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OCT 31 2013

PLAINTIFFS

DEFENDANTS

COLUMBIA JOURNALISM REVIEW

BRUCE POGOR

DANIEL LEVINTHAL

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

MARK N. WALDBAUM
KATON AND VAN WINKLE TEL 212-561-3610
3 PARK AVE, N.Y., N.Y. 10016

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 USC § 1332(a)(1) DEFAMATION, INVASION OF PRIVACY

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

PERSONAL INJURY

PERSONAL INJURY

FORFEITURE/PENALTY

BANKRUPTCY

OTHER STATUTES

- [] 110 INSURANCE
[] 120 MARINE
[] 130 MILLER ACT
[] 140 NEGOTIABLE INSTRUMENT
[] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
[] 151 MEDICARE ACT
[] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
[] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
[] 160 STOCKHOLDERS SUITS
[] 190 OTHER CONTRACT
[] 195 CONTRACT PRODUCT LIABILITY
[] 196 FRANCHISE

- [] 310 AIRPLANE
[] 315 AIRPLANE PRODUCT LIABILITY
[] 320 ASSAULT, LIBEL & SLANDER
[] 330 FEDERAL EMPLOYERS' LIABILITY
[] 340 MARINE
[] 345 MARINE PRODUCT LIABILITY
[] 350 MOTOR VEHICLE
[] 355 MOTOR VEHICLE PRODUCT LIABILITY
[] 360 OTHER PERSONAL INJURY

- [] 362 PERSONAL INJURY - MED MALPRACTICE
[] 365 PERSONAL INJURY PRODUCT LIABILITY
[] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

- PERSONAL PROPERTY
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[] 371 TRUTH IN LENDING
[] 380 OTHER PERSONAL PROPERTY DAMAGE
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[] 625 DRUG RELATED SEIZURE OF PROPERTY
[] 630 LIQUOR LAWS
[] 640 RR & TRUCK
[] 650 AIRLINE REGS
[] 660 OCCUPATIONAL SAFETY/HEALTH
[] 690 OTHER

LABOR

- [] 710 FAIR LABOR STANDARDS ACT
[] 720 LABOR/MGMT RELATIONS
[] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
[] 740 RAILWAY LABOR ACT
[] 790 OTHER LABOR LITIGATION
[] 791 EMPL RET INC SECURITY ACT

- [] 422 APPEAL 28 USC 156
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[] 830 PATENT
[] 840 TRADEMARK

SOCIAL SECURITY

- [] 861 HIA (1395f)
[] 862 BLACK LUNG (923)
[] 863 DIWC/DIWW (405(g))
[] 864 SSID TITLE XVI
[] 865 RSI (405(g))

FEDERAL TAX SUITS

- [] 870 TAXES (U.S. Plaintiff or Defendant)
[] 871 IRS-THIRD PARTY 28 USC 7609

- [] 400 STATE REAPPORTIONMENT
[] 410 ANTITRUST
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[] 450 COMMERCE
[] 460 DEPORTATION
[] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[] 480 CONSUMER CREDIT
[] 490 CABLE/SATELLITE TV
[] 810 SELECTIVE SERVICE
[] 850 SECURITIES/COMMODITIES/EXCHANGE
[] 875 CUSTOMER CHALLENGE 12 USC 3410
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[] 892 ECONOMIC STABILIZATION ACT
[] 893 ENVIRONMENTAL MATTERS
[] 894 ENERGY ALLOCATION ACT
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[] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
[] 950 CONSTITUTIONALITY OF STATE STATUTES

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[] 440 OTHER CIVIL RIGHTS (Non-Prisoner)

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[] 530 HABEAS CORPUS
[] 535 DEATH PENALTY
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PRISONER CIVIL RIGHTS

- [] 550 CIVIL RIGHTS
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IMMIGRATION

- [] 462 NATURALIZATION APPLICATION
[] 463 HABEAS CORPUS-ALIEN DETAINEE
[] 465 OTHER IMMIGRATION ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] DEF [X]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [] DEF []	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [] DEF []
CITIZEN OF ANOTHER STATE	[X] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)



DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

COLEMAN JOURNALISM REVIEW
729 SCHULTZ AVENUE
THIRD FLOOR
NY, NY 10019

DANIEL LOEWENTHAL
131 WEST 21ST ST
NY, NY 10011

DEFENDANT(S) ADDRESS UNKNOWN WITH CERTAINITY

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

BEST AVAILABLE INFORMATION
BRUCE PETER



Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 10/21/13 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
[X] YES (DATE ADMITTED Mo. JULY Yr. 1972)
Attorney Bar Code # 1572795(NY) MW-4615

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court
MAG. JUDGE FRANCES

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

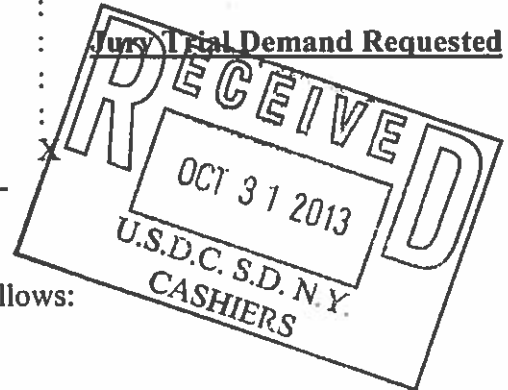
UNITED STATES DISTRICT COURT OF
THE SOUTHERN DISTRICT OF NEW YORK

----- X
[REDACTED]
Plaintiff

v.

