

“On the QT and Very Hush Hush:” Does California’s Constitutional Right to Privacy Protect Public Figures From Publication of Confidential Personal Information?

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*“You have already beaten him- you struck him where every human worthy of the name is most vulnerable. You have shamed him before his friends and before the world, and in doing that you have hurt him more than you could by any bodily punishment.”*²

I. Introduction

Informational privacy, the right to control access to confidential personal information, is by definition in conflict with the United States’ constitutional guarantee of freedom of the press.³ Five years ago the California Supreme Court posed the central question of this constant conflict: “How can the courts fashion and administer meaningful rules for protecting privacy without unconstitutionally setting themselves up as censors or editors?”⁴ In this essay I will summarize how California courts have attempted to answer that question by balancing the competing interests of privacy and freedom of the press in cases involving public figures.⁵

II. Informational Privacy and Public Figures: An Overview.

Claims of informational privacy assert that publication of information about a person’s medical condition, financial affairs, family life, or other intimate personal affairs, is actionable because that person alone has the right to decide whether that information should be made public. These claims present special problems under the First Amendment to the Constitution of the United States because the publication involved is, by definition, true.⁶ Allowing any remedy for a violation of informational privacy is controversial because courts are telling editors they cannot publish information even though it is true and “lawfully obtained.”⁷ Arguably, privacy remedies also interfere with the public’s right to receive information - a right related to freedom of speech and freedom of the press.⁸

The United States Supreme Court has addressed the clash between the competing values of informational privacy and freedom of the press in two cases, *Cox Broadcasting v. Cohn*⁹ and *Florida Star v. B. J. F.*¹⁰ In both cases, the Court held the First Amendment does not allow states to protect privacy interests where the press publicizes true information about matters of public concern lawfully gathered from public documents or proceedings.¹¹

While the Supreme Court was very solicitous of editorial discretion in those cases, it declined on both occasions to rule the press can never be sanctioned for publishing true information.¹² The Court explained that its reluctance stems from the recognition that claims of a right of privacy are “...plainly rooted in the traditions and significant concerns of our society.”¹³ Indeed, in *Cox Broadcasting* the Court acknowledged there are powerful arguments that there is “...a zone of privacy surrounding **every individual**, a zone within which the State may protect him from intrusion by the press...”¹⁴ Thus, despite dire judicial and academic predictions about the impending demise of the right to informational privacy in the wake of the *Florida Star* decision,¹⁵ courts continue to find the press liable for violating the right to privacy in select cases.¹⁶

III. Theoretical underpinnings of privacy claims by public figures

A. Legal and Constitutional standards applicable to privacy claims by public figures.

1. Newsworthiness

The United States Supreme Court in *Cox*¹⁷ and *Florida Star*¹⁸ limited informational privacy cases by imposing the “truthful” and “legally obtained” standards of review. However these standards do not address the difference between

the zones of privacy allowed public figures and private individuals. California courts have developed state standards governing the zones of privacy afforded public figures by providing interpretations of California constitutional law and common law. In an effort to reconcile protection of freedom of the press with the common law protection of informational privacy, California courts have utilized the “newsworthiness” standard to evaluate claims of invasion of privacy.¹⁹

California plaintiffs asserting informational privacy claims must prove an article was not newsworthy to succeed in their cause of action.²⁰ The definition of “newsworthy” is so broad that at first blush it appears impossible for a person to recover on a claim for invasion of informational privacy. In *Briscoe v. Readers Digest Association*,²¹ for example, the California Supreme Court held that a publisher need not intend to educate the public to render an item newsworthy. The Court concluded that the line between entertainment and education is too elusive for courts to define because “[w]hat is one man’s amusement teaches another’s doctrine.”²² Theoretically then, once an editor determines that an article is newsworthy, the courts will not second guess that determination.

