrote a novel entitled *The Desperate Hours*, which portrayed a family held hostage in their home by escaped convicts. The novel was inspired by the experience of the plaintiffs' family but contained significant factual differences. It was later made into a play and movie bearing the same title. After the play had opened, the defendant publisher of *Life* magazine printed an article entitled *True Crime Inspires Tense Play*.[1] The article used the plaintiffs' name in a form which sensationally portrayed the play as a true-to-life version of the family's ordeal.[2]

[1] Life, Feb. 28, 1955, p. 75.

[2] The article complained of contained pictures of scenes from the play taken on location at the Hills' former residence, where they were held hostage. The defendant publisher arranged at its own expense to photograph the scenes at the residence. The text of the article which identified the plaintiffs by name was: "Three years ago Americans all

The plaintiffs sued for violation of their right of privacy under New York statutory law and recovered a judgment against the magazine publisher.[3] The Appellate Division affirmed, with Presiding Justice Botein dissenting, but directed a new trial on the issue of damages.[4] The New York Court of Appeals affirmed without opinion, and two judges joined in a written dissent.[5]

New York Law

The right of privacy in New York is not a common law right[6] but is purely statutory.[7] Since the statute permits recovery only for the unauthorized use of one's name or picture[8] for advertising purposes or for purposes of trade, the protection is more narrow than is provided in common law jurisdictions.[9]

The New York courts are attempting to resolve the conflict between insuring the freedom of the press and protecting the individual's right of privacy[10] in light of the statutory purpose of protecting the sentiments, thoughts and feelings of the individual by preventing the commercial exploitation of his personality.[11] They

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over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel, *The Desperate Hours*, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off." *Ibid.*

[3] Author Hayes and the theatrical producers exonerated themselves by convincing the jury that the novel and play were pure fiction and were not based upon the Hill experience. HOFSTADTER & HOROWITZ, THE RIGHT OF PRIVACY, 145-47 (1964).

[4] Hill v. Hayes, 18 App. Div. 2d 485, 240 N.Y.S.2d 286 (1963). See generally HOFSTADTER & HOROWITZ, *supra* note 3, at 141-49.

[5] Hill v. Hayes, 15 N.Y.2d 986, 207 N.E.2d 604, 260 N.Y.S.2d 7 (1965), *prob. juris. noted sub. nom.* Time, Inc. v. Hill, 86 Sup. Ct. 392 (1965) (No. 562).

[6] The origin of the right of privacy is found in the famous law review article, Warren & Brandeis, *The Right of Privacy*, 4 HARV. L. REV. 193 (1890). The New York Court of Appeals rejected the argument of Warren and Brandeis at an early date, and refused to recognize a common law right of privacy. Roberson v. Rochester Folding Box Co., 171 N.Y. 538, 64 N.E. 442 (1902). See generally Prosser, *Privacy*, 48 CALIF. L. REV. 383-85 (1960); Wade, *Defamation and the Right of Privacy*, 15 VAND. L. REV. 1093-98 (1962).

[7] N.Y. CIV. RIGHTS LAW §§ 50-51. Section 50 is a penal provision which was not applied in the *Hill* case. Section 51 states: "Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained may sue and recover damages "

[8] Any representation is a "picture" within the meaning of the statute. Binns v. Vitagraph Co. of America, 210 N.Y. 51, 103 N.E. 1108 (1913).

[9] See PROSSER, TORTS § 112 (3d ed. 1964).

[10] Koussevitzky v. Allen, Towne & Heath, Inc., 188 Misc. 479, 68 N.Y.S.2d 779 (Sup. Ct.) *aff'd per curiam*, 272 App. Div. 759, 69 N.Y.S.2d 432 (1947); Lahiri v. Daily Mirror, Inc., 162 Misc. 776, 295 N.Y. Supp. 382 (Sup. Ct. 1937). The New York statute was declared constitutional and not in violation of either the state or federal constitution. Rhodes v. Sperry & Hutchinson Co., 193 N.Y. 223, 85 N.E. 1097 (1908), *aff'd*, 220 U.S. 502 (1910).