COLUMBIA JOURNALISM REVIEW, BRUCE
PORTER, and DANIEL LOEWENTHAL,
Defendants.
----- X

13 CIV 7723
Index No.



Plaintiff complains and for causes of action alleges as follows:

PARTIES

1. Plaintiff [REDACTED] or "Plaintiff") is an individual and is now, and at all times mentioned in this complaint was, a resident of Flint, Michigan where she grew up until she was 18 years old, 1966.

2. Plaintiff, now retired, has previously worked as a real estate developer in Hawaii and has resided in Flint, Michigan since June of 1999 when she moved back to her home town. Plaintiff has worked to cultivate a good reputation.

3. Defendant Columbia Journalism Review ("CJR"), is a highly esteemed academic journal and is now, and at all times mentioned in this complaint was, a bi-monthly publication of the Columbia University Graduate School of Journalism.

4. Upon information and belief, Defendant Bruce Porter ("Porter"), is an individual who is now, and at all times mentioned in this complaint was, a resident of New York, New York.

5. Defendant Daniel Loewenthal ("Loewenthal"), is an individual who is now, and at all times mentioned in this complaint was, a resident of New York, New York.

6. As described herein below, Defendants CJR, Porter, and Loewenthal (together, “Defendants”) collaborated to defame Plaintiff and invade her privacy on numerous occasions causing her harm and damage to her reputation.

JURISDICTION AND VENUE

7. Jurisdiction is proper pursuant to 28 USCA § 1332 based on diversity of citizenship and the amount in controversy.
8. Venue is proper based on the location of the Defendants in New York County.

FACTS

9. Porter is a journalist who has worked at various publications including CJR, and who was not only a former professor of Columbia University Graduate School of Journalism, but also acted as special advisor to the Dean.

10. Loewenthal is a documentary filmmaker.

11. The backdrop for the current defamation perpetrated by Defendants began in October of 1967 with Porter’s writing and publication of a sensationalistic front cover story in Newsweek titled, “Gentle Marcy: A Shattering Tale” (the “Newsweek Article”). A copy of the Newsweek Article is annexed hereto as Exhibit A.

12. The Newsweek Article was presented as detailing an interview granted by Plaintiff, but on condition of her anonymity: Porter promised, as he himself later admitted, that he would not use her name so that she would not be identifiable.

13. The Newsweek Article not only used Plaintiff’s first name, but also her home town so that she was easily identifiable to her family and acquaintances back home, as Porter later acknowledged.

14. The Newsweek Article described Plaintiff as engaging in heavy drug use, casual sex and paying \$200 for an illegal abortion, at a time when her mother believed she was working at Macy's in New York City.

15. In the wake of publicity from the Newsweek Article, the radio station WNEW broadcasted what they described as an interview with Marcy which included a phone call to her mother.

16. In fact, the "interview" was done in the private home of one of WNEW's reporters who did not disclose to Plaintiff that any recording was being made during their conversation and Plaintiff at no time consented to being recorded. Parts of this recording, including Plaintiff's private phone call, were later adopted by several music groups in the United Kingdom and made a part of their songs.

17. For nearly four decades, by Porter's own admission, he continued to publically discuss Plaintiff's story and his interaction with her surrounding the Newsweek Article in classes he taught at Brooklyn College and Columbia University Graduate School of Journalism as an example of his own experience exercising poor ethics in journalism.

18. Following years of orally repeating Plaintiff's story, continuing to defame and damage her character, Porter decided to publish a follow-up story in CJR titled "Lost and found" which was published on November 1, 2012 (the "First CJR Article"). A copy of the First CJR Article is annexed hereto as Exhibit B.

19. The First CJR Article re-states much of the defamatory material contained in the Newsweek Article and used to describe Plaintiff's actions and person at that time including but not limited to:

- a. “She was high from a steady intake of speed, stp, acid, codeine—whatever friends gave her—and her words gushed out in a breathy voice, with no periods or paragraphs.”
- b. “Marcy said she had run away from Flint, MI, after lengthy warfare with her father.”
- c. “...she moved in with a 28-year-old pusher she called the Walrus, from her favorite book, Alice in Wonderland. Stoned one day, she injured her leg jumping out of a moving car, and developed an infection after the Walrus treated her with morphine. She said it turned ‘beautiful colors, but it hurt.’ He got her to a hospital in Windsor, Ontario; she spent two weeks recovering, and then hitchhiked to the Newport Folk Festival.”
- d. “...she had lived in two-dozen crash pads, slept on park benches, and was trying to lose weight by taking speed. Someone beat her up with a milk crate in Tompkins Square Park.”
- e. “She became pregnant during drug-fogged sex and borrowed \$200 for an abortion, then illegal, which was performed in an apartment by a woman who was just out of her teens and made crude jokes during the procedure.”

20. In the First CJR Article, Porter acknowledged that he violated the conditions of Plaintiff’s consent to the interview used in the Newsweek Article by revealing her first name and home town and admits that therefore Plaintiff was not protected by anonymity.

- a. In describing his experience listening to the WNEW recording made after the Newsweek Article he wrote, “When she came on the air, you could tell from her

speedo speech she was flying high. Much to my dismay, she led off by saying how devastated she'd been by the Newsweek article. This reporter had paid her for the interview, she said, and promised not to use her name, only he did. I'd also mentioned Flint, so her parents could easily identify her, something I hadn't bothered to consider."

21. The First CJR Article reveals that readers were so moved by the Newsweek Article that they sent in thousands of dollars for Marcy (who never received their contributions).