The California Supreme Court’s most recent foray into this field reinforced the broad sweep of the definition of what is “newsworthy.” In *Shulman v. Group W Productions, Inc.*,²³ the plaintiffs were videotaped, without their knowledge or consent, as they were being treated for injuries suffered in a serious automobile accident. The videotape subsequently appeared on the defendant’s nationally syndicated “reality television show.”²⁴ In declaring the broadcast newsworthy, a majority of the Supreme Court concluded “... a publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it.... Thus newsworthiness is not limited to ‘news’ in the narrow sense of reports of current events.”²⁵

The elasticity of the “newsworthiness” concept might appear to make virtually any information “newsworthy” so long as some entity some where has printed it.²⁶ However in practice the newsworthiness standard is not as malleable as the case law suggests. First, the paramount test of “newsworthiness” is determining whether the matter is of legitimate public interest according to “community mores:”

The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he has no concern.²⁷

Second, California courts have entrusted determination of newsworthiness to juries: “Whether a publication is or is not newsworthy depends upon contemporary community mores and standards of decency. This is largely a question of fact, which a jury is uniquely well suited to decide.”²⁸ The practice of committing newsworthiness to juries continued after the *Florida Star* decision. In *Hood v. National Enquirer*,²⁹ a California Court of Appeal remanded the case for trial to determine whether information published about Eddie Murphy’s support of a child he fathered out of wedlock, and about the child’s mother, was newsworthy. In its opinion the court reaffirmed the principle that “newsworthiness” is a jury question:

[C]ourts have repeatedly held that even when an event is generally newsworthy, the publication of certain facts may not be such.... We cannot say as a matter of law that the details of a celebrity’s financial support of his child and Ms. Hood are newsworthy. While the fact of that support may be newsworthy, the financial details may not. **A trier of fact** could conclude that how much money Mr. Murphy gave plaintiffs, the price of their home, the amount of Ms. Hood’s monthly support, and the size of Christian’s trust fund, were private facts, the publication of which was unnecessary to the story told and not newsworthy.³⁰

Although the California Supreme Court upheld a grant of summary judgment dismissing the plaintiffs’ privacy claims in the *Shulman* case, the Court’s opinion implicitly agreed that newsworthiness can be a jury question. The Court stated that “an analysis focusing on relevance allows courts **and juries** to decide most cases involving persons involuntarily involved in events of public interest without ‘balancing interests in an ad hoc fashion in each case.’”³¹

Unfortunately, the definition of newsworthiness does not provide much guidance to editors considering news

stories, or to plaintiffs pursuing privacy claims. The standards that guide a jury's determination of newsworthiness are surprisingly vague. Juries are instructed to consider 1) the "social value" of the facts published, 2) the depth of the intrusion into ostensibly private affairs, and 3) the extent to which the plaintiff voluntarily acceded to a position of public notoriety.³² When considering the depth of the intrusion, a jury is instructed to determine whether the revelation of the information was "grossly offensive" to most people.³³ In *Sipple v. Chronicle Publishing Co.*³⁴ the court summarized the newsworthiness standard succinctly:

...the paramount test of newsworthiness is whether the matter is of legitimate public interest which in turn must be determined according to the community mores....*The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say he has no concern.*³⁵

In evaluating the "newsworthiness" definition, one California Court of Appeal remarked, "If there is room for differing views whether a publication would be newsworthy the question is one to be determined by the jury and not the court."³⁶ Juries are invited, essentially, to substitute their judgments for the judgments of editors on a case by case basis, applying the mores of their particular community. Thus a publication deemed newsworthy in Los Angeles could be found to violate the right to privacy in Anaheim, San Marino or Redondo Beach. As such, one can only imagine the nervousness experienced by editors of the Los Angeles Times, or of any major newspaper circulated to the suburbs and beyond, because of the endless possibilities for liability this standard allows.

2. Newsworthiness and Public figures

In applying the newsworthiness standard to invasion of privacy claims brought by public figures, California courts raise the theoretical bar for recovery.³⁷ When public figures sue for invasion of privacy under the common law tort, they must contend with a lowered expectation of privacy because, as established by case law, those who are famous, notorious or just plain noteworthy lose some portion of their privacy:

[T]here is a public interest which attaches to people who by their accomplishments, mode of living, professional standing or calling, create a legitimate and widespread attention to their activities. Certainly the accomplishments and way of life of those who have achieved a marked reputation or notoriety by appearing before the public such as actors and actresses, professional athletes... may legitimately be mentioned and discussed in print or on radio or television. Such public figures have to some extent lost the right to privacy, and it is proper to go further in dealing with their lives and public activities than with those of entirely private persons.³⁸

a. Who Is a public figure?

