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Sex, Lies, and Stereotypes . . .

One Rural Black Woman Takes on Publishing Powerhouses

by Lori Tripoli

Somewhere between Princess Diana and Richard Jewell comes another media victim. Not world-famous but not entirely unknown, Hazel Chambers is described in the book *Land of Opportunity* as "whoring around" as well as "screwing" and "milking" a man not her husband—to cite a few of the less graphic depictions. It should come as no surprise that someone accused of such acts, in print, decided to sue for libel, invasion of privacy, and the tort of outrage. *First National Bank of Phillips County, Conservator of the Estate of Hazel Cook Chambers v. Grove/Atlantic, Inc., Penguin Books USA, Inc., d/b/a Penguin Group, Plume, and Dutton Signet, and William M. Adler*, No. H-C-96 152 (E.D. Ark. complaint filed Nov. 12, 1996).

But Hazel Chambers' case against author William Adler and publishers Grove/Atlantic, Inc. (hardback 1995) and Penguin Books USA, Inc. (paperback 1996) is a little bit unusual. In addition to being elderly, poor, black, and uneducated, Chambers is a divorcee (two times), an occasional recipient of food stamps, the former operator of a tavern, and the mother of 14 children, four of whom grew up to become the notorious Detroit drug dealers known as the Chambers brothers—purveyors of crack cocaine who were making tens of millions of dollars a year in the 1980s, until they were arrested, tried, convicted, and incarcerated for terms ranging from 27 years to life.

Other sins aside, Hazel Chambers claims she wasn't a prostitute or an adulteress as described in William Adler's

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book. And the law suit bearing both their names brings to the fore issues that members of the media and lawyers alike are circling around: the role of reporters in revealing someone's private life, the use of (or misplaced reliance on) unnamed sources, the tabloidization of the book publishing industry, and the handling of the media itself.

The trial, originally scheduled to begin on September 15—shortly after Princess Diana's funeral and just before President Clinton's visit to Little Rock, Ark., to commemorate the integration of its schools—has been postponed, leaving the lawyers on both sides two-and-a-half more months to refine their arguments: the plaintiff's contention being that, among other things, the defendants committed libel *per se* and published with actual malice or reckless disregard for the truth; the defendants' position being that, *inter alia*, the plaintiff has failed to show actual malice or even fault on their part. The trial is now slated to start on December 1 (Order, Sept. 15, 1997) in Helena, Ark. As this article went to press, the plaintiff's and the defendants' motions for summary judgment were pending.

She Says, He Says

Land of Opportunity takes readers through the short strange trip of the Chambers Brothers, how they got started and how they got stopped. Adler, who interviewed some of the brothers, describes the lack of opportunity for destitute African-American Arkansans with hardscrabble childhoods, how the brothers set out for Detroit to seek their fortune, how they made one in illegal drugs, how they set up an impressive business operation, and how their obscure origins and careless upbringing ostensibly left them little leeway.

A number of critics praised the publication as a well-researched good read. Columnist George Will referred to the book as "a virtuoso exercise in reporting" but criticized Adler for claiming that the Chambers Brothers "made 'a rational career choice' when they became pioneers of the age of crack cocaine." (George F. Will, "A Rational Career Choice," *The Washington Post*, May 18, 1995, p. A31, included in Exhibit E in Affidavit of William Adler, July 29, 1997)

Hazel Chambers contends that certain statements, describing a period in the late 1960s and early 1970s, are false and that the defendants published them either knowing that they were false or with reckless disregard as to their truth or falsity. Chambers has allegedly become severely depressed, and a conservator has been appointed to manage her financial affairs.

Adler would not speak to this reporter without the approval of Kevin Goering, a partner at Coudert Brothers in New York who is representing all three defendants. Asked for their side of the story, Goering is tight-lipped. "If you look at the book, the book speaks for itself," he says. "The book is a rather lengthy account of the background and the subsequent investigation and arrest and conviction of members of the Chambers family. One small section of it discusses their upbringing."