22. The First CJR Article explains Porter's admitted continued use of Plaintiff's story in his journalism classes at Brooklyn College and Columbia University Graduate School of Journalism for nearly four decades.

- a. "Now and then I'd think of the Marcy story, and the tape: 'Please, Momma, please still love me when you read it.' Sometimes I'd play it for my class, as an ethics exercise, always hoping students would find some saving grace in what their professor had done."

23. The First CJR Article details Porter's meeting with Loewenthal, who "convinced" him to find Plaintiff and write a follow-up story and their search for Plaintiff starting in her home town.

24. The First CJR Article explains that Porter and Loewenthal's efforts to find Plaintiff were documented by Loewenthal on his camera.

- a. "I told him about Marcy, that I couldn't get her out of my mind... He'd help me. And he'd make a film about our search."

25. The First CJR Article identifies Plaintiff's immediate family: "Other than her first name, all we knew was that she had a [REDACTED]"

26. As part of their efforts to locate Plaintiff, Porter and Loewenthal contacted the newspaper in Plaintiff's home town, the Flint Journal, with details about Plaintiff taken from Porter's meeting with her in 1967 hoping a new story would assist them in locating Plaintiff.

27. The Flint Journal published a front page article in the print newspaper at their suggestion and there was a link in the online version of the story to the recording made by WNEW in 1967 which Plaintiff had not previously known existed.

28. As a result of the article in the Flint Journal, Porter and Loewenthal were contacted by local citizens one of whom divulged Plaintiff's last name which Porter published in the First CJR Article: "The last name is [REDACTED]"

29. The First CJR Article goes on to give the full names of Plaintiff's parents:

a. "Through the obit registry at the Journal, we found Marcy's father and mother,

[REDACTED]

[REDACTED] The family had lived in the west end of town."

30. Upon tracking Plaintiff down to her childhood home, where she continues to reside, Porter and Loewenthal pressured her to give a further interview and sign releases for Loewenthal's video footage.

31. The First CJR Article was accompanied by a photograph of Plaintiff standing in the doorway of her house where her street number is clearly visible on the doorframe:



Flashback The author with Marcy in Flint. After making, and losing, a lot of money in real estate in Hawaii, she says, she bought the house she grew up in and lives quietly on her Social Security check, tending her organic garden.

32. At no time prior to the publication of the First CJR Article did CJR fact checkers reach out to Plaintiff to verify information or give the Plaintiff her opportunity to respond before publication.

33. Following the First CJR Article, there were several follow-up articles in the Flint Journal in Plaintiff's hometown, two more on the front page of the printed newspaper.

34. On December 4, 2012, Porter gave an interview to Dick Gordon, titled "Mea Culpa: An Overdue Apology From A Reporter", in which he recounted much of what had been in the First CJR Article and much of what became the Second CJR Article (defined herein below at ¶ 37 et seq.).

- a. "I said, 'But I just put her name in the draft as Marcy because that's her real name, but she, you know, asked us not to use her real name.' And [my editor]

said, 'Well we won't use her last name, and I like the sound of Marcy, and there are hundreds of Marcys out there, and let's keep Marcy.' And I said, 'Fine with me.'"

- b. "[I had] mentioned Flint, Michigan, and so she could easily be identified as Marcy from Flint, something that I had given no consideration to whatsoever."
- c. Part of the interview re-plays the recording of Marcy made by WNEW after the Newsweek Article without her permission or knowledge.
- d. "an aging biker dude type guy with a grey ponytail, his wallet secured by a chain ... said that he knew her back in the '60s, and he gave us her last name, [REDACTED],"

35. When asked by Dick Gordon if he had learned something from finding Plaintiff and publishing the First CJR Article, Porter responded, "The small answer was that I felt very sorry about what I did, and I wouldn't do it again."

36. When asked by Dick Gordon if Plaintiff appreciated Porter's efforts to find her and if she was "okay with" the First CJR Article, Porter responded, "I don't think Marcy is really okay with this. I think she feels that her life was invaded, and I feel that she felt she was taken advantage of."

37. On December 21, 2012, Porter published a second article in CJR, "'Lost and found' follow-up" (the "Second CJR Article"). A copy of the Second CJR Article is annexed hereto as Exhibit C.

38. The Second CJR Article begins with a statement "Editors' note" which acknowledges that Plaintiff was unhappy with the inaccuracies in the First CJR Article and "was unhappy about

having her saga retold in CJR.”

39. Despite the Editors’ note, the Second CJR Article goes on to state Plaintiff’s maiden name again and admits that there is no independent source for any of the information in the Newsweek Article which was republished in the First CJR Article other than Porter’s own notes.

FIRST CAUSE OF ACTION

40. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 39 as if fully set forth herein.

41. The statement written by Porter and published in CJR that Plaintiff was on drugs including “stp” is false; Plaintiff has not ever used a drug called “stp” and has no knowledge of such a drug.

42. The statement written by Porter and published in CJR that Plaintiff “moved in with a 28-year –old pusher she called the Walrus” is false; Plaintiff never moved in with a drug dealer she called the Walrus. Plaintiff never had a drug dealer.

43. The statement written by Porter and published in CJR that Plaintiff ran away from home is false; Plaintiff left home voluntarily as a legal aged adult but did not run away as a seventeen year old teenager.

44. The statement written by Porter and published in CJR that Plaintiff was seventeen years old at the time of the Newsweek Article is false; Plaintiff was nineteen years old.

45. Based on his admitted knowledge of the recording made without Plaintiff’s knowledge or consent by WNEW, Porter knew that Plaintiff objected to these statements at the time the First and Second CJR articles were written and published.