In general the law defines a public figure as any person who has, by virtue of his position, activities, or happenstance, become the object of public attention.³⁹ California courts have adopted the two category treatment of public figures set out in the Restatement (Second) of Torts. This approach differentiates between voluntary and involuntary public figures.⁴⁰

Voluntary public figures are people who have placed themselves in the public eye by engaging in public activities, or assuming a prominent role in institutions or activities of interest to the general public.⁴¹ Actors, professional athletes, politicians, prominent musicians, singers and entertainers are included in the voluntary public figure category. The public may possess a legitimate interest in a wide range of information about voluntary public figures, "includ[ing] information as to matters that would otherwise be private."⁴²

In contrast, involuntary public figures are persons who have not sought the limelight, but who have become "news" as a result of their involvement in or association with a newsworthy event. This category includes crime victims, accident victims, accused criminals, and people who perform heroic acts. A person can become an involuntary public figure, with the concomitant loss of privacy, simply by being related to a voluntary public figure. As the Court explained

in Carlisle, “people closely related to such public figures in their activities must also to some extent lose their right to the privacy that one unconnected with the famous or notorious would have.”⁴³

The seminal California case discussing involuntary public figures is *Kapellas v. Kofman*.⁴⁴ In *Kapellas* a newspaper printed an editorial opposing the candidacy of Inez Kapellas for the Alameda City Council. The editorial argued against the election of Mrs. Kapellas because two of her sons had been arrested, and one daughter “had been found wandering on the street several times.”⁴⁵ Mrs. Kapellas filed suit on behalf of herself and her children arguing, *inter alia*, that publication of that information violated her children’s right to privacy. The California Supreme Court could have resolved the case based on the fact that the bulk of the information discussed in the editorial was contained in public records.⁴⁶ Instead, the Court focused on the public figure status of the mother, holding that the children lost their privacy when their mother chose to run for public office:

Those who seek elected public position realize that in doing so they subject themselves, and those closely related to them, to a searching beam of public interest and attention....Although the conduct of a candidate’s children in many cases may not appear particularly relevant to his qualifications for office, normally the public should be permitted to determine the importance of the reported facts for itself....The children’s loss of privacy is one of the costs of the retention of a free marketplace of ideas.⁴⁷

b. Public figure status is forever.

Courts have held that once people have become public figures, they can never regain the privacy lost due to that status. In *Sidis v. F-R Pub. Corporation*,⁴⁸ the plaintiff was a famous child prodigy who graduated from Harvard at the age of 16. After his graduation, Sidis deliberately sought to live a life of anonymity. However twenty years later a magazine printed an article about Sidis chronicling his early achievements, and contrasting them with his current life. As the Sidis opinion explained:

[T]he article is merciless in its dissection of intimate details of its subject’s personal life, and this in company with elaborate accounts of Sidis’ passion for privacy. ...[I]t may be fairly described as a ruthless exposure of a once public character, who has since sought and has now been deprived of the seclusion of a private life.⁴⁹

Sidis sued the publisher, claiming the article violated his right to privacy. The Second Circuit held that the article did not violate Sidis’ privacy because he remained a public figure due to his initial celebrity:

William James Sidis was once a public figure. As a child prodigy, he excited both admiration and curiosity.... In 1910 he was a person about whom the newspapers might display a legitimate intellectual interest, in the sense meant by Warren and Brandeis, as distinguished from a trivial and unseemly curiosity....Since then Sidis has cloaked himself in obscurity, but his subsequent history, containing as it did the answer to the question of whether or not he fulfilled his early promise, was still a matter of public concern.⁵⁰

The California Supreme Court adopted the Sidis principle in *Forsher v. Bugliosi*.⁵¹ James Forsher, a minor figure in the Manson “family” saga, sued Vincent Bugliosi for naming him twice in Bugliosi’s book *Helter Skelter*. Both references to Forsher connected him to unsolved murders associated with the Manson “family.”⁵² Forsher sued alleging, *inter alia*, that the publication of his name in the book violated his right to privacy because his identity was not a matter of public interest. His complaint stated that “...at no time...did [Forsher] seek or in any way encourage the publication of his name...” nor did he “...attempt to solicit publicity” regarding his association with the Manson clan.⁵³ The California Supreme Court ruled Forsher could not claim a violation of his right to privacy, adopting “the more general rule that once a man has become a public figure or news, he remains a matter of legitimate recall to the public mind to the end of his days.”⁵⁴ Thus no matter what they do, or do not do, people who become involuntary public figures can never again have any substantial expectation of privacy, under a literal reading of Sidis, Forsher and Kapellas.