In that section, the defendants referred to Hazel Chambers as someone who was a prostitute and operated a house of ill repute:

Hazel also made big money hustling out of the juke joint. "She sold herself to anyone who paid the right price," said a La Grange man who insisted that he not be named, but who adds: "Believe me, I was in a position to know. A whole bunch of us were always there, sometimes all night if that's what it took trying to outdo, one-up each other. Listen, Hazel Chambers ran that place like a cathouse. . . . If you had clothes, jewelry, or cash or *anything* she could use—you had a date." Another of Hazel's reputed regular customers was a member of the family's church. . . . Hazel and he reunited on Sunday afternoons after services. . . .

(Complaint at 5)

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Goering takes a literal approach to the book's content and maintains in all seriousness that "[t]he book doesn't say she was a prostitute."

"That's an odd thing," counters Sandy McMath, a Little Rock lawyer representing the plaintiff, when told of Goering's remark. He suggests that the term "cathouse" is, by definition, a brothel. "There's no doubt that [defendants] chose words that portrayed her as a rampantly, wantonly, promiscuous person," he adds.

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Indeed, the picture of Hazel Chambers that the defendants are trying to paint is not a particularly flattering one: "Plaintiff voluntarily engaged in activities designed to attract public attention. She willingly accepted large currency transfers from her sons and used them to enrich herself. She drove flashy new automobiles at a time when she was accepting food stamps. Above all, she was portrayed in the press as the mother of the leaders of a notorious and violent crack dealing enterprise." (Defendants' Memorandum in Support of Their Motion for Summary Judgment, July 31, 1997, p. 11.) But justifying an attack on a woman's character because she is a food-stamp-receiving mom with a number of kids who resorted to a life of crime may not fly before a jury. "I hope he's not planning to use that as his closing argument," advises one litigator at a national law firm.

"There's a logical disconnect," says John Walsh, a partner with New York's Cadwalader, Wickersham & Taft who represented Food Lion, Inc. in its recent lawsuit against Capital Cities/ABC contesting the use of hidden cameras. "The best woman in the world could have three or four kids who turn out bad."

McMath concedes that Hazel Chambers has had her share of troubles. "She is not a saint by any means, she's not pretending to be," he says. He himself was once "concerned that surely there must be fire where there was smoke." After researching her case, after pouring over government records and looking through old newspapers, he says he came up with nothing more against Hazel Chambers than a fine imposed for discharging a firearm in public in 1973 (McMath says she dropped the weapon), a citation for having beer at her cafe on the table after hours, and the government's seizure of a vehicle along with a certificate of deposit after the Chambers Brothers themselves ran afoul

of the law. "She's not running for Mother Teresa or Princess Diana," McMath admits.

The senior litigation counsel with the U.S. Attorney's Office in the Eastern District of Arkansas had looked into alleged money-laundering activities of members of the Chambers family and says that the government did not have probable cause to charge Hazel Chambers with a crime and that she has not, to his knowledge, been charged with or convicted of violating a federal law. He says Hazel Chambers was not named an unindicted co-conspirator. (Affidavit of Robert J. Govar, Aug. 18, 1997.)

Hazel Chambers, McMath says, just wants to clear her name. The defendants, though, maintain that she cannot recover because she has not shown that the statements about her were published with actual malice. (Defendants' Memorandum in Support of Their Motion for Summary Judgment, July 31, 1997.)

The Race Card

The defendants, McMath says, have turned Hazel Chambers into a caricature. "Here you have a person from a . . . WASP community who came here and claims to have fathomed the intricacies of the African-American and Southern white communities in a way the evidence will show was highly inaccurate," asserts McMath. The defendants, McMath contends, have portrayed Hazel Chambers as a "disdainfully hedonistic, cinematic stereotype" of African-American females, "the wild and woolly but sexy black woman who overcomes adversity through cleverly selling herself." Moreover, he asserts that the defendants added some spice to the book in an effort to boost sales and to help bring about a movie deal.

Goering claims that "this case has nothing to do with race." But the book has everything to do with it. Adler's entire thesis is that there were few options when the Chambers brothers were coming of age given the attitude in Arkansas toward African-Americans at the time. "In particular, as the book details, I believe that the Chambers family's criminality was in part a product of their social environment. I have never at any time harbored any malice, ill-will or animosity toward Mrs. Chambers or her family. To the contrary, I believe that she lived under very difficult circumstances and made ends meet as best she could." (Adler affidavit, July 29, 1997, para. 22.) Adler also says that he thinks Hazel Chambers commenced this law suit because her sons were displeased with the outcome of negotiations to portray their lives in film. (Adler affidavit, July 29, 1997, para. 20.)