46. Porter’s reiteration of these false statements was malicious.

47. CJR's repeated publication of these statements was willful as no fact checker ever contacted Plaintiff in time to allow for corrections to false statements.

48. Loewenthal's assistance to Porter in repeating the exploitation of Plaintiff's personal story and statements damaging to her character was negligent.

49. These false statements about Plaintiff's experience and character are libelous on their face. They clearly expose Plaintiff to hatred, contempt, ridicule and obloquy in her home town and wherever such statements are made public. This is clearly evidenced by the fact that readers later sent in monetary donations after reading the original Newsweek Article. Such statements paint Plaintiff as a person of low character and damage her good reputation.

50. Based on their actions, as set forth in the preceding paragraphs, Defendants are guilty of libel for the defamation of Plaintiff's character.

51. As a proximate result of the above-described publication, Plaintiff has suffered loss of her reputation, shame, mortification, and injury to her feelings, all to her damage in a total amount to be established by proof at trial.

52. The above-described written publications were not privileged because they were published by Defendants with full knowledge of their damaging effect on Plaintiff and selfish reckless disregard of such damage in pursuit of financial gain to Defendants as made clear by the admission of defendant Porter stating that he had "used her like some disaster mannequin" in the Newsweek Article and in the First CJR Article, "Oh Marcy, I thought, I've done it to you all over again!" Because of Defendants' malice in publishing, Plaintiff seeks punitive damages in a total amount to be established by proof at trial.

SECOND CAUSE OF ACTION

53. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 52 as if fully set forth herein.

54. The oral statement made by Porter and published in his interview with Dick Gordon that Plaintiff was on drugs including “stp” is false; Plaintiff has not ever used a drug called “stp” and has no knowledge of such a drug.

55. The oral statement made by Porter and published in his interview with Dick Gordon that Plaintiff “lived [with] a heroin pusher named Walrus” is false; Plaintiff never moved in with a drug dealer she called the Walrus. Plaintiff never had a drug dealer.

56. The oral statement made by Porter and published in his interview with Dick Gordon that Plaintiff ran away from home is false; Plaintiff left home voluntarily as a legal aged adult but did not run away as a seventeen year old teenager.

57. The oral statement made by Porter and published in his interview with Dick Gordon that Plaintiff was seventeen years old at the time of the Newsweek Article is false; Plaintiff was nineteen years old.

58. Based on his admitted knowledge of the recording made without Plaintiff’s knowledge or consent by WNEW, Porter knew that Plaintiff objected to these oral statements were made and published in his interview with Dick Gordon.

59. Plaintiff admitted during the course of that same interview with Dick Gordon that he had been wrong to break his promise of anonymity and that the story he had written was damaging as stated in ¶¶ 34-36 of this Complaint.

60. Porter’s reiteration of these false statements, and his specific identification of Plaintiff, was malicious.

61. Loewenthal's assistance to Porter in repeating the exploitation of Plaintiff's personal story and statements damaging to her character was negligent.

62. These false statements about Plaintiff's experience and character, are libelous on their face. They clearly expose Plaintiff to hatred, contempt, ridicule and obloquy in her home town and wherever such statements are made public. This is clearly evidenced by the fact that readers later sent in monetary donations after reading the original Newsweek Article. Such statements paint Plaintiff as a person of low character and damage her good reputation.

63. Based on their actions, as set forth in the preceding paragraphs, Porter and Loewenthal are guilty of slander for the defamation of Plaintiff's character.

64. As a proximate result of the above-described publication, Plaintiff has suffered loss of her reputation, shame, mortification, and injury to her feelings, all to her damage in a total amount to be established by proof at trial.

65. The above-described oral publications were not privileged because they were published by Porter with full knowledge of their damaging effect on Plaintiff and selfish reckless disregard of such damage in pursuit of financial gain to Porter as made clear by the admission by Porter in the First CJR Article stating that he had "used her like some disaster mannequin" in the Newsweek Article and, "Oh Marcy, I thought, I've done it to you all over again!" Because of Defendants' malice in publishing, Plaintiff seeks punitive damages in a total amount to be established by proof at trial.

THIRD CAUSE OF ACTION

66. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 65 as if fully set forth herein.

67. The statements made in the First CJR Article written by Porter and published by CJR identifying Plaintiff's first and last names were made without Plaintiff's consent and expressly against her desire for anonymity.

68. The photograph accompanying the First CJR Article written by Porter and published by CJR identifying Plaintiff's street number was shown without Plaintiff's consent and expressly against her desire for anonymity.

69. These statements and photograph were used by Porter and CJR for trade for financial and professional gain to the detriment of Plaintiff and without Plaintiff's consent.

70. Upon information and belief, Loewenthal's assistance to Porter in repeating the exploitation of Plaintiff's personal story and statements damaging to her character, of tracking Plaintiff down to her home town and forcing her into the public eye invading her privacy was malicious.

71. Based on their actions, as set forth in the preceding paragraphs, Defendants are guilty of invasion of Plaintiff's privacy under New York Civil Rights Law § 51.

72. Based on the fact that Defendants have knowingly used Plaintiff's name and picture for the purposes of trade without first obtaining her written consent, Plaintiff seeks an award of punitive and exemplary damages.


----- continued on following page -----

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, for:

1. Compensatory damages according to proof;
2. Punitive and exemplary damages;
3. Interest as allowed by law;
4. Costs of suit and attorneys' fees; and
5. Such other and further relief as this court may deem just and proper.

