DEFINING "RECKLESS DISREGARD" IN DEFAMATION SUITS: THE ALASKA SUPREME COURT RENDERS A NARROW INTERPRETATION OF THE *NEW YORK TIMES* RULE

I. INTRODUCTION

Twenty years ago, in *New York Times, Inc. v. Sullivan,*[1] the United States Supreme Court articulated a new standard for assuring the press of its constitutional liberties. Under *New York Times,* the press is protected from defamation suits by public officials; a public official has the burden of proving with convincing clarity that the publisher acted with knowledge of falsehood or reckless disregard for the truth.[2] The practical limits of the *New York Times* standard have never been clear, and the Supreme Court has allowed lower courts considerable liberty in certain areas of interpretation. One such area is the definition of "reckless disregard for the truth" as a standard of liability for publishers.

In *Green v. Northern Publishing Co.,*[3] the Supreme Court of Alaska found that a newspaper publisher was not entitled to summary judgment in a defamation suit because reasonable jurors could have found reckless disregard for the truth on the publisher's part. Although the court properly identified the "reckless disregard" test, its interpretation of the standard ignored significant authority. Further, the structure of the court's analysis served to undermine the requirements of the *New York Times* rule. The decision in *Green* reflects a narrow view of the guarantees of *New York Times;* its practical effect is to force publishers to be excessively cautious in their interpretation and presentation of issues that are inherently ambiguous.

In 1975, David Selberg, a young pipeline worker, was arrested for disorderly conduct. Selberg was examined by Dr. Thomas Green, who was responsible for coordinating all medical services for the Anchorage correctional facilities. Dr. Green concluded that Selberg was "hallucinating wildly" and recommended that he be

1. 376 U.S. 254 (1964).
2. *Id.* at 279-80.
3. 655 P.2d 736 (Alaska 1982), *cert. denied,* 103 S. Ct. 3539 (1983).

removed to a hospital for psychiatric examination. Selberg was detained in the cell, however, for nine days, during which time his behavior was completely wild and disoriented — refusing food, refusing to wear clothes, "throwing himself into the metal slab that was his bunk, and banging his head and body against the walls."[4] After nine days in the cell, Selberg died.

According to the autopsy report, Selberg died from the spontaneous collapse of both lungs — a natural cause apparently unrelated to his incarceration. The lack of a causal connection between Selberg's death and his incarceration precluded the coroner's jury from finding that anyone could be charged with negligent homicide. Several jurors, however, expressed their conviction, apart from the causation issue, that negligence had occurred on the part of all concerned — including Dr. Green, who had not taken adequate steps to assure that his recommendation for the removal of Selberg was followed.[5]

The *Anchorage Daily News* then commenced a series of articles which investigated the circumstances surrounding Selberg's death. This series culminated in an editorial that became the subject of the defamation action. The editorial claimed that "the state [had] recognized its responsibility for the death of David Paul Selberg."[6] The heart of the alleged defamation was contained in the following two paragraphs:

> Since then, [Health and Social Services] Commissioner Frank Williamson has taken steps to assure that such a tragedy does not happen again.
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> First, he abruptly cancelled the $125,000 a year contract of Dr. Thomas F. Green, the physician serving Anchorage jails for the past six years.[7]

Dr. Green brought suit against the owner of the newspaper, alleging defamation. The superior court granted summary judgment for the defendant. The supreme court reversed and remanded for trial, with one justice concurring and two dissenting.[8]

Justice Burke, writing for the majority, first concluded that the statement could be found to be defamatory. He wrote that "the editorial [is] susceptible of being reasonably interpreted as meaning that the *Daily News*, 'after an extensive investigation,' believed Commissioner Williamson was correct in concluding that Dr. Green was at least partially responsible for David Selberg's death."[9]

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4. *Id.* at 738.
5. *Id.* at 746.
6. *Id.* at 738.
7. *Id.*
8. The case is currently awaiting a trial date.
9. *Id.* at 740.

The court then considered the question of privilege under *New York Times.* It ruled that Dr. Green was a "public official,"[10] and therefore, the publisher was entitled to the application of the stringent "actual malice" test. This standard requires that a "public figure" plaintiff show with "convincing clarity" that the defamatory falsehood was made "with knowledge that it was false or with reckless disregard of whether it was false or not."[11]

The Alaska court provided a more detailed definition of the state of mind which must be proven:

> "Reckless disregard," for these purposes, means conduct that is heedless and shows a wanton indifference to consequences; it is conduct which is far more than negligent. There must be sufficient evidence to permit the inference that the defendant must have, in fact, *subjectively entertained serious doubts as to the truth of his statement.*[12]

The court then proceeded to analyze the facts in order to determine whether a reasonable jury could find that the publisher did in fact entertain serious doubts. The court observed that the publisher was certainly aware of the autopsy report, which constituted "substantial evidence that Dr. Green was not responsible for Selberg's death."[13] After considering the evidence available to the publisher which might have supported the alleged statement, the court concluded:

> It is our determination that the statements from Commissioner Williamson to [the reporter] are insufficient to conclusively overcome the testimony and coroner's report. . . . We conclude that reasonable jurors could disagree as to whether the defendant entertained serious doubts about the truth of its assertion that Dr. Green was in some way responsible for Selberg's death.[14]

Justice Compton concurred with the finding that reasonable jurors could disagree about whether the publisher entertained serious doubts, but disagreed with the majority's treatment of the public figure test. He argued that the court should have applied the "matter of public interest" test, which had been in use in Alaska since 1967.[15]

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10. *Id.* at 741.
11. *New York Times,* 376 U.S. at 279-80.
12. *Green,* 655 P.2d at 742 (emphasis in original) (citations omitted).
13. *Id.* at 742.
14. *Id.* at 743-44.
15. *Id.* at 744 (Compton, J., concurring). The majority's treatment of this issue in *Green* remains somewhat mysterious. In 1966, the Alaska Supreme Court independently established a "matter of public interest" test to determine the scope of the *New York Times* rule. Pearson v. Fairbanks Publishing Co., 413 P.2d 711, 713 (Alaska 1966). This decision anticipated by five years the test established by the United States Supreme Court in Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971) (plurality opinion). However, the United States Supreme Court has since stepped back from this broad standard. *See infra* text accompanying notes 31-33.