[11] Gautier v. Pro-Football, Inc., 278 App. Div. 431, 106 N.Y.S.2d 553 (1951), *aff'd*, 304 N.Y. 354, 107 N.E.2d 485 (1952); *cf.* Flores v. Mosler Safe Co., 7 N.Y.2d 276, 164 N.E.2d 853, 196 N.Y.S.2d 975 (1959); Lahiri v. Daily Mirror, Inc., 162 Misc. 776, 295 N.Y. Supp. 382 (Sup. Ct. 1937).

have recognized as an exception to the statute a "newsworthy" privilege permitting the publication of names and pictures in connection with the dissemination of news and educational and informational material which is within the public interest.[12]

This privilege, however, is narrowed by several significant limitations. The publisher may be liable if the person's name or picture has only a tenuous connection with, and no legitimate relationship to, the news item or educational article.[13] The privilege is further limited by the requirement that the presentation must not be sensationalized[14] or fictionalized.[15] But untrue statements alone may not be sufficient to remove the privilege. The fictional material must have no educational value or must reveal intimate details of a person's life which are repugnant to the public's sense of decency.[16] If, for any of these reasons, the publisher has lost the newsworthy privilege then he will be liable for the commercial exploitation of the plaintiff's personality for "purposes of trade."

While recognizing the narrow newsworthy privilege for the benefit of publishers, the courts have been liberal in applying the statute's prohibition against using one's name or picture for "purposes of advertising."[17] The statute clearly forbids the use of a person's name or picture where such use is solely to advertise or draw attention to some commercial product. This is termed a "collateral" or direct use of a name or picture for "purposes of advertising."[18] However, the pro-

[12] Sidis v. F-R Publishing Corp., 34 F Supp. 19 (S.D.N.Y. 1938), *aff'd*, 113 F.2d 806 (2d Cir.), *cert. denied*, 311 U.S. 711 (1940); Molony v. Boy Comics Publishers, Inc., 277 App. Div. 166, 98 N.Y.S.2d 119 (1950); Koussevitzky v. Allen, Towne & Heath, Inc., 188 Misc. 479, 68 N.Y.S.2d 779 (Sup. Ct.), *aff'd per curiam*, 272 App. Div. 759, 69 N.Y.S.2d 432 (1947).

[13] Lahiri v. Daily Mirror, Inc., 162 Misc. 776, 295 N.Y. Supp. 382 (Sup. Ct. 1937).

[14] See Gautier v. Pro-Football, Inc., 278 App. Div. 431, 106 N.Y.S.2d 553 (1951), *aff'd*, 304 N.Y. 354, 107 N.E.2d 485 (1952) (privilege does not include form distinct from news dissemination); Sutton v. Hearst Corp., 277 App. Div. 155, 98 N.Y.S.2d 233 (1950) (sensationalized presentation of facts); Krieger v. Popular Publications, Inc., 167 Misc. 5, 3 N.Y.S.2d 480 (Sup. Ct. 1938) (name used over one hundred times in story).

[15] Molony v. Boy Comics Publishers, Inc., 277 App. Div. 166, 98 N.Y.S.2d 119 (1950) (comic book portrayal of heroic event); Metzger v. Dell Publishing Co., Inc., 207 Misc. 182, 136 N.Y.S.2d 888 (Sup. Ct. 1955) (picture depicting boy as juvenile delinquent); Lahiri v. Daily Mirror, Inc., 162 Misc. 776, 295 N.Y. Supp. 382 (Sup. Ct. 1937) (picture of Hindu musician related to feature on Indian rope trick).

[16] Youssoupoff v. Columbia Broadcasting System, Inc., 41 Misc. 2d 42, 244 N.Y.S.2d 701 (Sup. Ct.), *aff'd*, 19 App. Div. 2d 865, 244 N.Y.S.2d 1 (1963); Koussevitzky v. Allen, Towne & Heath, Inc., 188 Misc. 479, 68 N.Y.S.2d 779 (Sup. Ct.), *aff'd per curiam*, 272 App. Div. 759, 69 N.Y.S.2d 432 (1947).

[17] See Spahn v. Julian Messner, Inc., 43 Misc. 2d 219, 250 N.Y.S.2d 529 (Sup. Ct. 1964).