Dated: New York, New York
October 31, 2012

EATON & VAN WINKLE LLP

By: 
Maxim H. Waldbaum
3 Park Avenue
New York, New York 10016
Tel. No. (212) 779-9910

Attorneys for Plaintiff 

VERIFICATION

STATE OF MICHIGAN)
) ss:
COUNTY OF GENESSEE)

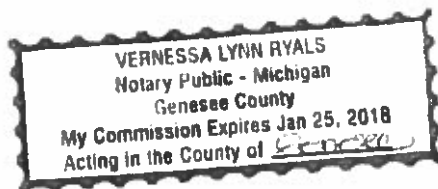
██████████, being duly sworn, deposes and says:

I am the Plaintiff in this action. I have read the foregoing Complaint, and know the contents thereof. I make this verification on personal knowledge and under penalty of perjury.

████████████████████
u ████████████████████

Sworn to before me the
3rd day of October, 2013.

Vernessa Lynn Ryals
NOTARY PUBLIC





Bad trip For years, the author used his experiences from this 1967 cover story in the classes he taught at the Columbia Journalism School as a cautionary tale for aspiring journalists who might be tempted to betray a source.

On October 27, 1967, senior editors gathered for the Thursday story conference to see how things were shaping up for the coming issue of *Newsweek*. A scrim of cigarette smoke hung over the room. Foreign had the Vietcong ambush that nearly wiped out a US Army company north of Saigon; *Nation*, the 100,000 peaceniks noisily besieging the Pentagon. Back-of-the-book was selling a think piece on how poorly the media had covered the riots in Detroit and Newark that summer. Eyes glazed over. Ho-hum news fare for the '60s. That stuff might do for inside, grumbled executive editor Osborn Elliott, in his honking Upper East Side accent. "But, c'mon boys, what've we got for the cover?" Unease pervaded the room.

two years as the not new thing, the c-singles market is getting serious—and crowded

Alternative ending Bruce R. Brugmann, one of the last of the all-weekly lions, is calling it quits. Sort of.

More

orthogonal on Stones I'd like to see (1)

Brian B on What are the odds? (2)

Aaron on A missed connection on Michigan's ballot questions? (1)

More

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- **Lessons from Sullivan-Sever** fracas: When digital and institutional cultures collide

The Observatory Science

- **Lemmings like us:** *Businessweek's* climate-change broadside is powerful, but ignores the allure of waterfront property
- **Bad hippie!** is it wrong to scold exaggerations about climate and weather?

Campaign Desk Politics & Policy

- **A Laurel to NPR,** for giving hospitals a disaster exam: Sandy exposes gaping holes in hospital safety plans
- **Election Day worries in Ohio:** Lawsuits, provisional ballots, alleged software glitches—and the coverage of it all

Behind the News The Media




- **Stories I'd like to see:** Keeping tabs on the Red Cross, Romney's transition plans, Obama's next book

Oz's eyes lit up. "That's it," he exclaimed. "That's our cover. We'll call it Trouble in HippieLand."¹² Nothing did better on the newsstand than scaring the shit out of mom and pop out there in Middle America. But the *Times* already had Linda Fitzpatrick. *Newsweek*, he said, needed a runaway of its own.

It seemed late to go hunting for the girl myself, much quicker to work through someone with contacts. That would of course be Abbie Hoffman, the counterculture impresario with the tumbling hair. Sure, Abbie said on the phone, he could get us a runaway; would there be, like, some payment? Over an expensive lunch at the Gloucester House, a *Newsweek* hangout on 49th Street off Madison, I laid out our requirements: mid-to-late teens, a good talker, should come from somewhere beyond the Hudson River, photogenic. And, most definitely, she must be having a bad time with the Flower Child experience. This story was an object lesson, not a siren song.

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The Kicker last updated Tue 5:30 PM

☞ Horfeaster blows Newsday's payroll down

☞ Pass the #popcorn

☞ The Frankenstein exception

☞ Pass the #popcorn

I found her sitting in a booth staring glassily out at the sidewalk scene—girls in long dresses, boys wearing headbands and surplus Army jackets. Jefferson Airplane was softly rocking over a scratchy speaker. Marcy had straight, streaked hair hanging to her shoulders. Her face was slightly pudgy but pretty, in a malt-shop way. Abbie had explained our mission: I was writing a story about runaways and wanted to interview her. Sure, she said. Just don't use her name. "Oh, we won't," I assured her, clicking my ballpoint into operation. She was high from a steady intake of speed, stp, acid, codeine—whatever friends gave her—and her words gushed out in a breathy voice, with no periods or paragraphs.

Marcy said she had run away from Flint, MI, after lengthy warfare with her father. To punish some transgression, she said, he had killed her pet turtle and torn up her vegetable garden, and was not nice to her boyfriend, a drummer named Twig. That May, before her 17th birthday, Marcy packed her clothes and, with her pet cat, caught a ride to Detroit, where she fell in with a motorcycle gang called The Outlaws. The cat got sick and died. Marcy grew frightened of the guys' carousing, and she moved in with a 28-year-old pusher she called the Walrus, from her favorite book, *Alice in Wonderland*. Stoned one day, she injured her leg jumping out of a moving car, and developed an infection after the Walrus treated her with morphine. She said it turned "beautiful colors, but it hurt." He got her to a hospital in Windsor, Ontario; she spent two weeks recovering, and then hitchhiked to the Newport Folk Festival. "After that," she told me, "I ended up here."