The impact of race on the outcome of this case is difficult to predict. "How race is going to play before a jury is something I would not call beforehand without doing re-

search specific to the case," says Kathleen Kauffman, chief executive officer of Starr Litigation Services, a trial consulting firm based in West Des Moines, Iowa. "Sometimes members of the African-American community are harsh critics of other African-Americans. The real question is how hardworking, church-going African-Americans are going to view this plaintiff."

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view this plaintiff.'**

How George Howard, the judge assigned to the case, will react to the plaintiff's case is also unknown. Howard, an African-American, is said by some litigators to be plaintiff-friendly. Civil defense attorneys evaluating the judge described him as "definitely not with the defense table" and "plaintiff-oriented" (*Almanac of the Federal Judiciary*, Aspen Law & Business, Vol. 1, 1997-2, 8th Cir., p. 4).

No matter how the deck is stacked, race relations are unlikely to be far from the minds of any jurors on this trial, coming, as it does, on the heels of the 40th anniversary of the desegregation of Little Rock Central High School.

Word of Mouth

Stereotype or not, there seems to be scant demonstrative evidence that Hazel Chambers was a prostitute: no arrest for solicitation, no charge, no jail time. Adler has an answer for this: "Although my research did not uncover any public record that Plaintiff had been convicted of prostitution, I did not find that fact to be the least bit suspicious. I had been told by many sources that some of Plaintiff's regular clients were members of the Lee County Sheriff's Department. Other sources told me that Plaintiff and her ex-husband made payments to law enforcement authorities (a fact about which Plaintiff does not complain here)." (Adler affidavit, July 29, 1997, para. 15.)

As such, the defendants' case speaks directly to the torturous issue of unnamed sources. Sig Gissler, a professor at Columbia University's Graduate School of Journalism and a former editor of the *Milwaukee Journal*, explains that the "quantity [of sources] is not as important as the quality." A factor an author generally should consider in a case such as this is whether a source was an eyewitness and saw someone engaging in a sexual act or whether the source is merely providing hearsay.

Generally, "it's not easy to defend" statements based on interviews with anonymous sources, says Sandra Baron, executive director of the Libel Defense Resource Center in

New York. "An issue that reporters and editors struggle with all the time," she says, is how to "deal with difficult, dangerous stories"—such as those covering drug rings. "It's no fun to squeal in the era of the machine gun."

McMath agrees, but contends that most of the anonymous sources Adler relied on spoke not to the nefarious world of narcotics but to Hazel Chambers' sexual practices: "Indeed, of 18 confidential sources listed in his 415-page book about what he would have us believe was a ruthless gangs [*sic*] of inner-city criminals for whom a stool pigeon is a dead pigeon, all but two of Mr. Adler's confidential informants concern Mrs. Hazel Chambers in Lee County, Arkansas!" (Plaintiff's Memorandum in Response to Defendant's Motion for Summary Judgment, Aug. 22, 1997, pp. 2-3.)

Adler has revealed the names of some on-the-record sources as well as two who were confidential (one died since the publication of the book, the other consented to have his name disclosed). But McMath still contends that much of the defendants' evidence "consists of rank and inadmissible hearsay" from witnesses that "'heard rumors' many years ago that [plaintiff] may have had affairs with men, whose names they cannot recall." (Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment, Aug. 22, 1997, pp. 7-8.) **"Nothing is so illustrative of the bankruptcy of the defendants' case than that eight (8) of the witnesses it identified as testifying adversely to plaintiff's reputation or as to illicit 'relationships' they or others had had with her did not do so on their depositions, but either testified to the contrary or that they honestly knew nothing bad about the lady or that they had no opportunity to form an opinion!"** (Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment, Aug. 22, 1997, p. 11, emphasis original.)

The bottom line, McMath maintains, is that "no one will say, 'I was there and saw her in a compromising situation.'" (For more about disputed testimony, see sidebar on page 5.) Goering again declined to comment about this evidence in the case.