Justice Matthews wrote the dissenting opinion, joined by Justice Connor. His first argument was that the court need never have reached the question of *New York Times* protection because the editorial was protected under the common law doctrine of fair comment.[16] The dissent also criticized the majority's holding on the actual malice question, arguing that "the gist of the defamation" was in the imputation of *negligence* in the handling of Selberg's case, not causation of his death, and there could be no finding of serious doubt on the question of negligence.[17] Observing that the editorial had reported that the coroner had found death by natural causes, the dissent argued that to hold the publisher liable for implying that the coroner may have been wrong would effectively create a duty to accept the coroner's opinion even where reason to doubt might exist.[18] Finally, noting that the *Daily News's* series on the Selberg affair "was in keeping with those values [of responsible journalism] designed to be secured under the constitutional guarantees" provided by *New York Times,* the dissent concluded that "[a]s applied by the majority in the present case, however, the protection offered by the *Times* rule is so weak as to be illusory."[19]

The purpose of this note is to examine the *Green* decision against the background of recent developments in the definition of "reckless disregard." Although there is strong evidence of a general trend toward narrowing the scope of protection afforded to the press under *New York Times,* particularly in the definition of public figures,[20] this trend is not evident in the definition of reckless disregard. The note discusses the United States Supreme Court cases — *St. Amant v. Thompson,*[21] *Time, Inc. v. Pape,*[22] and *Bose Corp. v.*

Justice Compton argued, "[w]hile the Supreme Court has come full circle, *Pearson* stands on its own, needing support from neither *New York Times* nor *Rosenbloom.* It is the law in this state . . . ." *Green,* 655 P.2d at 744 (Compton, J., concurring). *Pearson* was held to still represent Alaska law in Gay v. Williams, 486 F. Supp. 12, 16 (D. Alaska 1979). Strangely, though, the *Green* majority made no mention whatsoever of *Pearson,* leaving doubts whether its use of the narrower "public official" test should be interpreted as a repudiation of the "matter of public interest" test in Alaska.

16. *Green,* 655 P.2d at 745 (Matthews, J., dissenting). A discussion of the merits of this argument is beyond the scope of this note. For a thorough treatment of this possibility, see Carman, *Hutchinson v. Proxmire and the Neglected Fair Comment Defense: An Alternative to "Actual Malice,"* 30 DE PAUL L. REV. 1 (1980).

17. *Green,* 655 P.2d at 745 (Matthews, J., dissenting).

18. *Id.* at 747 (Matthews, J., dissenting).

19. *Id.* at 748 (Matthews, J., dissenting).

20. *See, e.g.,* Carman, *supra* note 16, at 6-7; Kulzick & Hogue, *Chilled Bird: Freedom of Expression in the Eighties,* 14 LOY. L.A.L. REV. 57 (1980); Rosen, *Media Lament — The Rise and Fall of Involuntary Public Figures,* 54 ST. JOHN'S L. REV. 487 (1980).

21. 390 U.S. 727 (1968).

Consumers Union, Inc.[23] — which most directly control the issue in *Green.* In addition, the note considers recent cases decided in both federal and state jurisdictions which construe the reckless disregard standard.

Finally, two major criticisms of the *Green* opinion are suggested. First, the court either should have followed or explicitly distinguished the facts of *Pape.* Second, in view of the ambiguities inherent in the facts of *Green* — ambiguities concerning what the editors intended to say as well as concerning what the editors knew — the structure of the court's analysis was flawed and served to undermine the fundamental requirements of the *New York Times* rule. Although the decision in *Green* was not clearly contrary to authority, neither was it well-supported. Thus, it indicates that the Alaska Supreme Court may have a tendency to interpret narrowly the protections of *New York Times.*

II. DEVELOPMENT OF THE *NEW YORK TIMES* RULE IN THE UNITED STATES SUPREME COURT

A. Generally

When the rule of *New York Times* was announced in 1964, proponents of strong First Amendment protections greeted it as "an occasion for dancing in the streets."[24] The Supreme Court had found that special protection was required for the press in order to preserve the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[25]

Since 1964, the rule has undergone a great deal of refinement and clarification. For several years, the attitude of the Court was expansive. For example, in *Beckley Newspapers Corp. v. Hanks,*[26] it was established that a mere failure to investigate cannot constitute reckless disregard for the truth. In *St. Amant v. Thompson,*[27] the Court ruled that the actual malice test must be a subjective one; therefore, the question is not what the defendant should have thought but only what he actually thought.[28]

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22. 401 U.S. 279 (1971).
23. 104 S. Ct. 1949 (1984).
24. A. Meiklejohn, *quoted in* Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment,"* 1964 SUP. CT. REV. 191, 221 n.125.
25. New York Times, Inc. v. Sullivan, 376 U.S. 254, 270 (1964).
26. 389 U.S. 81, 84-85 (1967).
27. 390 U.S. 727 (1968).
28. *Id.* at 731.

The Supreme Court decisions of 1971 are generally acknowledged to be the high-water mark of protection under the *New York Times* rule.[29] In *Rosenbloom v. Metromedia, Inc.*[30] the Court expanded the protection of the rule to include any statement involving a matter of public interest, regardless of whether the plaintiff was a public official.

The *Rosenbloom* court, however, was a sharply divided one,[31] and after that decision the Court began narrowing the scope of protection. In *Gertz v. Robert Welch, Inc.*,[32] the Court explicitly repudiated *Rosenbloom* and announced a "public figure" test to replace the broader "public interest" test. The Court has been relatively active in defining the limits of the public figure test.[33]

Recently, in *Herbert v. Lando*,[34] the Court made it easier for plaintiffs to gather evidence of actual malice by opening the editorial processes of publishers to discovery. *Lando* and other recent decisions have triggered a widespread recognition among commentators that *New York Times* protection has been on the wane for several years.[35]

This cursory survey of the *New York Times* rule is meant only to illustrate the existence of a recent trend toward restricting the protection provided defamation defendants.[36] Regardless of any trends which may have developed over the past decade, however, the fundamental rationale of *New York Times* has never been challenged. In *Lando* and *Gertz*, two landmarks of the current trend, the Court has taken pains to indicate that the doctrine of *New York Times* remains vital. The Court in *Lando* observed that the doctrine "has been repeatedly affirmed" and was being reaffirmed in the instant case.[37] The Court in *Gertz*, perhaps to soften the blow of its holding, stressed that the primary purpose of the *New York Times* rule — prevention of media self-censorship — was still being served:

> This standard administers an extremely powerful antidote to the inducement to media self-censorship . . . . And it exacts a correspondingly high price from the victims of defamatory falsehood.