[18] See Flores v. Mosler Safe Co., 7 N.Y.2d 276, 164 N.E.2d 853, 196 N.Y.S.2d 975 (1959) (name used to advertise office safe business); Selsman v. Universal Photo Books, Inc., 18 App. Div. 2d 151, 238 N.Y.S.2d 686 (1963) (photograph advertising cameras); Schneiderman v. New York Post Corp., 31 Misc. 2d 697, 220 N.Y.S.2d 1008 (Sup. Ct. 1961) (wedding photograph advertising country club in which publisher owned interest); Rubino v. Slaughter, 136 N.Y.S.2d 873 (Sup. Ct. 1954) (photograph advertising union election handbill); Lane v. F W Woolworth Co., 171 Misc. 66, 11 N.Y.S.2d 199 (Sup. Ct.), *aff'd mem.*, 256 App. Div. 1065, 12 N.Y.S.2d 352 (1939) (photograph used in lockets).

hibition does not apply to publishers who use an individual's name or picture to illustrate the quality or content of their own publications.[19] The justification for this obvious inconsistency is that such advertising is indispensable to the exhibition or sale of the medium.[20]

In contrast to the "collateral" or direct use, the occurrence of a person's name or picture in a publication may be so unrelated to the subject matter that the use is called "incidental" and is not a violation of the statute.[21] Such an "incidental" use is found only where the person's name or picture was not exploited for "purposes of trade."

The *Hill* case stands as a borderline application of the right of privacy statute. The cogency of the dissenting opinions and the diversity of legal principles applied by the majority and concurring opinions warrant a close scrutiny of the opinions of the Appellate Division.

Majority Opinion

The majority recognized that, at the time of the family's ordeal, the plaintiffs were newsworthy subjects and had no protected right of privacy with respect to legitimate, accurate news reporting. On the other hand, by referring to the passage of time and stating that the "occurrence had been relegated to the outer fringe of the public consciousness,"[22] the court seems to have indicated that the newsworthy privilege was exceeded. If so, this would conflict with the established rule that once an item has achieved the status of newsworthiness, it retains that status even when it is no longer of current interest.[23] However, the court probably did not intend to withdraw the newsworthy privilege, for it pointed out that the defendant's article erroneously portrayed the play as an accurate representation of

[19] *E.g.*, Dallesandro v. Henry Holt & Co., Inc., 4 App. Div. 2d 470, 166 N.Y.S.2d 805 (1957) (photograph illustrating book cover); Oma v. Hillman Periodicals, Inc., 281 App. Div. 240, 118 N.Y.S.2d 720 (1953) (boxer's photograph illustrating magazine cover); Humiston v. Universal Film Mfg. Co., 189 App. Div. 467, 178 N.Y. Supp. 752 (1919) (name used to advertise newsreel); Jaccard v. R. H. Macy & Co., 176 Misc. 88, 26 N.Y.S.2d 829 (Sup. Ct. 1941), *aff'd*, 265 App. Div. 15, 37 N.Y.S.2d 570 (1942) (use of dress designer's name). *But see* Booth v. Curtis Publishing Co., 15 App. Div. 2d 343, 223 N.Y.S.2d 737, *aff'd*, 11 N.Y.2d 907, 182 N.E.2d 812, 228 N.Y.S.2d 468 (1962).

[20] See Humiston v. Universal Film Mfg. Co., *supra* note 19.

[21] See Moglen v. Varsity Pajamas, Inc., 13 App. Div. 2d 114, 213 N.Y.S.2d 999 (1961) (news article with name printed on pajama material); Stillman v. Paramount Pictures Corp., 2 App. Div. 2d 18, 153 N.Y.S.2d 190 (1956), *aff'd*, 5 N.Y.2d 994, 157 N.E.2d 728, 184 N.Y.S.2d 856 (1959) (name of gymnasium shown in movie); Wallach v. Bacharach, 192 Misc. 979, 80 N.Y.S.2d 37 (Sup. Ct.), *aff'd mem.*, 274 App. Div. 919, 84 N.Y.S.2d 894 (1948) (news article printed in advertising space); Shubert v. Columbia Pictures Corp., 189 Misc. 734, 72 N.Y.S.2d 851 (Sup. Ct. 1947), *aff'd mem.*, 274 App. Div. 751, 80 N.Y.S.2d 724 (1948) (name used in press book); Damron v. Doubleday, Doran & Co., Inc., 133 Misc. 302, 231 N.Y. Supp. 444 (Sup. Ct.), *aff'd mem.*, 226 App. Div. 796, 234 N.Y. Supp. 773 (1928) (name used once in novel not actionable).