Actual Malice

Adler is certainly sticking to his story: "I continue to believe that *Land of Opportunity* contains no false statements whatsoever about the Plaintiff in this case," he maintains. (Adler affidavit, para. 21). The defendants contend that Adler's "notes of interviews and documentary sources are graphic evidence that he did not entertain any serious doubts as to the truthfulness of his statements about plaintiff." (Defendants' Memorandum in Support of their Motion for Summary Judgment, July 31, 1997, p.17). Redacted portions of Adler's notes have been released.

Yet the defendants' focus remains more on Chambers' status in the community than the "truthfulness" of Adler's statements. They say that Chambers, a part-time assistant attendance checker at an elementary school, is "unquestionably" a public official and therefore bound to a higher standard of proof if she expects to prevail in a libel action. (Defendants' Memorandum in Support of their Motion for Summary Judgment, July 31, 1997, p.8.) As a public offi-

cial, she must thus show actual malice or reckless disregard for the truth.

If, however, that "public official" assertion doesn't work, the defendants contend that, at the very least, she's a public figure, or if not that, then a limited public figure, and, if not that, they say her reputation is so bad that she's libel-proof. "In this case, the record is replete with evi-

Telling Testimony: 'He Didn't Say He Didn't Say It'

If the back-and-forth exchanges between the plaintiff's and defense lawyers in Hazel Chambers' libel lawsuit against the publishing industry are an indicator, any debate at trial about what sources or witnesses say and see in such cases can be lively ones indeed—and extremely problematic.

Take, for example, the lawyers' statements about Sheriff Bobby May, who is quoted in Richard Adler's book *Land of Opportunity* as saying that Hazel Chambers "was whoring around and selling bootleg whiskey and those kids got a Ph.D. in hustling at home." Defendants contend that "[a]lthough Counsel for Plaintiff had a full opportunity to cross-examine Sheriff Bobby May at his deposition, Sheriff May never testified that he did not give this quote to Mr. Adler. In fact, . . . Sheriff May stated that 'I could have said something along those lines.' . . . At his deposition, Sheriff May did not deny giving the author the 'gist' or the 'sting' of the quote attributed to him. . . . Even if Sheriff May were to have disputed the quote (which he did not do), Plaintiff has still not shown that its inclusion in *Land of Opportunity* constitutes actual malice." (Defendants' Reply Memorandum in Further Support of Their Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, Sept. 15, 1997, pp. 15-16, citations omitted.)

Whether such a finely crafted "he didn't say he didn't say it" argument will persuade a jury—or a judge—in an atmosphere still tinged with bitterness over the circumstances of Princess Diana's death remains to be seen.

The plaintiff, of course, has a different interpretation of May's statements. "According to the deposition of Bobby May, . . . Adler was looking for facts that would 'make the story sexy.'" (Plaintiffs' Memorandum in Response to Defendants' Motion for Summary Judgment, Aug. 22, 1997, p. 27) "In his deposition, Bobby May stated that he has never heard of any person who was alleged or said to have a relationship with Hazel Chambers other than Curtis Chambers." (Plaintiffs'

Memorandum in Response to Defendants Motion for Summary Judgment, Aug. 22, 1997, p. 28)

Very recently, however, the defendants have proffered one witness, Dave Ivory, who, they claim "is yet another individual with personal knowledge of Plaintiff's past conduct. His sworn declaration stat[es] that Plaintiff sold him liquor at her cafe, permitted gambling at her cafe, had an adulterous relationship with Leon Ellis, and offered Mr. Ivory sex for money. . . ." (Defendants' Reply Memorandum in Further Support of Their Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, Sept. 15, 1997, p. 4.)

Yet the declaration seems to actually say something a little bit different: that Ivory at most solicited Hazel Chambers, not *vice versa*. In his declaration, Ivory explained, "As a young man I attempted to have an intimate relationship with Hazel Chambers. She told me she was willing to do so but that I would have to pay her to have a sexual relationship with her. The price she demanded was \$50. I did not have that kind of money in those days and she refused to become intimate with me because I could not pay her." (Declaration of Dave Ivory, Sept. 14, 1997, para. 5, attached as Exhibit H to Affidavit of Kevin W. Goering, Sept. 15, 1997.)