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29. *See* Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971) (plurality opinion); Time, Inc. v. Pape, 401 U.S. 279 (1971); Monitor Patriot Co. v. Roy, 401 U.S. 265 (1971).

30. 403 U.S. 29 (1971) (plurality opinion).

31. *Id.* at 52.

32. 418 U.S. 323 (1974).

33. *See generally* Note, *Wolston and Hutchinson: Changing Contours of the Public Figure Test*, 13 LOY. L.A.L. REV. 179 (1979).

34. 441 U.S. 153 (1979).

35. *See supra* note 20.

36. For a thorough history of the *New York Times* rule, see Annot., 61 L. Ed. 2d 975 (complete through October 1982).

37. *Lando*, 441 U.S. at 169.

> Plainly many deserving plaintiffs, including some intentionally subjected to injury, will be unable to surmount the barrier of the *New York Times* test.[38]
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> . . . .
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> . . . [T]he communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them.[39]

B. Defining Reckless Disregard

1. *St. Amant v. Thompson: A Showing of Subjective Fault is Required.* It is well established that "mere negligence is not enough"[40] to create liability for publishers under the *New York Times* rule. As the Supreme Court explained in *St. Amant v. Thompson:*

> [The] cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.[41]

The Court in *St. Amant* went on to offer suggestions as to how "serious doubts" might be defined. Since the standard is a subjective one, and the publisher is expected to testify as to his own good faith, the plaintiff is compelled to show circumstances from which a jury could infer that serious doubt did exist.

> Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.[42]

Thus, the phrases "inherently improbable" and "obvious reasons to doubt" provide guidance in determining whether defendant-publishers had serious doubts as to the truth of their statements. These guidelines are of some use, but their practical significance was not made clear in *St. Amant.* The Court recognized this and admitted that it had not exhausted the subject: " 'Reckless disregard,' it is true, cannot be fully encompassed in one infallible definition. Inevitably its outer limits will be marked out through case-by-case adjudication . . . ."[43]

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38. *Gertz,* 418 U.S. at 342.
39. *Id.* at 345.
40. *Green,* 655 P.2d at 741.
41. *St. Amant,* 390 U.S. at 731 (quoted in *Green,* 655 P.2d at 741).
42. *St. Amant,* 390 U.S. at 732 (citation omitted).
43. *Id.* at 730.

The task of defining "serious doubt," then, is a fact-specific one. The case-by-case method is not an ideal way of providing security under a constitutional guarantee, particularly where the standard is meant to prevent self-censorship by editors unsure of their legal grounds.[44] Furthermore, Supreme Court supervision of the serious doubt/reckless disregard standard after *St. Amant* has been minimal.[45] Nevertheless, the Supreme Court in *Time, Inc. v. Pape* addressed the issue in a factual situation similar to that of *Green.*

2. *Time, Inc. v. Pape: Rational Interpretations of Ambiguous Sources Cannot Constitute Reckless Disregard.* In *Time, Inc. v. Pape*[46] the Supreme Court faced the issue whether a publisher has entertained serious doubts when he has deliberately published his own interpretation of an ambiguous factual situation. *Time* magazine ran a story concerning a report by the United States Commission on Civil Rights. The report discussed allegations of police brutality. Although the editors of *Time* magazine admittedly knew that the reports of brutality were only *alleged,* they nevertheless characterized the reports as *findings* of the Commission, simply omitting the word "alleged."[47] The question, then, was not whether *Time* magazine had made an unwitting mistake.

> Time made no claim of good-faith error or mere negligence. Both the author of the article and the researcher admitted an awareness at the time of publication that the wording of the Commission Report had been significantly altered, but insisted that its real meaning had not been changed.[48]

The question was the extent to which a publisher may stamp a situation with his own interpretation and present it as fact. The court of appeals, in reversing a directed verdict for *Time* magazine, concluded that "[s]ince the omission was admittedly conscious and deliberate," an issue of material fact must have existed as to whether the publisher entertained serious doubts.[49] The Supreme Court reversed, upholding the directed verdict by ruling that no material issue of fact could exist on the question of actual malice.

The Court's reasoning was grounded in the observation that publishers are often confronted with complex factual situations which are rendered even more ambiguous by the comments of their sources. "A press report of what someone has said about an underlying event of news value can contain an almost infinite variety of shadings. . . . [W]here the source itself has engaged in qualifying

44. *See supra* note 38 and accompanying text.
45. *See infra* note 62.
46. 401 U.S. 279 (1971).
47. *Id.* at 281-83.
48. *Id.* at 285.
49. *Id.*

the information released, complexities ramify."[50] The press cannot be required to report every angle of a complex issue, and it cannot be expected to ascertain the most accurate conclusion. Thus, publishers must be granted the discretion to choose one among many plausible interpretations. The Court concluded in *Pape* that:

> Time's omission of the word "alleged" amounted to the adoption of one of a number of possible rational interpretations of a document that bristled with ambiguities. The deliberate choice of such an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of "malice" under *New York Times.*[51]

The decision in *Pape* substantially qualified what the *St. Amant* court meant by "obvious reasons to doubt" and "fabrication." The publisher was in a position of uncertainty as to what his source actually meant to say, but he was entitled to present his own interpretation as fact. The official document "bristled with ambiguities." Although the document never went beyond the term "allegations," it was written in such a way that one easily could have concluded that the allegations of brutality were true.[52] *Time* magazine, in reporting them as true, was within the protected range of editorial discretion even though it could easily be claimed that reasons to doubt the assertion did exist.

Clearly, the holding of *Pape* is highly relevant to the issue in *Green.* In each case, the publisher encountered a factual situation which was unclear and was then sued for presenting his own interpretation of the situation. If *Pape* is read broadly, it can be seen as announcing a rule that any interpretation by the press of ambiguous circumstances will be protected so long as the interpretation has some rational basis.