[22] 18 App. Div. 2d at 489, 240 N.Y.S.2d at 290.

[23] Sidis v. F-R Publishing Corp., 113 F.2d 806 (2d Cir. 1940) (over twenty-five years); Gautier v. Pro-Football, Inc., 278 App. Div. 431, 435, 106 N.Y.S.2d 553, 557 (1961); Molony v. Boy Comics Publishers, Inc., 277 App. Div. 166, 98 N.Y.S.2d 119 (1950) (six months); *but cf.* Flores v. Mosler Safe Co., 7 N.Y.2d 276, 164 N.E.2d 853, 196 N.Y.S.2d 975 (1959) (*semble*).

the Hills' experience. This portrayal was the basis for finding that the article was fictionalized. Since fictionalization is a limitation upon the newsworthy privilege, it seems that the majority did not withdraw the privilege but rather found that it had been abused, thereby giving rise to defendant's liability. It is clear that the court considered the fictionalization sufficiently outrageous to satisfy the test of *Youssoupoff v. Columbia Broadcasting System, Inc.*[24]

In addition to finding that the defendant had abused the newsworthy privilege, the majority found that the defendant was also within the "advertising" basis of liability in that the article was written "to advertise and attract further attention to the play, and to increase present and future magazine circulation as well."[25] The court employed the distinction between a "collateral" and an "incidental" use of the plaintiffs' name when it said, "the use of plaintiffs' name was primary and not merely incidental to the article."[26]

To the extent that the majority found the publisher liable solely within the "advertising," as apart from the "fictionalization," approach, several questions arise. As pointed out by the dissenting judges in the Court of Appeals, it is doubtful that the defendant would be liable even if the article had been intended to advertise the play, since the subject was newsworthy and would naturally attract attention.[27] Moreover, there was no evidence that the defendant had that commercial interest in the play which is normally required in order to find a violation of the "collateral" rule.[28] For these two reasons it seems improper to find the defendant liable for having used the plaintiffs' name to advertise the play as a "collateral" commodity. A similar ambiguity arises from the court's conclusion that the article was written to increase circulation and thus was used "for purposes of trade" as proscribed by the statute. Since most newspapers and magazines are published for a profit and their articles are intended to increase circulation, the publisher's profit motive has not been and ought not to be the test of a use for "purposes of trade" as defined by the statute.[29]

The basic ambiguity of the majority's treatment of the defendant's liability appears in its merger of elements of the publisher's newsworthy privilege with the broader prohibition against using an individual's name or picture for purposes of advertising. The court properly found that the publisher had abused its privilege by fictionalizing the article. The majority's departure from fictionalization and reliance on the advertising basis of liability was unclear, but the concurring opinion offers a distinct treatment of advertising as a basis for publisher liability.

Concurring Opinion

The concurring opinion, also adopted[30] by the Court of Appeals, is partially an application of established rules. Stating that the Hill incident was still news-

[24] 41 Misc. 2d 42, 244 N.Y.S.2d 701 (Sup. Ct.), *aff'd*, 19 App. Div. 2d 865, 244 N.Y.S.2d 1 (1963).

[25] 18 App. Div. 2d at 489, 240 N.Y.S.2d at 290.

[26] *Ibid.*

[27] 15 N.Y.2d at 989, 207 N.E.2d at 606, 260 N.Y.S.2d at 9.

[28] See cases cited *supra*, note 18.

[29] See Sidis v. F-R Publishing Corp., 113 F.2d 806 (2d Cir. 1940); Binns v. Vitagraph Co. of America, 210 N.Y. 51, 103 N.E. 1108 (1913); Goelet v. Confidential, Inc., 5 App. Div. 2d 226, 171 N.Y.S.2d 223 (1958).