"My feeling is that [Ivory] is a fabricated and contrived witness," says McMath, who alleges that Ivory is not listed in the author's notes, and his name was not given to the plaintiffs as a source or even a confidential source of the material written about Hazel Chambers. "I think the fellow is impeachable," says McMath.

At the very least, it's the kind of testimony that can decisively cut two ways: for the defendants, it could establish a propensity to accept money for sex (regardless of who solicited whom), or, for the plaintiff, it could suggest another "contrived" effort to tarnish Chambers' reputation.

—Lori Tripoli

dence of plaintiff's notorious acceptance of the proceeds of her son's [sic] drug dealing. The widespread publicity surrounding her conduct between 1988 and 1990 precludes any claim that her reputation was further sullied in 1995 and 1996, when *Land of Opportunity* was published." (Defendants' Memorandum in Support of their Motion for Summary Judgment, July 31, 1997, pp. 31-32.)

At the very least, 'I wouldn't want to be defending a libel case the weekend after Princess Diana died,' quips Gissler.

McMath maintains that Chambers is not a public figure and that press coverage of her was always minimal: "Defendant submits twenty-four (24) articles in newspapers to demonstrate publicity surrounding the Chambers. Two of the news articles report that Ms. Chambers filed this particular suit in Arkansas federal court. Resorting to the judicial process is not a basis for claiming one is a public figure. . . . In the remaining twenty-two (22) news articles produced by Defendants, the name of Hazel Chambers appears in three (3) of the articles (and only once in each). There is no article which appeared in any newspaper before the filing of this lawsuit that quotes Hazel Chambers, shows a picture of Hazel Chambers or is written about Hazel Chambers. There is simply no evidence to show that Hazel Chambers voluntarily injected herself into any issue of public concern." (Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment, Aug. 22, 1997, pp. 23-24, citation omitted).

Practical Matter

Even if Hazel Chambers is deemed a public personage, McMath asserts that there is sufficient evidence to establish that the defendants acted with malice or reckless disregard for the truth. One important ancillary issue, the publishing houses had no fact-checking policy. Morgan Entrekin, president and publisher of Grove/Atlantic, observed that "book publishers do no [sic] expect their editors to verify independently factual statements made in manuscripts submitted to them. Instead, fact-gathering and fact-checking of this nature [are] the responsibility of the author. Where, as in this case, the publisher has no reason to question the reliability of the author, the publisher ordinarily would do no independent fact checking." (Affidavit of Morgan Entrekin, July 2, 1997, para. 6).

"Central to the [concept of] free expression is that there are not standards," says Tonda Rush, of counsel to the Washington, D.C., office of King & Ballou and a former president and CEO of the National Newspaper Associa-

tion. At the same time, she notes that, at least in the newspaper business, review of material by legal counsel and input from insurers, as a practical matter, provide some temperance. Sandra Baron says that, as she recalls, pertinent case law is consistent in holding that a book publisher is not obligated to fact-check a book by an accomplished author.

Defendants also maintain that a book publisher's reliance on an author "is not evidence of malice. A failure to investigate is not actual malice, and reliance on a trustworthy author with a proven track record is the exact opposite of actual malice. Here, Mr. Adler had already published two magazine articles five years earlier containing information about plaintiff's receipt of drug money and about the criminal convictions of her family. There is no fact in the record from which a jury could possibly find that Grove Atlantic acted with a 'high degree of awareness of probable falsity.' " (Defendants' Memorandum in Support of their Motion for Summary Judgment, July 31, 1997, p. 17, citation omitted.)

Even if Chambers is deemed to be a purely private person, the defendants maintain that she has not established fault of the defendants. They make much of the fact that Chambers declined to talk to Adler. "Plaintiff chose not to give Mr. Adler her side of the story. Her sons and daughter cooperated and praised the book." (Defendants' Memorandum in Support of Their Motion for Summary Judgment, July 31, 1997, p. 120)

A Tabloidized Story?

Kevin Goering is perturbed that this reporter is treating the Chambers matter "as if it's some major case." Yet, it seems that, should the plaintiff prevail, this case might have some fallout for publishers. What qualifications and track record are necessary for an author to be deemed "reliable?" Even if the author is so deemed, should certain allegations trigger a fact-checking response on the part of the publisher?