On the other hand, it is not clear that *Pape* should be read as announcing a broad rule. The *Pape* court was careful to point out that its decision was a fact-specific one;[53] thus, it might be unwise to follow *Pape* very far beyond its own facts. Also, at the time of the *Green* decision, it was possible to question the continued vitality of *Pape,* in light of the recent trend of retrenchment.[54] *Pape* was decided during the same year as *Rosenbloom,* which has since been discredited. It could have been argued that *Pape,* like *Rosenbloom,* was a product of an overly protective Court and, as such, should be read narrowly.

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50. *Id.* at 286.
51. *Id.* at 290.
52. *Id.* at 286-89.
53. *Id.* at 292.
54. *See supra* note 20.

In the Court's first significant actual malice case in thirteen years, *Bose Corporation v. Consumers Union, Inc.*,[55] however, the Supreme Court reaffirmed the authority of *Pape* by citing that decision twice. In *Bose,* a consumer magazine was sued for reporting that a stereo speaker system seemed to make the sounds of musical instruments wander "about the room." Judgment for the plaintiff-stereo company was entered by the trial court. On appeal, the First Circuit Court of Appeals conducted an independent review of the facts and reversed on the grounds that there was no clear and convincing evidence of actual malice.[56]

On certiorari, the Supreme Court affirmed the appellate court's holding.[57] The Court thoroughly reviewed the actual malice finding by the trial court in *Bose* and concluded that there was no clear and convincing evidence of reckless disregard by the consumer magazine.[58]

In *Bose,* the defendant-reporter made an inaccurate statement in reporting his own perceptions, and at trial he attempted to stand by the accuracy of the statements, refusing to admit that he had been mistaken. The trial court found that since the defendant knew what he had heard, but reported something else, he must have entertained serious doubts as to the truth of his statements.[59] The Supreme Court held, however, that because the perceived event was ambiguous and required interpretation, no reckless disregard existed because the language chosen by the defendant "was 'one of a number of possible rational interpretations' of an event 'that bristled with ambiguities'. . . ."[60]

Thus, *Bose* significantly bolsters the strength of the holding of *Pape.* The facts of *Bose* and *Pape* are easily distinguishable,[61] yet the Supreme Court chose to cite *Pape* specifically, rather than simply citing the general definition of serious doubt articulated in *St. Amant.*

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55. 104 S. Ct. 1949 (1984).

56. *Id.* at 1955.

57. Six justices formed the majority.

58. *Id.* at 1966. The primary issue decided by the Court was whether appellate courts must apply a "clearly erroneous" standard in reviewing lower court findings on actual malice. *See infra* note 95.

59. 104 S. Ct. at 1966.

60. *Id.* (quoting *Pape,* 401 U.S. at 290).

61. In *Pape,* the source of the story was an official document, while in *Bose* it was the reporter's own senses. The common thread found by the Court was that neither of these were "events that spoke for themselves." *Id.*

III. CASE DEVELOPMENTS PRIOR TO *BOSE*

With the exception of *Bose,* the reckless disregard standard has faced little Supreme Court review since *Pape.*[62] *Bose* had not been decided at the time of the *Green* decision. A survey of recent cases decided before *Bose* reveals an inconsistent application of *Pape.*[63] In general, it is safe to say that the trend toward favoring plaintiffs is not being followed on actual malice questions to the extent that it is being followed on public figure questions.[64]

In *Rebozo v. Washington Post Co.*[65] the Fifth Circuit Court of Appeals reviewed a case concerning a *Washington Post* story based on the alleged financial misdeeds of Charles G. "Bebe" Rebozo. The *Post* reporter was aware a private investigator working for E.F. Hutton had stated in a deposition that he told Rebozo that certain stocks had been stolen or were missing. This point was crucial in

62. The only notable case which has received Supreme Court review is Cantrell v. Forest City Publishing Co., 419 U.S. 245 (1974). The Court held that actual malice could be found to exist because a reporter wrote about an interview which he later acknowledged had not occurred. The facts of *Cantrell* are too dissimilar from *Pape* and *Green* to allow a useful comparison.

63. Most of the cases which involve the definition of serious doubt turn on the *reliability* of the publishers' sources of information, without concern for the complicating factor of contradictory or ambiguous sources. The most that could be concluded from a survey of these cases is that there is no obvious trend in favor of either plaintiffs or defendants.

Defendants who have argued appeals in the federal circuits have actually fared rather well, but little can be concluded from such a cursory survey. *See* Schultz v. Newsweek, Inc., 668 F.2d 911 (6th Cir. 1982) (affirming summary judgment for defendant); Ryan v. Brooks, 634 F.2d 726 (4th Cir. 1980) (reversing verdict for plaintiff); Brewer v. Memphis Publishing Co., 626 F.2d 1238 (5th Cir. 1980), *cert. denied,* 452 U.S. 962 (1981) (reversing verdict for plaintiff); Steaks Unlimited, Inc. v. Deaner, 623 F.2d 264 (3rd Cir. 1980) (affirming summary judgment for defendant); Long v. Arcell, 618 F.2d 1145 (5th Cir. 1980), *cert. denied,* 449 U.S. 1083 (1981) (affirming judgment n.o.v. for defendant). *But see* Golden Bear Distrib. Sys., Inc. v. Chase Revel, Inc., 708 F.2d 944 (5th Cir. 1983) (affirming verdict for plaintiff); Gertz v. Robert Welch, Inc., 680 F.2d 527 (7th Cir. 1982), *cert. denied,* 103 S. Ct. 1233 (1983) (affirming verdict for plaintiff).

High courts in the states have exhibited no discernible trend. *See, e.g.,* Mehau v. Gannet Pac. Corp., 658 P.2d 312 (Hawaii 1983) (affirming in part and reversing in part summary judgments); Catalano v. Pechous, 83 Ill. 2d 146, 419 N.E.2d 350 (1980), *cert. denied,* 451 U.S. 911 (1981) (affirming summary judgment for newspaper reporter); Capital-Gazette Newspapers, Inc. v. Stack, 293 Md. 528, 445 A.2d 1038 (1982), *cert. denied,* 459 U.S. 989 (1982) (upholding directed verdict for defendant); Independent Broadcasting Corp. v. Hernstadt, 664 P.2d 337 (Nevada 1983) (affirming verdict for plaintiff); Rinaldi v. Viking Penguin, Inc., 52 N.Y.2d 422, 420 N.E.2d 377, 438 N.Y.S.2d 496 (1981) (denying summary judgment to defendant); Bukky v. Painesville Tel. & Lake Geauga Printing Co., 68 Ohio St. 2d 45, 428 N.E.2d 405 (1981) (upholding summary judgment for defendant).