B. Theory vs. reality

The court opinions addressing the clash between privacy and freedom of the press suggest that public figures do not possess a zone of privacy insulated from public scrutiny. In reality, public figures have recovered judgments, successfully settled lawsuits, and even obtained restraining orders against the press based on the publication of private and, in one instance, not so private information.

One notable example is a case involving Brad Pitt and *Playgirl* magazine. The magazine printed an edition containing photographs of Mr. Pitt and his then girlfriend, Gwyneth Paltrow, frolicking nude on a secluded beach. Pitt sued the magazine alleging that publication of the photographs, apparently taken from long range via a telephoto lens, invaded his privacy. In a surprising decision, a California superior court judge issued two orders mandating that *Playgirl* recall the issue. The court issued these orders after the magazine was distributed to subscribers and had appeared on newsstands, even though the photographs were widely available on the Internet before the magazine was published.⁵⁵

A court awarded similar relief in the *Hood v. National Enquirer* case.⁵⁶ In *Hood*, the *National Enquirer* printed a story reporting the details of a relationship between Eddie Murphy and a child he fathered out of wedlock. The story identified the mother and the child by name, reported that Murphy purchased a house and car for the mother, and detailed the amount of money he was paying the mother for child support. The story included photographs of both plaintiffs, their home and their car. The mother sued on behalf of herself and her son alleging the story violated their right to privacy. The trial court dismissed the complaint on the theory both plaintiffs were public figures who did not possess an expectation of privacy. However the California Court of Appeals, while agreeing that the mother and child are public figures, reversed and remanded the case for trial on the merits.⁵⁷

And in the most infamous case, actress Pamela Anderson and her estranged husband Tommy Lee settled a lawsuit against an Internet publisher who was selling unauthorized copies of a videotape of the couple engaged in lovemaking in a car and on a boat.⁵⁸ The settlement of this lawsuit is intriguing because the Anderson and Lee had discussed, in graphic detail, of the contents of the videotape on the Howard Stern radio show.⁵⁹

The results in these cases reinforce one California court's observation that "[p]ublic figures...are entitled to keep some information of their domestic activities and sexual relations private."⁶⁰

D. Punitive damages for invasion of privacy of public figures

I located one California case addressing the availability of punitive damages in a privacy claim of a public figure. In *Diaz v. Oakland Tribune, Inc.*, a newspaper publicized the fact that the student body president of a local college was a transsexual. The plaintiff had scrupulously kept this fact confidential.⁶¹ Despite its finding that the plaintiff was indeed a public figure,⁶² the court held that an award of punitive damages was appropriate because both the reporter and the publisher acted with malice in publicizing the information. In so ruling the court articulated the standard for an award of punitive damages in privacy cases: "In order to justify the imposition of punitive damages, the defendant must act with the intent to vex, injure or annoy, or with a conscious disregard of the plaintiff's rights."⁶³ The court noted that the article publicized Diaz' status as a joke, with the article stating "Now I realize, that in these times, such a matter is no big deal, but I suspect his [sic] female classmates in P.E. 97 may wish to make other showering arrangements."⁶⁴ It found this mocking reference alone could suffice as a showing the defendants knew Diaz would suffer emotional distress.⁶⁵

The challenge is to ascertain the boundaries of the "zone of privacy" that protect public figures.

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² Ousmane Sembane, *God's Bit of Wood*, 1970; quoted in Dorothy Winbush Riley, *My Soul Looks Back, 'Less I Forget* (1993)

³ Gary Williams, *California's Constitutional Right to Privacy: Can it Protect Private Figures from the Unauthorized Publication of Confidential Medical Information?*, 18 *Loyola Entertainment Law Journal* 1, 4-9 (1997).

⁴ Shulman v. Group W Productions, Inc., 18 Cal. 4th 200 (1998).