Since then, she had lived in two-dozen crash pads, slept on park benches, and was trying to lose weight by taking speed. Someone beat her up with a milk crate in Tompkins Square Park. She became pregnant during drug-fogged sex and borrowed \$200 for an abortion, then illegal, which was performed in an apartment by a woman who was just out of her teens and made crude jokes during the procedure. Her idea now was to earn money to help friends buy a bus and go see the Grand Canyon.

I'd become dazed by all her distress, having had little experience with people lost and in pain. But, never mind, I knew what I'd been sent for, and deadline loomed. I handed her the few dollars in my pocket, said to wait there for the photographer—don't worry, he'd do a profile shot, not her full face—and split for the office.

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Writing the piece, I wondered what to call her. I'd used "Marcy" in the draft because that was her name, but told Shew Hagerty I'd promised not to identify her. He said he liked the sound of "Marcy," so let's keep it. There are hundreds of Marcy's running around; he reasoned, and besides, we're not using her last name. "Fine with me," I said. Headlined "Gentle Marcy: A Shattering Tale," the story blew everyone away. It earned me a write-up in the front of the magazine. I got a scribbled "Hear, hear!" from Oz on his special notepaper—he wasn't too free with those. It also created a sensation among readers. Hundreds of letters poured in, many of them with checks for Marcy. One little girl from San Francisco sent a quarter and a dime. "I have enclosed my week's allowance," she wrote. "Please give it to Gentle Marcy." To top it off, *Reader's Digest* said it would pay \$1,500 to reprint the story, a giant fee back then.

After a few days, the glory faded. Then a researcher at the magazine told me she'd just heard a radio interview with Marcy on the New York rock station WNEW. I got the tape. The interview was conducted by a newsman named Steve Young, who opened with some commentary trashing the hippie movement, how unwashed they were, and deluded. A case in point was this girl Marcy, whom he claimed to have found at the Diggers Free Store—no mention of the *Newsweek* piece. He'd persuaded her to talk by letting her and some friends sleep on the floor of his apartment.

He tided his bit "Marcy, a Child Again." When she came on the air, you could tell from her speedo speech she was flying high. Much to my dismay, she led off by saying how devastated she'd been by the *Newsweek* article. This reporter had paid her for the interview, she said, and promised not to use her name, only he did. I'd also mentioned Flint, so her parents could easily identify her, something I hadn't bothered to consider. Her mother would be crushed; she'd thought Marcy was working at Macy's.

Young then cut in, his voice lowered to a whisper, like some guy in an alley selling a hot watch. "Would you like to call your parents?" he asked. "Oh, wow, you don't mean it!" she said. "It's early in the morning, but I'd love to talk to my mother." He slid the phone to her, and you could hear her dialing. Her mother answered, but you could catch only Marcy's end of the conversation.

"Momma, this is Marcy," she said in a rush. "Momma, you know *Newsweek*, you haven't seen it, have you? Don't let Daddy read it." She then broke into sobs and had difficulty getting words out. "Please, Momma, please still love me when you read it. Oh, Momma, I really love you. I thought you wouldn't love me anymore. I told them I loved you but they didn't print that. It wasn't like they said. Oh, Momma, don't cry. Don't cry."

The conversation went on for five minutes, and I was feeling lower and lower. Young ended the program by saying that the next morning he drove Marcy and her friends over the George Washington Bridge and got them maps of the United States. "I last saw Marcy on the ramp of the New Jersey Turnpike," he said. "Those maps don't show where Marcy [big pause for dramatic effect] can be a child again."

What a creep! I thought. But then, how did his interview differ from what I'd done, using her like some disaster mannequin? I'd given no thought to what it really must have been like jumping out of that car, venturing alone into an apartment for a botched abortion. I felt deeply crummy for caving to Hagerty, using her name, and her city. He'd said the story would have lost credibility without those details, but I should have argued, "So what?"

The years rolled by. I left *Newsweek*, became a magazine writer, and taught journalism. Now and then I'd think of the Marcy story, and the tape: "Please, Momma, please still love me when you read it." Sometimes I'd play it for my class, as an ethics exercise, always hoping students would find some saving grace in what their professor had done. I mean, parents had to hear this stuff, didn't they? I got few takers.

Then, a couple of years ago, after retiring as a professor at Columbia Journalism School, I ran into the documentary filmmaker Dan Loewenthal at a party in New York. I forget why, but I told him about Marcy, that I couldn't get her out of my mind. "Well, why don't you go out and find her?" he said. "And apologize." He'd help me. And he'd make a film about our search.

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Other than her first name, all we knew was that she had a brother, Arthur, and a sister named Jeanie. And there was that telephone call over the old rotary phone. We thought if we slowed down the tape and counted the clicks, we could come up with her number. Then, we'd look that up in a reverse phone directory from 1967, find the family's name and address. They'd be long gone, of course, but we could nose around the neighborhood, locate someone who knew them, and maybe learn what had happened to Marcy. Piece of cake.

Not actually. There are no audible clicks. Rather, it's a time-lapse thing—the number of milliseconds that elapse between dialing a nine, say, and when the rotary winds back to zero. The nine and zero are easy to distinguish, but not the nine from an eight, or a five from a four. Computer experts we found on Craigs-list translated the sound impulses to digital images, but none was confident he had the golden number.

There were other avenues, one of which was her high-school yearbook. A Flint librarian told us that back then she would have attended one of three high schools, and been listed as Marcy somebody-or-other in the freshman class entering the fall of 1954, when she was 14. That intrigued us enough that in January 2011, we flew to Detroit, rented a car, and drove the 50 miles up to Flint. It was cold, with about a foot of snow on the ground. Before leaving, we'd called the *Flint Journal* and convinced them to do a story about our search, hoping to reach someone who had known Marcy. We got to Flint on a Friday, and the story was scheduled to run that Sunday.