64. *See supra* note 63.

65. 637 F.2d 375 (5th Cir. 1981), *cert. denied,* 454 U.S. 964 (1981).

supporting the allegations; however, upon interviewing the investigator, the reporter never questioned him about the statement in the deposition. The court ruled that the "[defendant's] resolution of the obvious ambiguity . . . in favor of the most potentially damaging alternative creates a jury question on whether the publication was indeed made without serious doubt as to its truthfulness."[66] The question for the jury was whether the reporter had intentionally failed to ask the question so that he could make "a front-page story of an episode which otherwise might not have commanded any significant attention, when taken in a light most favorable to [the plaintiff]."[67]

The point of *Rebozo* is clear. Where ambiguity exists within the facts underlying a story, the publisher may not intentionally abuse this uncertainty by choosing the most damaging interpretation, which, by implication, is the interpretation which he most desires to publish.[68]

The Colorado Supreme Court has taken an even tougher stance on the press' freedom to interpret facts. In *Burns v. McGraw-Hill Broadcasting Co.*,[69] the court considered a case involving a newspaper article about a bomb squad officer who had been severely injured in an explosion. The story reported that "his wife and five children have deserted him since the accident."[70] The ex-wife sued, claiming that the use of the word "deserted" in this context defamed her. In fact, the couple had experienced marital problems prior to the accident, and the reporter was aware that the wife had reasons for leaving her husband which were not related to the accident. On the other hand, in discussing the events which followed his accident, the officer had told the reporter, "I know what it's like to be deserted."[71] On these facts, the state court upheld a finding of actual malice.

These two cases illustrate that some courts have attached little weight to the *Pape* decision.[72] In each, it was held that actual malice could be found to exist because the publisher's interpretation was a

66. *Id.* at 382 (citing *St. Amant,* 390 U.S. at 731).

67. *Rebozo,* 637 F.2d at 382.

68. Actually, although the ultimate point of *Rebozo* is clear, the Court's analysis suggests that the reporter's failure to ask certain questions was also important. If the *Rebozo* court had based its holding on this point, it would have run afoul of the rule of *Beckley Newspapers,* which states that a mere failure to investigate cannot constitute reckless disregard for the truth. *See supra* text accompanying note 26.

69. 659 P.2d 1351 (Colo. 1983) (*en banc* with five dissenters).

70. *Id.* at 1354.

71. *Id.* at 1363.

72. Neither case addressed *Pape.*

defamatory one. Three other recent cases, however, serve to support a broad reading of *Pape.*

In *Tavoulareas v. Washington Post Co.*,[73] the District Court for the District of Columbia expressly declined to follow *Rebozo* and endorsed *Pape.* The *Washington Post* published a story which stated that an executive of Mobil Oil had used his influence improperly in order to set up his son in the shipping business. In composing the article, the reporter ignored certain comments of a Mobil director which tended to disprove the story. Thus, the court faced the question whether actual malice can exist when the publisher intentionally disregards information which might change the story. In affirming judgment notwithstanding the verdict for the defendants, the court declared: "The issue in this case is . . . not whether the article was partisan, narrow, or one-sided."[74] Rather, the issue was whether the ignored information would have removed the ambiguity of the underlying facts, and thus removed the element of interpretation from the editor's task. If the information demonstrated that the article was false, then actual malice could be found to exist. But where the information merely supported a contrary interpretation, where it would have shaded the story in a different direction, then there could be no reckless disregard in ignoring it.[75] In its discussion of authorities, the court found that *Rebozo* is "arguably inconsistent" with *Pape,* and refused to follow *Rebozo* "[i]n the absence of any further guidance on the issue from this Circuit or the Supreme Court."[76]

The Supreme Court of New Jersey also has followed *Pape* in a recent decision. In *Lawrence v. Bauer Publishing & Printing Ltd.*,[77] a newspaper reported that a citizens' group was being investigated for forgery of names on petitions. The story reported the names of two of the group's leaders. The source for the story was a city official who had told the publishers that there were "irregularities" being investigated, without naming the plaintiffs in particular. The reporter named the plaintiffs simply because their names were commonly associated with the leadership of the group. The court reversed a jury verdict for the plaintiffs and stated that although the story was "careless and perhaps irresponsible,"[78] the publisher, nevertheless, was protected under the *New York Times* rule. Citing *Pape,* the court stated that "[n]either 'errors of interpretation of judgment' nor 'misconceptions' are sufficient to create a jury issue of

73. 567 F. Supp. 651 (D.D.C. 1983).
74. *Id.* at 658.
75. *Id.* at 657.
76. *Id.* at 658.
77. 89 N.J. 451, 446 A.2d 469 (1982), *cert. denied,* 459 U.S. 999 (1982).
78. *Id.* at 468, 446 A.2d at 478.

actual malice . . . ."[79] The court voiced its opinion that the definition of reckless disregard does not extend to questions of interpretation. "[T]he recklessness in publishing material of obviously doubtful veracity must approach the level of publishing a 'knowing, calculated falsehood.' "[80]

Without mentioning *Pape,* the Supreme Court of Pennsylvania recently affirmed summary judgment for defendants in a case which presented an issue similar to that in *Tavoulareas.* In *Curran v. Philadelphia Newspapers, Inc.,*[81] a newspaper, in reporting the resignation of a United States Attorney, stated that he had resigned involuntarily and otherwise would have been fired the next day in a meeting with his superior. The story was based on information from a reliable source who did not mention the meeting, but stated that the plaintiff would have been fired had he not resigned. The plaintiff and his assistant had both denied the story, and they had presented evidence to the reporter that the meeting was a regularly-scheduled meeting on a mundane administrative topic. The assistant of the plaintiff's superior declined to comment. In affirming summary judgment for the newspaper, the court ruled that, despite the presence of information suggesting other interpretations, the publisher's reliance on a reliable source precluded any finding of actual malice.[82] "[I]t simply cannot be concluded that a defendant entertained the requisite doubt as to the veracity of the challenged publication where the publication was based on information a defendant could reasonably believe to be accurate."[83] The court's statement that "reasonable belief" is a defense to a charge of "serious doubt" is similar to the *Pape* court's use of the phrase "possible rational interpretations."