⁵ For purposes of this summary, I am limiting my definition of “public figures” to persons who do not hold an elected or appointed government position, but have achieved some level of public notoriety. Voluntary public figures are persons who, through their own actions, have become famous, or infamous - i.e. movie stars, prominent athletes, talk show hosts. Involuntary public figures have risen to public notice through some circumstance, often not of their own making - i.e. crime victims, persons accused of crime, persons related to public figures of public officials, Richard Jewell)

I have deliberately omitted from this discussion “public officials.” The public’s right to receive information about those who are elected or appointed to public office presents especially difficult problems. Limits on the right to publish information about public officials adversely impacts the public’s ability to make informed decisions about self governance, and affects “core” First Amendment values. These concerns give me greater constitutional pause than limits on the right to publish information about the lives, loves and medical history of movie stars and athletes.

I recognize this distinction is very problematic at its borders. Many “public figures” (most recently and famously, Arnold Schwarzenegger) have aspirations for public office, or are public figures precisely because they seek to influence public. Indeed, many public figures who are entertainers or famous athletes regularly use their notoriety to influence public policy debate (Barbra Streisand, an activist on many liberal causes, is a prime example).

The difficulties in drawing distinctions between public figures and public officials undoubtedly has influenced the United States Supreme Court, which has treated public figures and public officials as equals for First Amendment purposes. See, e.g., *Curtis Publishing Co. v. Butts and Associated Press v. Walker*, 388 U.S. 130 (1967); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). At the same time, the Supreme Court has declared, in dicta, that even the President of the United States retains some right to privacy. *Nixon v. Administrator of General Services*, 433 U.S. 425, 457-9 (1977).

⁶ One prominent constitutional law scholar has noted in this regard that “[T]he Court’s rulings reflect the principle that the First Amendment must virtually always protect the publication of true information.” Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 864 (1997).

I accept that proposition, and posit here that protection of highly sensitive personal information that an individual has treated as confidential presents that rare instance where the First Amendment should not protect publication.

⁷ Editorial control is, generally, the exclusive province of news editors. See e.g. *Miami Herald v. Tornillo*, 418 U.S. 241 (1974).

⁸ See e.g. *Lamont v. Postmaster General*, 381 U.S. 301,307 (1965); *Griswold v. Connecticut*, 381 U.S. 479 (1965). While the contours of the right to receive information are in dispute, the existence of such a right seems to be indisputable. Tribe, *American Constitutional Law*, 2nd Ed., 944 (1988).[improve citation here]

⁹420 U.S. 469 (1975).

¹⁰ 491 U.S. 524 (1989).

¹¹The Supreme Court reaffirmed this principle in *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2000).

¹² *Cox*, supra, 420 U.S. at 491; *Florida Star*, supra, 491 U.S. at 533.

¹³*Cox*, supra, 420 U.S. at 491.

¹⁴ *Cox*, 420 U.S. at 487, emphasis added.

¹⁵ In the *Florida Star* case, Justice White in his dissent wrote that the majority accepted “appellants’ invitation to obliterate one of the most noteworthy legal inventions of the 20th Century; the tort of publication of private facts.” 420 U.S. at 550. After the *Florida Star* decisions, many legal commentators agreed the private facts tort was dead. See, e.g. Peter B. Edelman, *Free Press v. Privacy: Haunted by the Ghost of Justice Black*, 68 *Texas L. Rev.* 1195 (1990); Diane L.

Zimmerman, Requiem for a Heavyweight: A Farewell to Warren and Brandeis's Privacy Tort, 68 Cornell L. Rev. 291 (1993); Lorelei Van Wey, Note, Private Facts Tort: The End is Here, 52 Ohio State L. J. 299 (1991).

¹⁶ For a listing of cases decided after Florida Star where courts have upheld claims for invasion of privacy, see Sean Scott, The Hidden First Amendment Values of Privacy, 71 Washington Law Review 683, 696-698.

¹⁷ 420 U.S. at 495-97.

¹⁸ 491 U.S. at 530.

¹⁹ Shulman, *supra*, 18 Cal. 4th at 214. See Restatement (2d) Torts, Section 652D.

²⁰ Diaz v. Oakland Tribune Publishing Co., *supra*, 139 Cal. App. 3d at 130. Cited with approval in Shulman v. Group W Productions, Inc., 18 Cal. 4th 200 (1998). The California treatment of newsworthiness is drawn from the Restatement (Second) of Torts, section 652D.

²¹ 4 Cal. 3d 529 (1971)

²² *Id.*, 535, n.6

²³ Shulman, *supra*, 18 Cal. 4th 200.

²⁴ The show is titled "On Scene: Emergency Response. *Id.*, 210.