One of Flint's misfortunes was to have been the birthplace of Michael Moore, whose documentaries regularly paint it as the unhappiest place to live in America. Beyond a couple of ritzy neighborhoods filled with Tudor mansions, it's dominated by one-story frame bungalows that house the former work force from the abandoned Chevrolet and Buick plants. Aside from unemployment numbers, bad news in Flint comes in the form of arson and violent crime. The city averages 300 to 400 fires a year. And as Dan and I drove around, we saw plywood signs nailed up on trees saying things like, "No Hoes Allowed. Children At Play."

At the Flint Central Library, the yearbook gambit also proved a dead end. No Marcys in the 1954 books, or the classes on either side. "Marcy," we figured, could well be a nickname for Marsha, Martha, Marjorie, Margaret, or Mary. It seemed hopeless. We also tried checking the "Marcy" birth announcements that the Flint Journal used to run in the '40s and '50s. No luck.

We ended Friday in low spirits.

Saturday morning, we were back at the library. I was up in the microfilm room, and Dan was downstairs at a table poring over more yearbooks, when a presence loomed in his peripheral vision. He looked up to see this aging biker dude with a gray ponytail, his wallet secured to his blue jeans by a chain. "You the guys looking for Marcy?" he asked in a challenging voice. He'd seen the story in the Sunday issue of the *Journal*, which had appeared online that day, ahead of schedule. "I knew her back in the '60s. Her real name is Margaret. The last name is Bachman."

"Whoa, whoa, wait a minute," Dan sputtered. "Wait, wait." He said he needed to get his camera operational, go find Bruce. No, the biker said he wasn't going to wait.

"Well, what's your name?" Dan asked.

"Call me 'Moon,'" he said.

"Is that your name?"

"No, but you can call me Moon." Moon then spun on his heel and walked out of the library.

From then forward, our search unfolded in a rush. Through the obit registry at the *Journal*, we found Marcy's father and mother, Reinhold and Edith Bachman, who had died in the '90s. The old man had run a hobby shop in downtown Flint, The Hobby House. The family had lived in the west end of town. We also learned that Marcy now resided in Hawaii, of all places, married to a man named Thomas Won, and that she had four children. Via Google satellite, we zeroed in on their house, a big-looking spread outside Waikiki. Could Marcy be a well-off matron? Was a trip to Hawaii in the offing? Piña coladas in a Tiki hut, watching the curlers roll in? We felt like dancing a jig.

There was still daylight left to Saturday, so we drove out to Marcy's old house to film the street for background, and talk to whoever was now living there. It was a white bungalow, surrounded by a chainlink fence, looking forlorn in the dirty snow.

I went up and knocked on the storm door while Dan shot me from the sidewalk.

~~Deep-throated barking exploded from within the house, and a large-ish, middle-aged~~ woman appeared, shouting at the dogs to stay back. She had glasses and a head of curly brown hair, and was smiling inquisitively. I told her we were looking for someone named Bachman who had lived at this address a long time ago.



DANIEL LOWENTHAL

Flashback The author with Marcy in Flint. After making, and losing, a lot of money in real estate in Hawaii, she says, she bought the house she grew up in and lives quietly on her Social Security check, tending her organic garden.

"Well, I'm a Bachman," she said.

"You're a Bachman," I said, uncomprehending.

"Yes, I'm a Bachman. I'm Margaret Bachman."

"Margaret Bachman? You mean . . . you're Marcy?!"

"Yes, I'm Marcy."

Speechless for a second, I quickly recovered and told her I was the guy who'd written the *Newsweek* story so many years ago, about her running away to New York, did she remember? Did she remember! She immediately lit into me as if she'd been waiting all these years for that guy to show up at her door. That was an awful, awful thing I did to her, taking advantage of a young girl, how painful it was, how horrible it made her feel, and how it had so upset her family, how embarrassing with friends and neighbors reading it. And she was 19, not 17 like I'd written, and she didn't even know what STP was, although she did admit to a liking for LSD.

After agreeing that I'd done a terrible thing and apologizing a dozen times, I told her this man with the camera who was coming up the walk right now was my associate, Dan Loewenthal, and that we were here to do a film about the consequences of such careless and thoughtless journalism, hoping to make amends and be forgiven. And on and on.

Eventually she relaxed, and invited us into her living room, now a little crowded, what with us and her large rescue dogs, including a boisterous Rottweiler she'd acquired to scare away criminals. Speaking in a voice you could probably hear several houses away, she ran briefly through her life after being dropped off that day at the Jersey Turnpike. She and her friends hitched to Haight-Ashbury, she worked as a waitress, attended and then dropped out of college, knew Country Joe and the Fish and Timothy Leary, was present at Altamont. She then moved to Hawaii, where she got married and had three boys and a girl, made and lost a lot of money in real estate and the restaurant business, and, after getting divorced, moved back to Flint in the late 'gos. She bought out her sister's share of her parents' house, and was now settled into a quiet retirement, living on her Social Security check and tending her organic garden.

As it grew dark, we said we had to go, but made a date for lunch the next day. It wasn't until we reached our motel that I realized I'd forgotten to tell her about the story that was running tomorrow on the front page of the *Sunday Journal*. Thanks to the digital age, it would include not only the reporter's interview with Dan and me, but also the original *Newsweek* story, as well as the radio interview on WNEW. All of Flint would now listen in as Steve Young slid that old phone over to the clueless flower child and asked in his unctuous fashion: "Would you like to call your parents?"