IV. ANALYSIS

The opinion in *Green* is subject to two major lines of criticism. First, if the crucial issue is the one recognized by the court — that is, whether the authors entertained serious doubts as to the truth of the assertion that Dr. Green somehow may have caused Selberg's death, then *Pape* should have controlled the *Green* decision. Second, by separating the question of whether the defendant's statement can be construed as defamatory from the question of actual malice, the court opened a loophole in the subjectivity requirement of the *New*

79. *Id.* at 468, 446 A.2d at 477.
80. *Id.* at 466, 446 A.2d at 477.
81. 497 Pa. 163, 439 A.2d 652 (1981).
82. *Id.* at 181, 439 A.2d at 661.
83. *Id.* at 180, 439 A.2d at 660 (emphasis added).

York Times rule. In effect, the court made it possible for publishers to be held liable for a merely negligent misstatement.

A. *Pape* Can Be Dispositive of the Issue in *Green*[84]

The facts of *Green* must be examined more closely. If the sources of information for the editorial were unclear enough to make interpretation necessary, and the statements at issue represented a reasonable interpretation, then the *Green* court should either have followed or distinguished *Pape*.[85]

The primary fact is that the authors were aware of the coroner's conclusion that Selberg had died of natural causes unrelated to his incarceration. However, the authors also possessed evidence from three different sources which tended to cloud the picture. The written comments of the jurors from the coroner's inquest, as well as some comments from both Dr. Green and his ultimate superior, gave rise to doubts as to the certainty of the coroner's conclusion.

Although the coroner's jury did not hand down any charges, three of the jurors entered comments into the record expressing their doubts and frustration. They found that some negligence had certainly occurred, but that the evidence of causation was insufficient to support a charge of negligent homicide against any one person. The jurors were not convinced, however, that there was *no* possibility of such a causal connection.[86] One stated, "[a]lthough I could find no one person guilty of negligent homicide . . . I do strongly feel that there was negligence perpetrated on him in life."[87] Another stated, "there are questions left unanswered because we do not know what causes spontaneous collapse of both lungs."[88]

Dr. Green himself, acknowledging that chest problems are not his specialty, had speculated in an interview that Selberg's behavior in the cell may have aggravated a pre-existing condition.[89] Of more importance are the comments of Commissioner Williamson, which the *Green* majority recognized as "[t]he defendant's best hope of avoiding [a finding of] recklessness."[90] The Commissioner's comments implied a lack of confidence in the coroner's report: "We are all guilty . . . . I think we can stop it from happening again. . . . If anyone along the way had made another decision, Selberg would

84. For purposes of this discussion it will be assumed that the editorial does contain an assertion that some causal link may have existed between Dr. Green's conduct and Selberg's death.

85. The court in *Green* made no mention whatsoever of *Pape*.

86. Green v. Northern Publishing Co., 655 P.2d at 746.

87. *Id.*

88. *Id.*

89. *Id.* at 747.

90. *Id.* at 742.

still be alive."[91] Elsewhere, the Commissioner expressed his special concern about Dr. Green's role: "I have trouble with all of it . . . [e]specially the medical end."[92]

In the court's analysis, the coroner's report created a presumption that the editors seriously doubted their statements, and the defendant failed to rebut the presumption: "It is our determination that the statements from Commissioner Williamson . . . are insufficient to conclusively overcome the testimony and coroner's report."[93]

This approach seems to be inconsistent with the guidelines of *St. Amant* and *Pape.* There is nothing inherently implausible in the assertion that Selberg's death may have been related to his incarceration, considering that the death occurred after nine days of fasting and self-abuse. Obviously, the coroner's conclusion created reasons to doubt the editors' assertion; however, these are not the "obvious reasons to doubt" required by the constitutional guarantees. The holding in *Pape* controls unclear cases like *Green* where reasons to doubt would exist for any assertion, and some element of interpretation by the press is required. The point of *Pape* is that editors must not be required to choose the *best* interpretation; it is sufficient that their interpretations be *rational.*[94]

If the *Green* court had followed *Pape,* it would have reversed its presumptions; the editors' interpretation would have been presumed to be adequate, unless the editors were shown to have possessed evidence so compelling that it removed the rational grounds from the published assertion. The question in *Green,* then, would not be whether the other sources were sufficient to "conclusively overcome" the influence of the coroner's report. Rather, the question would be whether the coroner's report was conclusive enough to remove the rational grounds from the writers' suspicions that there may have been some causal connection between the incarceration and the death.

Under *Pape,* the facts of *Green* should lead to summary judgment.[95] Reasonable jurors certainly could disagree whether the *Daily News's* assertion was wise or well-supported by the available sources. However, it is difficult to imagine a reasonable juror finding

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91. *Id.* at 742-43.

92. *Id.* at 743.

93. *Id.*

94. *See supra* note 51 and accompanying text.

95. The propriety of granting summary judgment in actual malice cases has been a subject of dispute. It has been argued that the constitutional guarantees of the *New York Times* rule require independent action by judges. *See, e.g.,* Bon Air Hotel, Inc. v. Time, Inc., 426 F.2d 858, 867 (5th Cir. 1970). On the other hand, the Supreme Court has stated in a footnote that the "proof of 'actual malice' calls a defendant's state of mind into question, and does not readily lend itself to summary

that, in spite of the other comments and the uncertainty of the situation, there was no rational basis for suspecting that the coroner's conclusion may have been wrong.[96]

This is not to say that the court had to rule that *Pape* was dispositive of *Green.* As noted previously, the Supreme Court warned that *Pape* was fact-specific and should not be read too broadly.[97] The facts of *Green* can be distinguished from those of *Pape.* The official document at issue in *Pape* lent itself very easily to the conclusion that the alleged incidents had occurred.[98] In contrast, the weight of the evidence in *Green* seemed to support a probability (though not a certainty) that Selberg's death was indeed unrelated to his incarceration.