[30] 15 N.Y.2d at 987, 207 N.E.2d at 605, 260 N.Y.S.2d at 7.

worthy information in which the public had a legitimate interest,[31] the concurring justice found that the article was fictionalized and concluded that the publisher was no longer immune from liability.[32] It was pointed out that had the defendant properly presented the article no liability would exist.[33] This undoubtedly means that, had the publisher avoided representing the play as a true enactment of the family's experience, no liability would have been found.

Having an established basis for holding the defendant liable, the concurring justice set forth broader grounds of liability which stimulated the alarm of the dissenting judges in both the Appellate Division and the Court of Appeals, when he stated:

> If it can be clearly demonstrated that the newsworthy item is presented, not for the purpose of disseminating news, but rather for the sole purpose of increasing circulation *the privilege to use one's name should not be granted even though a true account of the event be given—let alone when the account is sensational and fictionalized.*[34]

This dictum suggests a basis of liability which is a departure from New York's statutory protection of the right of privacy. In protecting the individual from the unauthorized use of his name or picture for advertising or purposes of trade, the New York cases fall within the "appropriation" category set forth by Dean Prosser.[35] In these cases the newsworthy privilege exempts publishers from statutory liability if the person's name or picture is used in a true account which is newsworthy. The concurring opinion, however, states that, even though the publisher has presented a true account which is newsworthy, he will still be liable if a solely pecuniary purpose can be clearly demonstrated. While the judge does not discuss how this sole purpose may be determined, referral to broader principles of the law of privacy in other jurisdictions suggests an answer. The judge is undoubtedly referring to the publication of material which is both true and of interest to the public but which involves the disclosure of personal facts where such publicity would be offensive to one of ordinary sensibilities. In short, the reference is to that type of abuse arising in cases which Dean Prosser terms "public disclosure of private facts."[36] The concurring justice combines these two categories by suggesting that such a disclosure of private facts would serve to "clearly demonstrate" that the publisher's sole purpose was to increase circulation rather than to present newsworthy information.

Whereas the concurring opinion tends to merge the two categories, Dean Prosser points out that the cases classified as "appropriation" and "disclosure" protect different interests of the individual. The effect of the "appropriation" decisions is to recognize or create an exclusive right in the individual to a species of trade name, while "disclosure" cases protect against the invasion of something secret, secluded or private pertaining to the plaintiff.[37] The difference between

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[31] 18 App. Div. 2d at 491, 240 N.Y.S.2d at 292.
[32] *Ibid.*
[33] 18 App. Div. 2d at 491, 240 N.Y.S.2d at 292.
[34] 18 App. Div. 2d at 491, 240 N.Y.S.2d at 293. (Emphasis added.)
[35] PROSSER, *supra* note 9, at 839-44.
[36] *Id.* at 834-37.
[37] *Id.* at 842-43.

these interests was recognized in *Sidis v. F-R Publishing Corp.*,[38] where the federal courts, applying New York law, refused to protect the plaintiff from the disclosure of private facts. In discussing the origin of New York's right of privacy statute and its limitations, the court said: "Any liability imposed upon defendant must therefore be derived solely from the statute, and not from general considerations as to the right of the individual to prevent publication of the intimate details of his private life."[39] This decision makes it clear that disclosure of private facts is not proscribed by the New York statute.

The difference between the two interests can be illustrated further by comparing a case which arose in California. Both interests are recognized in California,[40] where the right of privacy is derived from the state constitution rather than from a statute.[41] In *Melvin v. Reid*,[42] the plaintiff recovered for the exhibition of a movie which accurately revived her former life as a prostitute and her prosecution in a notorious murder trial which had occurred seven years earlier. The court found that, even though the portrayal was true and newsworthy, the plaintiff was entitled to be protected from publicity which disclosed her former condition of depravity. Relying on the state constitution, the California court recognized and protected an interest which, under the *Sidis* rule, is beyond the protection afforded by the New York privacy statute.

Critique

While the *Hill* case was correctly decided within the limits of the New York statutory provision, the dictum of the concurring opinion proposes a basis of liability which reaches beyond the scope of the statute. The dissenting judges properly argued that the suggestion of the concurring opinion would inject an "unrealistic ingredient" into the law as it exists under the narrow statute.[43] It is clear that the New York privacy statute is too restricted to protect the individual from a disclosure of private facts where such publicity would be offensive to one of ordinary sensibilities.