²⁵ Quoting from the Restatement Second of Torts, the opinion continues:
[Newsworthiness] extends also to the use of names, likenesses or facts in giving information to the public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published.
Id., 225.

²⁶ One commentator observed "Essentially, if an item has been printed it is deemed newsworthy by the courts." Scott, *supra*, 71 Washington Law Review 700.

²⁷ Sipple v. Chronicle Publishing Co., 154 Cal. App. 3d 1040, 1049 (1984).

²⁸ Diaz, *supra*, 139 Cal. App. 3d at 133. Diaz relied on *Briscoe v. Readers Digest Association*, *supra*, where the Supreme Court held that newsworthiness was properly a question for a jury. 4 Cal. 3d at 541, 543. In Shulman, although the Supreme Court upheld a grant of summary adjudication of the plaintiffs' privacy claims, it implicitly agreed with Diaz that newsworthiness can be a jury question:

...an analysis focusing on relevance allows courts **and juries** to decide most cases involving persons involuntarily involved in events of public interest without balancing interests in an ad hoc fashion in each case.

Shulman, *supra*, 18 Cal. 4th at 225 (emphasis added).

²⁹ Hood v. National Enquirer, *supra*, 17 Entertainment Law Reporter No.9 (1995). I am indebted to Jay Dougherty for providing this citation.

³⁰ *Id.*, at 9-10 (emphasis added).

³¹Shulman, *supra*, 18 Cal.4th at 225.

³² *Briscoe v. Readers Digest Association*, 4 Cal. 3d 529, 541 (1971).

³³*Id.*, at 542.

³⁴ 154 Cal. App. 3d 1040 (1984).

³⁵ *Id.*, 1048-9(original emphasis).

³⁶ *Times-Mirror Co. v. Superior Court*, 198 Cal. App. 3d 1420, 1429 (1988).

³⁷As do all courts. The California standard governing the privacy of public figures is drawn directly from the Restatement 2d of Torts. Section 652D.

³⁸*Carlisle v. Fawcett Publications, Inc.*, 201 Cal. App. 2d 733, 747 (1962).

³⁹ Restatement (Second) of Torts, section 652D cmt. a. (1977).

⁴⁰ *Id.*, section 652D cmt. e, f.

⁴¹ *Id.*, section 652D cmt. e.

⁴²Restatement 2d, *supra*, Section 652De.

⁴³*Carlisle*, *supra*, 201 Ca. App. 2d at 747.

⁴⁴1 Cal. 3d 20 (1969).

⁴⁵ *Id.*

⁴⁶ *Id.*, at 38.

⁴⁷ *Id.*, at 37-38.

⁴⁸113 F2d.806 (2nd Cir. 1940).

⁴⁹*Id.*, 807-8.

⁵⁰ *Id.*, 809.

⁵¹ *Forsher v. Bugliosi*, 26 Cal.3d 792 (1980).

⁵² *Id.*

⁵³*Id.*

⁵⁴ *Id.*, 811. By adopting the Sidis approach, the California Supreme Court rejected its earlier suggestion in *Briscoe*, *supra*, 4 Cal. 3d at 539, n.13, that a person does not lose his privacy for all time by virtue of being a public figure.

⁵⁵The trial court's reasoning is unavailable because the judge ordered his opinion sealed. Ann W. O'Neill, Judge Orders Recall of Magazine Over Nude Photos, Los Angeles Times, August 8, 1997, B3. The decision was appealed; however there is no reported opinion on the outcome.

⁵⁶ See page 7, *supra*.

⁵⁷ Hood v. National Enquirer, B082611 (1995). The opinion was not published. It is, however, reported at 17 Entertainment Law Reporter No. 9 (1996). The case was settled after issuance of the appellate court's decision. Terms of the settlement are confidential. Telephone interview with Paul Hoffman, plaintiffs' counsel (June 30, 1998).

⁵⁸ Ann O'Neill, The Court Files, Los Angeles Times, December 7, 1997, B1. The terms of the settlement were not disclosed.

⁵⁹ *Id.*

⁶⁰ Diaz v. Oakland Tribune, 139 Cal. App.3d 118, 134 (1983).

⁶¹ *Id.*

⁶² *Id.*, 134.

⁶³ *Id.*, at 135.

⁶⁴ *Id.*, at 124.

⁶⁵ *Id.*, at 135-36.