Therefore, while strong reasons existed for following *Pape,* there were also grounds for distinguishing the case. While the *Green* court *could* have followed *Pape,* it was not strictly bound to do so. In ignoring *Pape* altogether, the court has aligned itself with the current trend toward the weakening of *New York Times* protection.

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disposition." Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9 (1979) (citations omitted).

The decision in Bose Corp. v. Consumers Union, Inc., 104 S. Ct. 1949 (1984), lends strong support to those who favor the propriety of summary judgment. In holding that appellate courts may conduct de novo reviews of the evidence, the Court effectively dismissed the argument that evaluation of witnesses' credibility is essential to actual malice cases. This is clearly shown by the fact that the *dissenting* opinion of Justice Rehnquist reiterated the logic of footnote nine in *Proxmire,* stating that appellate courts are ill-equipped to evaluate issues involving *mens rea. Bose, id.* at 1960 (Rehnquist, J., dissenting).

While the holding of *Bose* supports summary judgment, the language of *Bose* goes even further. The Court did not use guarded language, but rather made it very clear that judges should operate independently of triers of fact in analyzing actual malice cases:

> The requirement of independent appellate review reiterated in *New York Times v. Sullivan* is a rule of federal constitutional law. It emerged from the exigency of deciding concrete cases; it is law in its purest form under our common law heritage. It reflects a deeply held conviction that judges — and particularly members of this Court — must exercise such review in order to preserve the precious liberties established and ordained by the Constitution. The question whether the evidence in the record in a defamation case is of the convincing clarity required to strip the utterance of First Amendment protection is not merely a question for the trier of fact. Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of "actual malice."

Id. at 1965.

96. As the dissent noted, the coroner's report was in itself only an opinion. *Green,* 655 P.2d at 747 n.2.

97. *See supra* text accompanying note 53.

98. Time, Inc. v. Pape, 401 U.S. at 288.

B. The Structure of the Opinion

The court's analysis of the constitutional issue in *Green* was performed entirely apart from the threshold issue of how the statements in the editorial should be construed. The court stated:

> We have already determined that reasonable jurors could find that the Daily News stated that Dr. Green was at least partially responsible for David Selberg's death. The question then, is whether this statement was made with knowledge or at least with serious doubt as to its truth.[99]

This separation of the issues resulted in two very different standards being employed. On the question of how to construe the editorial statement, a simple reasonableness test was applied, and it was found that reasonable jurors *could* interpret the editorial as an assertion of Dr. Green's causal responsibility for Selberg's death. Only upon passing to the question of whether the editors entertained serious doubt did the court apply the much stricter standards of the *New York Times* rule.

This approach serves to simplify the constitutional analysis. The question of what was said is settled first. Then the question whether the statement was seriously doubted by the author may be analyzed without confronting the complicated question whether the statement at issue actually was intended to be understood in such a manner. This two-tiered analysis is the typical method for approaching such cases.[100] As a method for assuring the guarantees of *New York Times*, however, it is badly flawed. The problem with this two-tiered method is that it applies too liberal a standard to the important question of how the authors intended the publication to be interpreted. The question of the way in which the statement can be construed must not be separated from the issue whether the publisher entertained serious doubts as to its truth; for it is simply nonsensical to speak of an author "in fact entertaining serious doubts"

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99. *Green,* 655 P.2d at 742.

100. "[I]f the language used is capable of two interpretations, one of which would be defamatory and the other not, then it is for the jury to determine which meaning would be given the words by those who read them." Fairbanks Publishing Co. v. Pitka, 376 P.2d 190, 194 (Alaska 1962) (footnote omitted). In some states, the question is not for the jury but for the court. *See, e.g.,* Machleder v. Diaz, 538 F. Supp. 1364, 1370 (S.D.N.Y. 1982) (applying New Jersey law); Loeb v. New Times Communications Corp., 497 F. Supp. 85, 90 (S.D.N.Y. 1980) (applying New York law). Illinois is the most protective state; there the court seeks an "innocent construction" of the statement "by reading the language stripped of innuendo." Cantrell v. American Broadcast Co., 529 F. Supp. 746, 755 (N.D. Ill. 1981) (citations omitted). In none of these cases, however, is there an explicit suggestion that constitutional issues may influence the construction question.

about a statement's truth unless he was aware of how the statement would be construed.[101]

Thus, the two-tiered analysis opens the possibility of publishers being held liable for statements they did not intend to make. To find that a published statement *could* be interpreted as a defamatory assertion, and then to impose liability because the author possessed evidence of that assertion's falsity, is in effect to rule that the author *should have known* that the publication would be so interpreted. Thus, the publisher is held liable for mere negligence, and this is clearly proscribed by the *New York Times* rule.[102]

This faulty method of analysis could be cured by applying the subjectivity and clarity requirements of *St. Amant* directly to the construction question.[103] The plaintiff should have to prove with

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101. This conclusion is simply a logical observation. Its purpose is to point out the incompatibility of objective and subjective standards, or at least the difficulty of applying them simultaneously. If the law requires that the defendant must have subjectively doubted the truth of an assertion, then it is insufficient to find that his utterance *could* be construed as that assertion, for this provides no guarantee that the defendant in fact contemplated that particular implication of his utterance. And one cannot doubt what one has not contemplated.

This problem has been receiving attention recently in the related field of "libel by fiction." *See, e.g.*, Wilson, *The Law of Libel and the Art of Fiction,* 44 LAW & CONTEMP. PROBS. 27, 28 (1981); Comment, *Defamation in Fiction: With Malice Toward None and Punitive Damages for All,* 16 LOY. L.A.L. REV. 99, 128 (1983).

102. *See supra* text accompanying note 28; Herbert v. Lando, 441 U.S. 153, 159 (1979) ("[T]o avoid self-censorship it was essential that liability for damages be conditioned on the specified showing of culpable conduct."); *see also Green,* 655 P.2d at 742, which states: "[Reckless disregard] is conduct which is far more than negligent."

