

# Judge's Libel Victory Against Paper Is Upheld

By PAM BELLUCK

BOSTON, May 7 — The highest court in Massachusetts upheld a \$2 million libel verdict on Monday against The Boston Herald and one of its reporters for articles that said a Superior Court judge had made disparaging comments about crime victims and that he was lenient with criminals.

In a unanimous opinion sharply critical of the newspaper, part of Herald Media Inc., and its reporter, David Wedge, the Supreme Judicial Court said, "There is an abundance of evidence that, taken cumulatively, provides clear and convincing proof that the defendants either knew that the published statements found by the jury to be libelous were untrue or that they published them in reckless disregard of their probable falsity."

The case concerns a series of articles and columns about Judge Ernest B. Murphy, beginning with a front-page article on Feb. 13, 2002, that called him a "wrist slapping" judge who had "heartlessly demeaned victims" and had said about a rape victim: "'She's 14. She got raped. Tell her to get over it.'"

The rape comment, which The Herald said the judge made in a closed meeting with prosecutors, set off a frenzy and calls for Judge Murphy's resignation. It also led columnists and commentators to call him Easy Ernie or Evil Ernie. The judge, who denied making the comment, said he received death threats, including a photograph of himself with a bull's-eye on it. He said he and his family were so traumatized that he bought a gun for protection.

In February 2005, a jury found the judge after testimony about some inaccuracies in the articles and statements from two of Mr. Wedge's sources that instead of "tell her to get over it," Judge Murphy might have said "she's got to get over it," a compassionate statement.

Also crucial to the case was an appearance by Mr. Wedge on "The O'Reilly Factor" on the Fox News Channel. On the program, Mr. Wedge said about the judge, "Every county this guy's been in in his short two years on the bench, he's had problems. He's caused headlines for making disparaging remarks to victims and coddling defendants."

Ruling on the appeal by The Herald, the Supreme Judicial Court opinion, written by Justice John M. Greaney, said, "By the end of Wedge's testimony, his credibility on any material factual point at issue was in tatters."

The opinion added, "Wedge's comments on 'The O'Reilly Factor' were

made with actual malice," showing that "Wedge possessed either a brazen disregard for the actual truth or a deliberate intent to give credence to a controversial story that he knew (at the time) to be false."

In a statement, Mr. Wedge said he "vehemently" disagreed with the decision, adding, "I continue to firmly stand behind my reporting on these stories."

The Herald's publisher, Patrick J. Purcell, said in a statement that the court had a "relentlessly one-sided view of Dave Wedge's reporting on a public controversy within the judicial system" and that the paper was "unwavering in our complete confidence in Wedge's journalistic skills."

At a news conference, Judge Mur-

phy said the ruling changed the perception that "we judges are not in a position to do much when we are assailed."

It is relatively unusual for a large libel verdict to be upheld on appeal, experts say.

Sandra Baron, executive director of the Media Law Resource Center, said, "There's a strong message, which is that journalists who have been found to have fabricated anything are going to have a deep hole from which to dig themselves out of."

Rodney A. Smolla, dean of the University of Richmond Law School, said, "If this had really been a close call, you would have expected it to be a divided court."

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