It was as if I'd never learned a thing. Oh, Marcy, I thought, I've done it to you all over again!

Wednesday, January 30, 2013, 1:01 PM CST

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Behind the News

CJR on the media

'Lost and found' follow-up

Our author responds to her critics

By Bruce Porter

Book: *Bruce Porter, CJR: Marty Neumeier*

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Editor's note: It has come to our attention that Marty, the subject of Bruce Porter's article, *'Lost and found,'* in the November/December issue, was unhappy about having her name retold in CJR, and claims that it repeated a number of factual errors from Porter's original *Newsweek* piece on Marty in 1987. She declined to submit a list of her specific complaints for publication, but we have made certain revisions to the story and asked Porter to respond.

I'm sadder than your audience might presume that Marty is upset over the CJR piece, and that she views a story about her success in life after such a traumatic early experience as anything less than a testimonial to her strength of character and perseverance.

The relevance of her complaint does come as a surprise, considering the long hours of pleasurable conversation Dan Luewenthal and I had with her in 2011, when we first met her and she agreed to cooperate as a film about her life story. During that first meeting, she expressed unhappiness with the original *Newsweek* piece, as well as the *First Journal's* misreporting, at the investigation, the story once again. However, once we got past that, she still agreed to participate in the documentary as long as she would be compensated for her effort.

Marty returned 5,000 to begin cooperating with the documentary, and she signed a standard release giving us the right to use her in the film and her right to approve the final version. There was no provision in the agreement to withhold her name or that of her family members. Indeed, during that first meeting, she provided Dan with the name and address of her son in California. A few weeks later, Dan went out there to talk to him about participating in the film, obtained a release from him, and then returned to LA that June to film her talking about his life growing up with his mother.

After the first meeting with Marty in January 2011, and after a lot of phone conversations, Dan and a producer returned to Flint in Mar 2011. They spent several days filming Marty's account of her life, and she also provided them with some 50 family photographs to use in the documentary.

I viewed the story I wrote for CJR as encompassed by the agreement to do the documentary, and as a way to possibly drum up publicity to get some funding.

Concerning the question of factual errors: I don't have a copy of the old *Civ* Directors of Flint, but if Marty says there are two or three names, let's maiden names, I apologize for the mistake. In any case, everything that appears in the old *Newsweek* story comes from the notes of an conversation with Marty, which unfortunately survived for 32 years. There were actually two of us taking notes that day, me and Paul Zimmerman. Neumeier's first critic, now deceased, who went along to help me write everything down as accurately as possible. When she passed out in our 2011 talk that she was 19 in 1967 and not 17, and that she didn't even know what the drug STF was, I included that in the CJR story. In the matter of the disappearance of her cat, apparently Paul heard one explanation and I another, and what appeared in the magazine was as something of a compromise. I suspect the *Newsweek* latechicklers, being unable to find Marty that night, went along.

Finally, to the matter of my less than commendable attempt to shield Marty from further publicity by misquoting the *First Journal* the week after we found her: What I should have done when the *Journal* reporter called to ask if we had found Marty was as confide in the reporter that yes, we had, and that she was living back in Flint, and then try to explain why another story wasn't such a good idea at that moment.

Unfortunately, I did not do that. Having witnessed Marty's unhappiness over the fact the *Journal* had given everyone in Flint the link to her 1967 radio interview (which, by the way, has been out there on the Web since the 1990s, and is the subject of two rock songs by a Swedish techno group), I endeavored, without directly lying, to lead the reporter to believe she had not returned to Flint, and was still married and living in Hawaii.

The paper, of course, published a story saying just that, and Marty was understandably outraged. The paper then published another story about how it had been deceived by a journalism professor no less. I apologized, but the damage was done.

This episode will always stay with me as an incomprehensible lapse in judgment, albeit one with good intentions. To my mind, though, it had nothing to do with the story I wrote for CJR, which ended when our search for Marty ended on her doorstep in Flint. And the editors at CJR knew nothing about it.

Again, I wish to apologize to Marty for anything we've done to make her upset. I hope she will reconsider her recent decision to pull out of the documentary; not only would the film tell the story of a brave and remarkable woman, but also provide insight into 1960s America, an important era that is slowly fading from public view.

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Date: you're doing it wrong

The end with a pun for her to play in the Web, regardless of your intentions, you can't let me being only concerned with a product. She said no.

417 Posts | 11 Comments | Sat 23 Dec 2012 | 12:41 PM

Here, I just read the full media release. Good to know.

CJR's editor David Cunningham came off as a reasonable person, only once asked if he wanted to pay for the slightest error in fact checking at the end of the next column page or so in his way back.

CJR puts out the papers for Porter's most, perhaps, masterpiece and he becomes a key participant in his ongoing work on public view.

And with that, I go back to sleep.

417 Posts | 11 Comments | Sat 23 Dec 2012 | 12:41 PM

"Lost and found" is the story about her success in life? Really?

GP looks to be an excellent piece. Unfortunately, I hope to agree with Bruce about the CJR's editor. About the show's too.

417 Posts | 11 Comments | Sat 23 Dec 2012 | 12:41 PM

I find that CJR is a very interesting read and the Porter is "lost" for the news.

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about the author

Bruce Porter is the author of *Lost and found*, a book for St. Martin's Press about a woman who is rescued and by families in California while working as an entrepreneur operating in the 1960s.

Related stories

Porter's book is now out for sale in the *Civ* Directors of Flint

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