103. As noted above, *supra* note 100, courts have not explicitly applied the subjectivity and clarity requirements of *St. Amant* directly to the construction question. However, there have been indications of courts' willingness to find innocent constructions in cases where *New York Times* would apply. In Greenbelt Coop. Publishing Ass'n v. Bresler, 398 U.S. 6 (1969), the Court ruled as a matter of law that the word "blackmail" was used innocently at a public debate. The Court did not discuss the standard used in this determination. However, the significance of the holding may have been indicated in Justice White's concurring opinion, in which he charged that the holding serves "to immunize professional communicators from liability for their use of ambiguous language." *Id.* at 23 (White, J., concurring). In Loeb v. New Times Communications Corp., 497 F. Supp. 85 (S.D.N.Y. 1980), the district court stopped short of explicitly applying *New York Times* requirements to the construction question; however, the facts indicate that the court was very willing to find innocent constructions wherever possible. For example, in an article about the plaintiff which was highly charged with negative criticism, the statement that the plaintiff's legal career abruptly ended when he "failed to make it through Harvard Law School" was found *not* to imply that he had failed for academic reasons. *Id.* at 90. Unlike the court in *Green,* the court in *Loeb* does not seem to have been asking whether the statement *could reasonably* be read that way; for clearly it could. Rather, the court seems to have been looking for clear and convincing evidence that

convincing clarity that the defamatory meaning was actually contemplated by the author. In order to determine this, the court would have to consider the variety of interpretations to which the publication was susceptible. If there were other interpretations that could reasonably reflect the intentions of the author, it would be difficult to show with convincing clarity that the author contemplated the defamatory implication.

This analysis supports the dissenting opinion in *Green.* It is clear that the editorial implied responsibility on Dr. Green's part. It is equally clear that no serious doubt in the minds of the editors could be found as to an assertion of mere negligence on Dr. Green's part. What is unclear is whether the implications of responsibility constituted assertions of a *causal* connection between Dr. Green's negligence and Selberg's death. The majority opinion used the terms "responsibility," "fault," and "cause" interchangeably.[104] The dissent, on the other hand, argued that "the gist of the defamation lies in the imputation of neglect to Dr. Green."[105] The crucial question was whether the editorial could be found with convincing clarity to have implied that Dr. Green may have *caused* the death, or whether it merely implied that Dr. Green's negligence rendered him "responsible" in the sense that he might have been found criminally liable, given stronger evidence of causation.

The majority did not directly address this question. Although the court ruled that some implication of a causal connection between Dr. Green's inaction and Selberg's death *could* be found by jurors, the *standard* that was used for determining a defamatory intent remains unclear. If it were merely *reasonable* to interpret the editorial in its most damaging light, then the holding is objectionable. Only if it were *clear* that such a defamatory meaning was contemplated by the author would the court's holding satisfy the subjective test of the *New York Times* rule. The *Green* court twice used the word "clear" to describe the editorial's defamatory statements.[106] However, the standard that was explicitly employed was not one of "convincing clarity." The explicit holding in *Green* was that it was *reasonable* to construe the editorial in a defamatory light.[107]

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the statement was intended to be so interpreted: "[T]he ambiguity cannot be stretched to convey a meaning not expressed." *Id.*

For cases involving the protection of imprecise language, see Bose Corp. v. Consumers Union, Inc., 692 F.2d 189, 197 (1st Cir. 1982), *aff'd,* 104 S. Ct. 1949 (1984); Wolston v. Reader's Digest Ass'n, 578 F.2d 427, 434 (D.C. Cir. 1978), *rev'd on other grounds,* 443 U.S. 157 (1978).

104. *Green,* 655 P.2d at 739-40.

105. *Id.* at 745 (Matthews, J., dissenting).

106. *Id.* at 739.

107. *Id.* at 740.

V. CONCLUSION

The significance of the *Green* decision is best appreciated when one understands the unavoidable tension that resides within the law of defamation. As the Supreme Court has noted, "[t]he rule of *New York Times* was based on a recognition that the First Amendment guarantee of a free press is inevitably in tension with state libel laws designed to secure society's interest in the protection of individual reputation."[108] The reason for this dilemma is that laws which guarantee freedom do little to discourage irresponsibility; policymakers have never been able to avoid this difficulty.[109]

In America, the task of regulating this tension has been entrusted in part to the courts. Concerning the particular problem of defining reckless disregard, the Supreme Court has explicitly stated that the issue lends itself to imprecision and must be considered one case at a time.[110] Thus, the role of the individual state courts attains importance. Each court has considerable liberty in deciding cases on the merits; however, each court also bears a responsibility to interpret the guidelines of the Supreme Court as accurately as possible.

With its decision in *Green,* the Alaska Supreme Court has exhibited a tendency to favor the protection of individual reputations over the interest in an uninhibited press. As this note has attempted to show, it is arguable whether the court strayed impermissibly beyond the guidelines established by the Supreme Court. What is clear is that a contrary decision in *Green* would have been well within those guidelines.

Publishers in Alaska, and their attorneys, should take full note of the *Green* decision.[111] *Green* puts publishers on notice that they

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108. Monitor Patriot Co. v. Roy, 401 U.S. 265, 270 (1971).

109. Among those principles deemed sacred in America, among those sacred rights considered as forming the bulwark of their liberty, which the Government contemplates with awful reverence and would approach only with the most cautious circumspection, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this *liberty* is often carried to excess; that it has sometimes degenerated into *licentiousness,* is seen and lamented, *but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America.*

Rosenbloom v. Metromedia Corp., 403 U.S. 29, 51 (1971) (quoting 6 THE WRITINGS OF JAMES MADISON, 1790-1802, at 336 (G. Hunt ed. 1906)) (emphasis in original).

110. *See supra* text accompanying note 43.

111. *Green* may represent a change in the attitude of the Alaska Supreme Court toward publishers' privilege. Although the issue of reckless disregard had not been addressed by the Alaska Supreme Court before *Green,* the court in the past has displayed a tendency toward an attitude protective of the press. *See, e.g.,* Urethane

will be responsible for the clarity of their statements, even if the underlying factual situations are rife with ambiguity. After *Green,* publishers who attempt to draw their own conclusions from ambiguous grounds will face the possibility of drawing liability upon themselves.

Andrew B. Stegemoeller

Specialties, Inc. v. Valdez, 620 P.2d 683 (Alaska 1980); West v. Northern Publishing Co., 487 P.2d 1304 (Alaska 1971); Pearson v. Fairbanks Publishing Co., 413 P.2d 711 (Alaska 1966).