The dissenting opinions also pointed out the problem of protecting the freedom of the press by saying that the concurring opinion's proposed expansion of the right of privacy "would abridge dangerously the peoples' right to know."[44] This problem has continued to be one of the primary obstacles in the growth of the law of privacy since the time Warren and Brandeis first raised the issue in 1890.[45] Overcoming this inhibition of the growth of the right of privacy is not properly within the discretion of the New York courts. It must be left to the legislature because of the narrow terms of the New York statute. The *Hill* case illustrates the impropriety and confusion which result from the judicial expansion of the statutory limitation on the right of privacy. It is unfortunate that the New York statute,

[38] 34 F Supp. 19 (S.D.N.Y. 1938), *aff'd*, 113 F.2d 806 (2d Cir.), *cert. denied*, 311 U.S. 711 (1940).

[39] Sidis v. F-R Publishing Corp., 113 F.2d 806, 810 (2d Cir. 1940).

[40] Werner v. Times Mirror Co., 193 Cal. App. 2d 111, 14 Cal. Rptr. 208 (1961) (applying Prosser's categories).

[41] Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931).

[42] *Ibid.*

[43] 15 N.Y.2d at 989, 207 N.E.2d at 606, 260 N.Y.S.2d at 9.

[44] *Ibid.*

[45] Warren & Brandeis, *supra* note 6.

which was enacted at the time when the right of privacy was at its infancy, is so narrow that it precludes the growth of the law of privacy which is occurring in other jurisdictions.

Appeal to the United States Supreme Court

Defendant Time, Inc. has recently appealed the holding of the New York courts to the United States Supreme Court, which has noted probable jurisdiction.[46]

The appellant contends that Sections 50 and 51 of the New York Civil Rights Law, when they are construed to award damages for invasion of privacy by the publication of a review of a play that resembled a prior incident involving a private person, the review and accompanying photographs being inaccurate in some particulars, abridge the freedom of the press guaranteed by the first and fourteenth amendments.[47] Claiming that the New York courts impose liability upon publishers whose news articles are factually inaccurate,[48] the appellant asserts that the rules pertaining to the newsworthy privilege and fictionalization have not been measured by standards which satisfy the first amendment.[49] Accordingly, the Court is asked to evaluate the constitutional propriety of the protection which New York extends to the right of privacy,[50] in light of the fact that the Court has tested the law of defamation by the first amendment standard in *New York Times v. Sullivan*.[51] The brief suggests that a proper test for publisher's liability consistent with the first amendment would require showing actual malice on the part of the publisher toward the person whose name or picture is used or a showing of the publisher's flagrant and reckless disregard for the truth.[52]

That portion of the appellant's argument which contends that publishers will be liable whenever they publish inaccurate news material is clearly wrong. Where fictionalization does occur, liability arises only when the fictional material has no educational value or reveals intimate details of a person's life which are repugnant to the public's sense of decency.[53]

The primary issue raised by the appellant is whether all the rules[54] which the New York courts apply in limiting the newsworthy privilege, taken together, fail to meet the standards of the first amendment. The appellee argues that the New York legislature formulated the right of privacy law with careful attention to the freedom of the press guaranteed by the New York state constitution.[55] Shortly after it was enacted, the statute was tested on constitutional grounds and was upheld.[56] The appellant's challenge however, is not directed at the New York statute but rather at the judicial development of the rules which have culminated in its liability The appellee contends that the New York courts have consistently drawn the

[46] Time, Inc., v. Hill, 86 Sup. Ct. 392 (1965).

[47] Brief for Appellant, pp. 2-3, Time, Inc. v. Hill, *supra* note 46.

[48] *Id.* at 7.

[49] *Id.* at 8, 10.

[50] *Id.* at 11.

[51] 376 U.S. 254 (1964).

[52] Brief for Appellant, p. 23.

[53] See note 16 *supra* and accompanying text; Brief for Appellee, pp. 4, 16-17.

[54] See notes 10-21 *supra* and accompanying text.

[55] Brief for Appellee, p. 3.

[56] Rhodes v. Sperry & Hutchinson Co., 193 N.Y. 223, 85 N.E. 1097 (1908), *aff'd*, 220 U.S. 502 (1910).