McMath believes that "one of the great issues in the case is how the so-called legitimate media have actually become tabloidized." At the very least, "I wouldn't want to be defending a libel case the weekend after Princess Diana died," quips Gissler.

But Goering is dismissive when asked if the Hazel Chambers law suit puts the press on trial. The case "has absolutely nothing to do with Diana," and, asked whether jurors are going to be antagonistic toward writers, Goering says, "No, I don't believe that's going to happen."

"This is not about paparazzi," Goering adds, although some might see it only as a matter of degree, whether a woman is hounded to death or just driven to deep depression.

Spin Control: How to Stop Worrying and Love the Press

Despite protecting clients' right to speak out, defense lawyer Kevin Goering, a partner with New York's Coudert Brothers, doesn't himself say much of anything about Hazel Chambers' libel case. Asked whether he has a press person getting the defendant's side of the story out, Goering replies, "I won't comment about that." Asked whether *Land of Opportunity* author William Adler did his homework and checked police and court records for information about Hazel Chambers' background, Goering says, "I won't comment on the evidence in the case." Asked whether there's a movie deal to translate the book for the big screen, Goering answers, "No comment."

The defendant might want to donate profits from the book to some charitable cause—again, emphasizing the human nature of the writer.

Despite the story's media-genic appeal—it's full of bad guys, drugs, Arkansas, hard times, and spurned women—keeping quiet might be just the right approach for defense counsel in a case like this one, says Richard Levick, director of the public relations division at Jaffe Associates, a Washington, D.C., firm specializing in marketing, communications, and business development for law firms. Levick notes, of course, that a defendant's press strategy also varies with each case, particularly since some state courts have prohibitions on what lawyers involved in pending litigation are allowed to talk about.

If, however, the story is getting picked up by wire services and national publications, if the defendants are "being beat up in the press a lot" because of a wave of Princess-Diana-how-far-is-too-far stories, if a story "is developing a life of its own," if it's becoming a "reverse *cause celebre*" and reaching a "Dante's Inferno point," then, Levick says, "silence is not a particularly positive strategy."

Defense lawyers can try to create a positive spin for their side of the case. Levick suggests that a lawyer defending an author accused of defamation might try to set up editorial board meetings, perhaps with the client participating, so that, if articles or editorials are being

prepared, then at least the defendants have an opportunity to have their side aired. While the facts have to speak for themselves, for real spin the goal would be to let the author-defendant's humanness out. The spin could also be that the author was writing, not just to tell someone's story but in the hope of helping others.

The defendant might want to donate profits from the book to some charitable cause—again, emphasizing the human nature of the writer. As a press management ploy, defense lawyers can also go off the record and suggest that the journalist seek certain information or pose specific questions to the opposing side. Levick cautions, however, that such a tactic "absolutely has to be done in the most charming, pleasant, professional, and sensitive way that says 'I'm not trying to manipulate you.'"

If, on the other hand, Levick were handling press for the plaintiff's firm in a case like Hazel Chambers', he'd link the whole action to the "evil dirty press." He might consider press conferences including the plaintiff's lawyer, particularly if the media is already interested and the attorney is eloquent or flamboyant. Levick says he probably would want to keep the plaintiff away from individual meetings with reporters. At a press conference, though, he might provide a plaintiff like Hazel Chambers with one-liners, such as "I'm a mother. Like all mothers, I've made my mistakes." If the plaintiff were not particularly articulate, he might still hold a press conference but feature her in a short video and leave the rest up to the attorneys, the message being that the plaintiff is too broken to appear in public.

Whether the plaintiff's or the defense side has a natural media advantage is a "fluid question," Levick believes. The focus of coverage can quickly shift. Levick, paraphrasing a commentator, points to the recent death of Princess Diana: at the outset, paparazzi were being targeted as the bad guys in the case, then the Queen of England was castigated and as this issue goes to press, drunk drivers are the villains. In typical cases, Levick maintains, a plaintiff has one set of baggage, the defendant has another, and "neither is the most perfect person going to the prom." One of them, though, might be able to do the press dance better.

—Lori Tripoli